PUBLICATION

'Cursory Services' May Be 'Worthless Services' Under False Claims Act [Ober|Kaler]

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A recent federal court decision allowed the federal government to proceed with a False Claims Act (FCA) case involving an allegation that a health care provider's "services were so cursory that they were worthless." U.S. v. Associates in Eye Care, PSC, No. 13-27-GFVT (E.D. Ky. Feb. 4, 2014) [PDF]. In that case, the federal government alleged violations of the FCA by an optometrist and his employer. The optometrist provided services to residents of nursing homes and, according to the government, for certain periods of time and certain types of exams, he submitted more claims to Medicare than any other optometrist in the United States. On some days, the optometrist claimed to have treated over 100 patients in a single day. The court concluded that the alleged "mathematical impossibility" of the optometrist spending sufficient time with his patients was, by itself, enough to allow an inference that the provider submitted knowingly false payment claims to the federal government. The government was not required to allege in detail how the services were "worthless" in any particular case.

The defendants asked the court to dismiss the case based on an argument that the government failed to allege sufficient details about the allegedly false claims. The court rejected defendants' argument, finding that the government's complaint contained a detailed chart of representative payment claims, including the patients' initials, the billing codes used, and the amount paid by Medicare or Medicaid. The court also rejected the defendants' argument that the sample alleged by the government was "not truly representative of the whole." The sample of allegedly false payment claims presented by the government was sufficient to meet the requirements for pleading a violation of the FCA.

The optometrist's employer separately asked the court to dismiss the case because the government did not allege that the employer "endorsed" the optometrist's actions or that the employer had any role in the optometrist's delivery of services. The court also rejected that argument, concluding that the employer may be "vicariously liable under the FCA for acts of employees when the employees acted within the scope of their employment." In this case, the government asserted that the optometrist was acting within the scope of his employment because, for example, the employer billed Medicare and Medicaid, and received federal payment, for the optometrist's services that were the subject of the FCA lawsuit.