

60-Day Overpayment FCA Enforcement Action Results in \$2.95 Million Settlement

8/30/2016 by Stephanie Johnson | King & Spalding

Like 0

G+1 0

Tweet

Share



On August 23, 2016, a New York hospital system settled False Claims Act (FCA) allegations that it violated the 60-day overpayment rule by improperly retaining Medicaid overpayments. The whistleblower alleged that three of the system’s hospitals violated the reverse FCA provision, 31 U.S.C. § 3729(a)(1)(G), by improperly retaining Medicaid overpayments.

Specifically, the whistleblower and the New York Office of the State Comptroller allegedly informed the hospitals that certain claims had been improperly billed to Medicaid due to a software glitch caused by the State’s Medicaid managed care organization, Healthfirst. However, the whistleblower and the Government further alleged that the hospitals took approximately two years to fully reimburse the Medicaid program for overpayments identified by the Comptroller. The nearly \$3 million settlement is one of the first settlements related to a provider’s alleged failure to timely report and refund “identified” overpayments, as required by the 60-day overpayment rule.

There has been considerable uncertainty regarding the precise parameters of the Affordable Care Act's 60-day overpayment rule, which was enacted in 2010 and requires recipients of a Medicare or Medicaid overpayment to report and refund the overpayment within 60 days of "identification" of the overpayment (or the date the corresponding cost report is due, whichever is later). See 42 U.S.C. § 1320a-7k(d). One controversial aspect of this rule surrounds the interpretation of the term "identification," which is the trigger for the 60-day timer to report and refund the overpayment.

As previously [reported](#) in *Health Headlines*, the Southern District of New York was the first court to interpret and define the extent of a provider's obligations under the 60-day rule. See *Kane ex rel. New York v. Healthfirst, Inc.*, 11 CIV. 2325 (ER) (S.D.N.Y.). The court denied the hospitals' motion to dismiss and rejected the hospitals' argument that "identification" could be reasonably interpreted to require conclusive proof of an overpayment; instead, the court interpreted "identification" to include situations where ***"a person is put on notice that a certain claim may have been overpaid."***

In February of this year, after the August 3, 2015 *Kane* decision but before last week's settlement, CMS issued the Final Rule for Medicare Parts A/B overpayments. The Final Rule defines "identification," stating that a Medicare Parts A/B overpayment is identified "when the person has, or should have, through the exercise of reasonable diligence, determined that the person has received an overpayment and quantified the amount of the overpayment." CMS has yet to issue a proposed or final rulemaking for Medicaid overpayments. However, providers are still subject to the ACA's 60-day overpayment rule for Medicaid payments even in the absence of rulemaking from CMS.

In a press release regarding the *Kane* settlement, DOJ highlighted the important role the Comptroller played in identifying the underlying software error that caused the initial overpayments, and the Comptroller's partnership with law enforcement to identify additional overpayments. The DOJ press release emphasized the length of time the hospitals allegedly took to repay claims, noting that the Defendants were "alerted to the software error by the New York State Comptroller" in 2010, and an

internal investigation by the whistleblower in 2011 revealed approximately 900 claims that may have been wrongfully submitted. “These claims were identified in the whistleblower’s list on February 4, 2011,” the press release claims, “yet Defendants did not fully repay these claims until March 2013, *i.e.*, nearly two years later.”

The settlement of nearly \$3 million represents more than three times the amount of alleged Medicaid overpayments. The settlement is also notable because the hospitals specifically “admit[ted], acknowledge[d] and accept[ed] responsibility” for conduct relating to failing to timely refund the Medicaid overpayments.

The DOJ Press Release is available [here](#).

RELATED POSTS

[CMS Issues Long-Awaited Final 60-Day Overpayment Rule](#)

[CMS Issues Long-Awaited 60-Day Medicare Parts A and B Overpayment Final Rule](#)

[OMB Receives Final Medicare Parts A and B 60-Day Overpayment Rule from CMS](#)

LATEST POSTS

[Southern District of New York holds that intercreditor agreement allows for payment of subordinated lender’s post-petition interest prior to repayment of the outstanding principal amount of senior debt](#)

[Data Breach Notification Archive Made Publicly Available Online By Massachusetts Office Of Consumer Affairs](#)

[See more »](#)

DISCLAIMER: Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.

WRITTEN BY:



King & Spalding

+ Follow



Stephanie Johnson

+ Follow

PUBLISHED IN:

60-Day Rule

+ Follow

Affordable Care Act

+ Follow

CMS

+ Follow

Comptroller

+ Follow

DOJ

+ Follow

False Claims Act (FCA)

+ Follow

Hospitals

+ Follow

Medicaid

+ Follow

Medicare

+ Follow

Overpayment

+ Follow

Overpayment Recovery Time Limits

+ Follow

Whistleblowers

[+ Follow](#)

Government Contracting

[+ Follow](#)

Health

[+ Follow](#)

King & Spalding on:



**TOP 50 LEGAL TOPICS
ON JD SUPRA IN 2016**

[VIEW OUR EXCLUSIVE REPORT »](#)

Cybersecurity
Healthcare Reform
Compliance
Hiring & Firing The SEC
Patents China FLSA
Confidentiality Agreements
Trade Secrets
and others...

JOURNALISTS

[Find a qualified source for your story »](#)

Connect with leading experts for quotes, background, [in-depth perspective...](#)

