



HEALTH CARE LAW ALERT

Criminal Division of U.S. Department of Justice Increases Scrutiny of Whistleblower False Claims Act Lawsuits

The Criminal Division of the Department of Justice (DOJ) announced that all False Claims Act lawsuits filed by qui tam relators, or whistleblowers, will be immediately and concurrently reviewed by the DOJ's Criminal and Civil Division attorneys. Leslie Caldwell, Assistant Attorney General for the Criminal Division, announced on September 17, 2014 at the Taxpayers Against Fraud Education Fund Conference that her team will be stepping up its analysis of qui tam lawsuits in an effort to redouble efforts to work with qui tam relators, which she called a "vital part of the Criminal Division's future efforts."

Qui tam lawsuits are civil actions that may be brought against healthcare providers by an individual and by the government for any violation of the False Claims Act. They are filed "under seal" with the government in order to allow the DOJ time to investigate. If the qui tam relator ultimately wins the lawsuit or it is settled, he or she may share in a portion of any money recovered by the government and receive reimbursement for reasonable expenses associated with the lawsuit, including reasonable attorneys' fees and costs.

The new review process will involve a coordinated effort between the Civil Division and local U.S. Attorney's Offices to determine the best manner in which to conduct parallel investigations, tapping into the Criminal Division's resources from the FBI, HHS-OIG, the Postal Inspection Services and other law enforcement agencies.

Ms. Caldwell encouraged qui tam relators to contact the Criminal Division directly, stating "When you are thinking of filing a qui tam case that alleges conduct that potentially could be criminal, I encourage you to consider reaching out to criminal authorities, just as you now do with our civil counterparts in the department and the U.S. Attorney's Offices."

The local U.S. Attorney's Office in the Northern District of New York has increased its efforts to strengthen and enhance a qui tam program. Recently, U.S. Attorney Richard Hartunian observed in his remarks at the Taxpayers Against Fraud Conference that "The Northern District of New York is committed to building a leading qui tam practice because the False Claims Act works. It works because it is an effective tool to fight fraud across the full spectrum of federal programs. It works because it provides powerful incentives for companies and individuals to do

business honestly. And it works because it safeguards taxpayer money, protects public safety and improves confidence in government.”

Healthcare providers must continue to be diligent in their compliance efforts to monitor, audit and consider self-disclosures as a part of their operation to avoid being ensnared in the ever-widening qui tam nets being cast by federal regulators.

If you have any questions or would like more information on the issues discussed in this communication, please contact any of the following Hancock Estabrook attorneys:

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