

Legal Matters

Is a Major Shift in DOJ Policy on Qui Tam Actions Coming?



By Brian F. McEvoy, JD and Michael M. Besser, JD
Polsinelli, PC

A Department of Justice official recently announced what could amount to a major policy shift in the way the government approaches qui tam actions under the False Claims

frivolous actions.

Qui tam actions cost health care companies millions of dollars in settlements and judgments each year and often threaten to put companies facing frivolous claims out of business. It is typical for health care companies facing frivolous claims to spend millions of dollars in legal fees, without even reaching trial. As a result, health care companies are often forced to divert resources away from organizational costs and patient care to defend against these claims.

The rise in qui tam actions brought under the False Claims Act over the past three decades has been staggering,



Act. Under the federal False Claims Act, whistleblowers, known under the law as relators, can bring what is known as a qui tam action alleging a person or company has committed fraud against the government. The government then has sixty days to decide whether to intervene in the case, or let the relator proceed using their own resources. If a settlement or judgment is imposed in the case, then the relator receives a portion of the proceeds, typically between 15-25%.

Michael Granston of the fraud section of the DOJ's civil division recently announced at a meeting of the Health Care Compliance Institute in Washington D.C. that the DOJ would now intervene in frivolous qui tam actions and move to dismiss them. The government has traditionally declined to intervene in most cases and allowed frivolous claims to move forward, in part because the government lacks the resources to get involved in meritless actions, and in part because the government stands to gain a large portion of the damages obtained in any settlements or judgments out of these

and health care companies remain a lucrative target for relators and an increasingly aggressive plaintiffs' bar. In 1987, only 30 qui tam actions were brought resulting in no awards to either the government or relators in settlements or judgments. In 2016, 702 qui tam actions were brought and resulted in almost \$3 billion in settlements and judgments against defendants. As rewards recovered in qui tam actions have increased over the years, so has the number of relators willing and able to continue to pursue actions even when the government has declined to intervene.

Given the fact that the government has profited handsomely from allowing qui tam actions to proceed even when they have declined to intervene, to the tune of \$1.7 billion in the past thirty years, it seems unlikely that a policy change is about to occur. In the meantime, health care companies must continue to rely on the expertise of experienced defense lawyers to combat frivolous qui tam actions in the face of government inaction.◆

VANTAGE
MED CENTER

NOW LEASING

3 MONTHS FREE + \$0 APP/ADMIN FEE + 1/2 DEPOSIT FREE
RATES AT \$1540
*Rates & Specials subject to change

A NEW PERSPECTIVE ON HIGH-RISE LIVING

VANTAGEMEDCENTER.COM
1911 Holcombe Blvd. Houston, TX 77030 281.884.3930

The Dinerstein Companies
Creating the Best Places to Live