

# THE MEDICAL PROFESSIONAL BEWARE: The False Claims Act — A Danger You Can't Ignore

By Theodore Margolis and Sandra Jarva Weiss



**T**HE DARTMOUTH-HITCHCOCK MEDICAL Center has agreed to pay over \$2 million to settle a False Claims Act lawsuit with the United States and the states of Vermont and New Hampshire. This case is yet another in a long line of lawsuits in which the False Claims Act has been used to punish an assortment of billing and statutory violations by medical professionals and institutions. The Department of Justice states that since January 2009 some \$2.3 billion has been recovered from health care professionals for violations of the False Claims Act.

The act prohibits making any false Medicare reimbursement claims. Hospitals, doctors, medical associations, labs or equipment suppliers have often violated one of the Medicare reimbursement requirements inadvertently, thereby increasing the potential for a claim of a False Claims Act violation. Recent federal case law requires physicians, hospitals and medical professionals to know the legal requirements for the valid submission and collection of claims for medical services. Medical

professionals who simply chose not to educate themselves may be found to have acted in deliberate ignorance or with reckless disregard and may thereby be liable under the False Claims Act. The submission of a Medicare claim by a provider is a certification that they have complied with the Medicare Act's medical necessity definitions and complied with all relevant laws.

To succeed with a False Claims Act case, the government or the plaintiff must prove: (1) a false or fraudulent claim; (2) presented by the defendant to the United States for payment or approval; or (3) with the knowledge that the claim was false. The damages assessed to the guilty defendant under the act include liability for a civil penalty of not less than \$5,000 and not more than \$10,000, for each violation plus three times the amount of damages that the government sustains because of the violation. Because neither the Stark nor anti-kickback statutes provide for rights of private action, violations of these acts are being brought under the False Claims Act.

The Stark statute prohibits doctors from referring patients to a hospital or medical care center, or for certain health care services, if the doctor has a financial relationship with that entity. Violation of the anti-kickback statute (42 U.S.C.A. 1320 a-7b (b) (2) (2006)) can also trigger a False Claims Act charge.

The requirement that the false claim submission be undertaken knowingly does not require a specific pronounced intent to violate the law. Therefore, medical professionals cannot simply disregard or attempt to remain ignorant of the reimbursement requirements.

As witnessed in the False Claims Act cases, the initial punishment for the defendant medical professional is the cost, time and pressures brought on by a False Claims Act case. Usually, thousands of documents and years of history are sought by the government for review. In states with these acts the matter of Medicaid reimbursement to the state comes into issue. If the federal investigators find that the violations involve criminal conduct, charges of conspiracy, mail and wire fraud, money laundering, and tax code violations can follow. For hospitals, expensive corrective action and/or corporate compliance programs may be required by the government to prevent future violations.

The myriad of health care laws and regulations are a challenge to anyone, but the potential penalty for not taking care of reimbursement and regulatory issues is becoming too substantial to ignore. Like in medicine, if you can prevent the damage from occurring, the solution is always more cost effective.

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