

FRAUD ALERT

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Did you know that QuiTam plaintiffs can now bring an action in state court on behalf of state and local government, as well as themselves, to recover monies paid as a result of false claims?

The adding of Article 13 of the State Finance Law (see Senate Bill S-02108) permits a citizen who has "direct and independent knowledge" of a false claim being submitted to the state or local government to sue on behalf of the government as well as him or herself. If the suit is successful, the citizen can be eligible for a share of 35% of the award if the government declines to take over the case, to a max of 25% if the government pursues the case. The award consists of 3 times the damage the State suffered plus \$6,000 to \$12,000 as a civil penalty. The Attorney General will promulgate rules to effectuate this law and the civil penalty will most likely be calculated on a per-transaction, not per-claim basis. This will boost awards significantly.

Like the Federal False Claims Act, you "knowingly" submit a false claim by (i) actual knowledge of its falsity; (ii) deliberate ignorance of the truth; or (iii) reckless disregard of the truth. While potential QuiTam cases are a major concern to health care providers (the submission of false Medicaid claim forms will qualify as a "false claim"), the institution of a robust compliance program can be a provider's "insurance policy" against these actions.

Generally, it is the provider's own employees who become the QuiTam plaintiffs. At smaller providers, employees may seek "revenge" for being terminated or demoted. At larger providers, employees feel there is no one to correct the false claims when they are detected. Both types of employees then take matters into their own hands and start QuiTam

actions. Where active, "real" compliance programs are in effect, the chances of a provider being a QuiTam defendant is greatly diminished. Lastly, an employer cannot take discriminatory action against any whistleblower. If you do, you are subject to an injunction and penalties, including double back-pay.

The pressure to follow the law has been ratcheted up because now the people who know the inner workings of your office will be reading articles and emails advising them of the QuiTam "Lottery". This type of publicity by plaintiff's attorneys needs to be countered with a reaffirmation of your current compliance program and assurances to your staff that you are committed to following the letter and spirit of the law.

SHEEHAN NAMED MEDICAID IG

Governor Spitzer has named Jim Sheehan, currently an Assistant U.S. Attorney and Chief of its Civil Division, as the State Medicaid Inspector General. Jim has personally led the investigation in health care fraud and kick-backs in the pharmaceutical, DME, nursing home, hospital and physician practice areas. RMF Partner Gregg J. Naclerio calls Jim, "one of the best health care fraud prosecutors I know." Naclerio continued, "Jim is innovative, a hard working and hard-nosed fraud fighter." It appears Medicaid providers in New York will be under even greater scrutiny in the years to come.

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