



ALERT
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Department of Justice Moves to Dismiss FCA Cases Involving Patient Support Services

Exercising the government's discretion to dismiss meritless FCA cases, DOJ argues patient support services are "appropriate and beneficial to federal healthcare programs and their beneficiaries."

This week, the Department of Justice ("DOJ") moved to dismiss 10 False Claims Act ("FCA") cases around the country that challenged patient support services in the pharmaceutical industry. Relators—LLCs formed by a partnership of investors and former Wall Street investment bankers—asserted that three types of common services violated the Anti-Kickback Statute and the FCA: (i) providing nursing services, such as instructing patients on how to administer prescribed medication; (ii) using nurse educators to promote medications; and (iii) providing "reimbursement support services," including helping patients with benefit verifications and prior authorization forms. The government originally declined to intervene in these cases.

On December 17, DOJ moved to dismiss because, among other things, the United States found "the allegations to lack sufficient merit to justify the cost of investigation and prosecution and otherwise to be contrary to the public interest." DOJ also highlighted that the partnership behind these "professional" relators used "false pretenses" and "fictitious" research studies to try to obtain information from witnesses.

DOJ's motions included significant language related to patient support services. While referring specifically to the services identified in these cases, the government determined "that the specific allegations" against these programs "conflict with important policy and enforcement prerogatives of the federal government's healthcare programs."

For example, while relators argued that providing "educational information and instruction to patients constitutes illegal kickbacks to physicians," the government explained it has "a strong interest in ensuring that, after a physician has appropriately prescribed a medication, patients have access to basic product support relating to their medication." The government concluded that these lawsuits "would undermine common industry practices" that are "appropriate and beneficial to federal healthcare programs and their beneficiaries."

These motions come in the wake of the January 2018 "Granston Memo," in which DOJ directed prosecutors to more seriously consider the government's discretion to voluntarily dismiss meritless FCA cases, even when relators attempt to proceed after the government has declined to intervene.



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