

ALERT

HEALTHCARE LITIGATION

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Supreme Court Narrows the Scope of False Claims Act Cases Against Subcontractors; Ruling Could Limit Claims for Medicaid Fraud

In a unanimous decision issued recently, the United States Supreme Court rejected attempts to expand the scope of the False Claims Act (FCA), 31 U.S.C. §§ 3729, et. seq. The FCA has been the primary weapon of the federal government to combat fraud in civil cases. The Court's ruling in *Allison Engine Co. v. United States ex rel. Sanders* 128 S. Ct. 2123 (2008) heightened what the government (or whistleblower) must prove to show that the defendant knowingly used a "false statement to get a false or fraudulent claim paid or approved by the [federal] Government." This decision has far-reaching implications for government subcontractors as well as healthcare providers who receive payments from state programs that receive federal funding, including Medicaid.

Prior to the unanimous ruling, the United States Court of Appeals for the 6th Circuit decided that subcontractors could be liable under the FCA if the subcontractor defrauded a contractor who was receiving payments under a federal grant or from a federal funding source, because the false statements (of the subcontractor) "resulted in the use of Government funds to pay a false or fraudulent claim." The unanimous Court rejected this broad view, holding that the subcontractor must intend for the federal government to rely on the subcontractor's false statement as a condition for payment to the contractor - in other words, the subcontractor must intend that the prime contractor will use the subcontractor's false statement to get the federal government to pay the prime contractor. Thus, the mere fact that a contractor utilizes federal government funds to pay a subcontractor is not sufficient to show that the subcontractor itself violated the FCA.

Finding that the resulting liability (against the subcontractor) would effectively "expand the FCA well beyond its intended role of combating 'fraud against the Government,'" the Court noted that "getting a false claim paid by the Government is not the same as getting a false claim paid using 'government funds'...a defendant must intend that the [federal] Government itself pay the claim." Thus, the claim must be paid "by the Government and not by another entity." Further, the Court held that the government (or whistleblower) must prove that the "defendant intended that the false record or statement be *material to the Government's decision* to pay the false claim."

This decision impacts not only government subcontractors, but all those who submit claims for payment to entities or programs that receive federal funding. In the healthcare arena, providers who submit claims to Medicaid (a state program that is partially funded by the federal government) can now argue that claims of alleged Medicaid fraud are not subject to prosecution under the FCA. The government (or whistleblower) must now prove that the healthcare provider intended to defraud the federal government itself and not just an entity (Medicaid) that makes payments using federal funds. Further, any false statements made by a healthcare provider to the government (e.g., on reimbursement claim forms submitted to Medicare - a federal program), must be material to the government's decision to pay the claim in order to be actionable under the FCA.

The Court's decision in *Allison Engine* may be challenged by pending legislation introduced by Iowa Sen. Charles Grassley that would adopt the broader approach of the 6th Circuit. The False Claims Act Correction Act of 2007 would instead seek to apply FCA liability directly to any false claim regarding government money or property regardless of whether the individual making the false claim directly presents such a claim to the government. Thus, possible legislative changes may overrule the Court's decision. At this time, we do not know whether Congress will attempt to make such legislation apply retroactively, and if so, whether such provisions would survive legal challenges.

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