Westlaw Today
powered by Reuters

False Claims Act settlements to know from Q2 2024

By Latazia Carter, Esq., and Scott Gallisdorfer, Esq., Bass, Berry & Sims PLC*

AUGUST 15, 2024

Halfway through 2024, the government's False Claims Act (FCA) enforcement efforts show few signs of letting up. In June alone, the Department of Justice (DOJ) announced at least five eight-figure FCA settlements, resolving allegations ranging from unlawful kickbacks to upcoding to improper subcontracting to cybersecurity violations.

These resolutions not only highlight focus areas for regulatory enforcement but also offer healthcare companies, government contractors, and other entities doing business with the government valuable lessons for their own compliance efforts.

On May 16, Cape Cod Hospital agreed to pay $24.3 million to resolve allegations that it billed Medicare for transcatheter aortic valve replacement procedures that failed to comply with certain Medicare rules.

Below, we summarize six noteworthy settlements from Q2 2024, including two that resulted in Corporate Integrity Agreements (CIAs).

Healthcare kickback schemes

- On May 24, the owner and operator of a laboratory and several related companies agreed[1] to pay $27.9 million to resolve allegations that he and his companies violated the FCA by conspiring to bill for medically unnecessary cancer genomic (CGx) tests obtained through unlawful kickbacks. According to the government, the conspiracy had four components — the owner conspired with telemarketing agents to solicit Medicare beneficiaries for purportedly free tests; with telemedicine providers to prescribe the unnecessary tests; with reference laboratories to conduct the tests; and with billing laboratories and a hospital to submit the false claims to CMS. The owner had previously pleaded guilty[2] to three healthcare fraud conspiracy counts in September 2022.
- On May 29, spinal device manufacturer Innovasis Inc. and two of its senior executives agreed[3] to collectively pay $12 million to resolve allegations that they paid unlawful kickbacks to spine surgeons in exchange for the surgeons using Innovasis spinal implants and other equipment in procedures performed for Medicare beneficiaries. The kickbacks allegedly included consulting fees, intellectual property acquisition and licensing fees at rates exceeding fair market value, performance shares in the company, travel to a luxury ski resort, and lavish dinners and holiday parties. The two senior executives allegedly controlled or otherwise directed Innovasis's operations and strategic decisions, including the unlawful agreements with the surgeons.

Medicare billing and coding violations resulting in CIAs

- On May 16, Cape Cod Hospital agreed[4] to pay $24.3 million to resolve allegations that it billed Medicare for transcatheter aortic valve replacement (TAVR) procedures that failed to comply with certain Medicare rules. The government alleged that, over a roughly seven-year period, the hospital failed to properly examine and document patient suitability for TAVR procedures consistent with the requirements of the relevant Medicare National Coverage Determination (NCD). In connection with the settlement, the hospital entered into a five-year CIA with HHS-OIG, which requires an annual review of the hospital's Medicare claims by an Independent Review Organization (IRO).
- On June 5, a chronic disease management provider agreed[5] to pay roughly $14.9 million to resolve allegations that it knowingly submitted upcoded evaluation and management (E&M) claims for various services related to the management of chronic care patients in assisted living and other care facilities. According to the government, the E&M codes billed by the provider did not support the level of service provided. The provider entered into a five-year CIA with HHS-OIG, which requires the provider to establish and maintain a compliance program and to submit to an IRO's review of the provider's Medicare claims to determine whether such claims were medically necessary, appropriately documented, and correctly coded.

COVID-19 program fraud

- On June 7, urgent care provider CityMD agreed[6] to pay over $12 million to resolve allegations that it submitted false claims for COVID-19 testing to a Health Resources and Services

Administration (HRSA) program for uninsured patients. CityMD allegedly did not adequately confirm whether individuals had health insurance coverage before submitting claims to the program, including, in some cases, individuals for whom CityMD had health insurance cards on file.

Unlawful subcontracting in Navy procurement

- On June 21, Sikorsky Services Inc. and Derco Aerospace Inc. agreed[7] to pay $70 million to resolve allegations that they overcharged the Navy for spare parts and materials for repairing and maintaining aircraft used to train naval aviators. The government alleged that Sikorsky entered an improper cost-plus-percentage-of-cost subcontract with Derco in violation of both a federal statute and Sikorsky's prime contracts with the Navy. According to the government, based on Sikorsky's failure to disclose the nature of the non-compliant contract, the Navy reimbursed Sikorsky for improper markups on the cost of parts Sikorsky purchased from Derco.

For a deeper dive into FCA settlements and their implications, we invite you to explore our Healthcare Fraud & Abuse Resource Center,[8] which includes a searchable database of healthcare FCA settlements from the last decade.

Notes:

[1] https://bit.ly/3SBVHvV

[2] https://bit.ly/3SyTYYm

[3] https://bit.ly/3Wtk28n

[4] https://bit.ly/3LRokBD

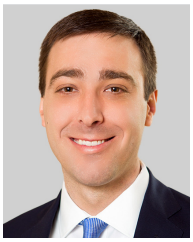
[5] https://bit.ly/3WLEcM4

[6] https://bit.ly/3yqFenx

[7] https://bit.ly/4d2TMZJ

[8] https://bit.ly/4dnEm1K

About the authors



Latazia Carter (L) is an associate at **Bass, Berry & Sims PLC**. She represents clients in complex business litigation and government investigations and can be reached at Latazia.Carter@bassberry.com. **Scott Gallisdorfer** (R), a member of the firm, advises clients on complex litigation and government and internal investigations. He has significant experience in False Claims Act litigation and health care fraud and abuse investigations, including civil and criminal investigations by the U.S. Justice Department, U.S. Department of Health and Human Services Office of Inspector General and other regulators. He can be reached at Scott.Gallisdorfer@bassberry.com. Both authors are located in the firm's Nashville, Tennessee, office. The authors would like to thank summer associate Dana Branstetter for contributing to this article, which was originally published July 11, 2024, on the firm's website. Republished with permission.

This article was published on Westlaw Today on August 15, 2024.