

DOJ INTERVENES IN RETAINED OVERPAYMENT SUIT

With the passing of the Affordable Care Act ("ACA"), False Claims Act ("FCA") observers **noted the imminent filing of cases** alleging violations of the ACA's amendments to the FCA or "reverse" false claims. Such claims are *per se* false claims under the FCA and arise when a government contractor or health care provider becomes aware of a government overpayment and improperly fails to reimburse the government within 60 days. While these cases have remained largely out of sight - and most assuredly under seal - the Department of Justice ("DOJ") has found its test case in the Southern District of New York and intervened: *U.S. v. Continuum Health Partners, Inc., et al.*

THE COMPLAINT

Friday, the DOJ filed its **Complaint-in-Intervention** on the basis that the Defendants "knowingly concealed and improperly avoided or decreased an obligation to pay or transmit money or property to the Government." (**Complaint** at 1.) The original complaint was filed by an employee of Continuum who conducted an internal investigation on behalf of her employer related to the claims the Government alleges improperly went unpaid. Defendants include Continuum, Beth Israel Medical Center and St. Luke's Roosevelt Hospital Center.

The Government alleges that the Defendants received payment for claims wrongly billed to Medicaid and that the Defendants were notified of these overpayments by New York in the fall of 2010 and in February 2011. The Defendants' own internal investigation identified 900 specific overpayments. Rather than reimbursing these overpayments within the required 60 days, the Government alleges that Continuum repaid the claims in "small batches" over the course of two years.

THE IMPACT

What is perhaps most unexpected regarding this complaint is that the Defendants appear, even by the Government's own allegations against them, to have repaid the identified overpayments in full. The alleged failure by Defendants was to ensure such repayment within the 60-day period provided under the FCA. Regardless of the ultimate outcome in this case, it appears to be a clear shot over the bow of health care providers and government contractors: the Government intends to strictly enforce the 60-day rule.

This case will be closely watched as it progresses through litigation, as it is one of the first of its kind in which the Government has intervened. The legal arguments and theories presented in this case will provide key indications not only of the Government's interpretation of the amendments but also the first indications of what defenses may prove most effective against such claims.

Should you have any questions regarding FCA defense or the ACA's amendments regarding reverse false claims, please contact:

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