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Mount Sinai Seeks Dismissal of Groundbreaking False Claims Suit

On September 22, 2014, Mount Sinai Health System (Mount Sinai) filed a motion to dismiss a groundbreaking lawsuit filed against it in a New York federal district court. The suit is the first publicly unsealed whistleblower case pursued by the government that seeks to enforce the so-called "60-Day Rule" for the return of overpayments of federal health care program funds set forth by the Patient Protection and Affordable Care Act (PPACA).

The 60-Day Rule requires a provider to return an overpayment received from a federal health care program within 60 days after the date on which the overpayment is identified and to document the reason for the overpayment. Any overpayment not returned to the government within the 60-day timeframe constitutes an "obligation to pay" under the federal False Claims Act (FCA) and is therefore subject to treble damages and civil penalties under the FCA. The PPACA does not define the point at which an overpayment is "identified," which has led to uncertainty among providers regarding how to comply with the 60-Day Rule.

The Mount Sinai litigation stems from an electronic billing error that caused a Mount Sinai subsidiary to receive overpayments from New York's Medicaid program. The government alleges that such overpayments were not timely returned, in violation of the 60-Day Rule, and is seeking treble damages and civil penalties under the FCA. The basis for Mount Sinai's motion to dismiss is its interpretation of the proper date on which overpayments are "identified," which triggers the 60-Day Rule. Mount Sinai argues that the proper application of the 60-Day Rule is to look to the date on which Mount Sinai conclusively identified that it received the overpayments rather than the date on which it received information regarding potential overpayments. Mount Sinai contends that, because the government miscalculated the point at which the 60-Day Rule was triggered, it cannot demonstrate that Mount Sinai knowingly failed to return the overpayments, a requirement for liability under the FCA.

In 2012, the Centers for Medicare & Medicaid Services (CMS) issued proposed regulations stating that an "overpayment has been identified at the time that a person acts with actual knowledge of, in deliberate ignorance of, or with reckless disregard to the overpayment's existence." CMS further suggested that a provider who receives information concerning a potential overpayment has an obligation to make a reasonable inquiry or possibly be held liable for knowingly retaining an overpayment or acting with reckless disregard or in deliberate ignorance of whether it received such an overpayment. While these proposed regulations are informative, they are not binding requirements.

The court's decision in this case will have substantial implications on how providers and the government interpret the identification provision of the 60-Day Rule. In the meantime, significant uncertainty persists regarding the applicability and reach of the 60-Day Rule. Therefore, to reduce exposure to FCA liability based on a violation of the 60-Day Rule, hospitals, physicians, and other providers may want to review their compliance programs to ensure that payments are appropriately monitored and that processes are in place to conduct efficient and effective investigations of suspected overpayments. We will continue to monitor this case and advise our readers of further developments.

Please contact any member of the Health Law Group at Robinson+Cole if you have questions:

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