

Pediatric Firm Can Pursue Federal, State False Claims Act Allegations, Judge Says

Mealey's (September 19, 2017, 11:06 AM EDT) -- NEWARK, N.J. — A firm of pediatric doctors can pursue allegations that a skilled nursing and rehabilitation facility violated the False Claims Act, the New Jersey False Claims Act (NJFCA) and the New York False Claims Act (NYFCA) for unlawfully billing Medicare and Medicaid as primary payers rather than a patient's private insurance company, a federal judge in New Jersey ruled Sept. 18, finding that the firm sufficiently stated claims under Federal Rule of Civil Procedure 12(b)(6) (United States of America v. Wanaque Convalescent Center, et al., No. 14-6651, D. N.J., 2017 U.S. Dist. LEXIS 150566).

(Opinion available. Document #20-171020-006Z.)

U.S. Judge Susan D. Wigenton of the District of New Jersey held that Jersey Strong Pediatrics LLC adequately pleaded in its amended complaint that under Medicare Secondary Payer (MSP) laws, Wanaque Convalescent Center (WCC), Wanaque Operation Co. L.P. and Seniors Management North Inc. were required to first bill a patient's private insurer before submitting bills to Medicare or Medicaid.

Jersey Strong alleged in its Oct. 2, 2014, complaint that WCC, a skilled nursing and rehabilitation facility, fraudulently billed Medicare and Medicaid by either failing to ascertain, or ignoring the existence of, patients' private health insurance and, as a result, violating secondary payment laws by billing Medicare and Medicaid as primary payer when submitting claims for payment. Jersey Strong brought suit as a qui tam relator on behalf of the United States of America and the states of New Jersey and New York. Jersey Strong asserted claims for violations of the FCA, 31 U.S.C. §§ 3729 – 3733, the NJFCA, N.J.S.A. 2A:32C-1, and the NYFCA, N.Y. State Fin. Law §187 et seq. The United States, New York and New Jersey declined to intervene in November 2016.

Amended Allegations

WCC moved to dismiss Jersey Strong's suit for failure to state a claim under Rule 12(b)(6), Fed. R. Civ. P. 12(b)(6). Judge Wigenton granted the motion on June 14, 2017, and Jersey Strong filed an amended complaint on July 14.

WCC filed a motion to dismiss the amended complaint on July 28, again arguing that Jersey Strong failed to state a claim and that the allegations in the amended complaint failed to satisfy the heightened pleading requirement of Rule 9(b), Fed. R. Civ. P. 9(b).

Judge Wigenton found that while eight examples of claims submitted by Jersey Strong in support of their allegations did not include patient names, dates of treatment or primary insurance policy numbers, they do

put the defendants on notice of the allegations against them.

“The Amended Complaint also alleges that the federal government contracts ‘with private auditors to strictly enforce secondary payment laws to prevent improper payments’ indicating that adherence to secondary payer laws is material to any ‘decision to pay for Defendants’ services,’” the judge wrote. “At this stage, Plaintiff has met its burden to plead that the MSP laws are material.”

Finally, Judge Wigenton ruled that because Jersey Strong sufficiently stated claims under the FCA, the relator adequately alleged that the defendants violated the NJFCA and NYFCA.

Counsel

Eric R. Breslin and Melissa S. Geller of Duane Morris in Newark and Trevor Haruo Taniguchi of Duane Morris in Cherry Hill, N.J., are counsel for WCC.

Jeremy Edward Abay of Sacks Weston Milstein & Diamond in Philadelphia are counsel for Jersey Strong.

(Additional documents available: Motion to dismiss. Document #20-171020-007M. Opposition brief. Document #20-171020-008B. Reply brief. Document #20-171020-009B.)

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