

DOJ Sweeps up Private Equity Firm in False Claims Net

When it comes to False Claims Act (FCA) litigation, it's no surprise to hear that the government chooses to intervene in some cases and declines to intervene in others. What might be surprising in recent healthcare FCA news is the entity that has been named as defendant, a detail that some think may foreshadow a new direction for the U.S. Department of Justice (DOJ) in determining complicity for false claims wrongdoing.

A False Claims Act case against Diabetic Care Rx LLC (d/b/a Patient Care America [PCA]) and two of PCA's executives might not raise any eyebrows on the surface, but the lawsuit also includes PCA's private equity sponsor, Riordan, Lewis & Harden, Inc. ... even though one might classify the latter as "just" an investor. The case alleges that the defendants participated in a kickback scheme that sought to induce compound drug prescriptions in order to have them reimbursed by TRICARE (a healthcare program designed for military personnel and funded by the federal government).

Drug formulations motivated by payment rather than patient need?

The complaint alleges that the defendants enriched "marketers" with illegal kickbacks in an attempt to boost company and portfolio revenue by steering referrals to the compound pharmacy. The alleged scheme targeted members of the military and their families, and it apparently centered around prescription-strength compounded vitamins and topical creams. Additionally, the case alleges that when the creams were being compounded, maximum reimbursements by TRICARE drove the specific formulations, rather than what the patient actually needed medically.

Furthermore, the lawsuit claims that independent contractors — behaving as marketers — were involved in the alleged scheme when they would send patient information to physicians amenable to prescribing the aforementioned creams and vitamins remotely, in the absence of an in-person examination of the patient. (The government alleges that in some cases the doctor did not even speak with the individual for whom the prescription was intended.) The defendants are also accused of illegally paying patient coinsurance so that TRICARE would cover the prescriptions.

DOJ says PE firm "knew or should have known" about the illegality of its alleged actions

Regarding the private equity firm, the DOJ clearly sees it as complicit in the alleged wrongdoing. The complaint alleges that two partners of Riordan, Lewis & Harden "knew and approved of" the scheme involving the independent contractors. The complaint goes even further in its criticism of the firm, holding it to a high standard as an investor in several healthcare companies and saying that it "knew or should have known ... that health care providers that bill federal health care programs are subject to laws and regulations designed to prevent fraud, including the federal anti-kickback statute."

As described in the complaint, it appears that the private equity firm's involvement with the particular workings of its portfolio company run along the routine spectrum — the firm made a controlling investment in Patient Care America, after which two of the firm's partners were made PCA officers. PCA management was undertaken by another company controlled by Riordan, Lewis & Harden.

Other PE firms might view this case as a lesson learned

vicariously

Private equity firms investing in healthcare organizations need to remember that the government can pursue action against financial sponsors as well as the entity active in the field when misconduct is suspected. Of course, ignorance of the law is never a defense (and this particular complaint alleges that the private equity firm had knowledge of the alleged scheme), but clearly, investors need to be vigilant in assessing the compliance of their portfolio companies, not only at the outset of the relationship, but on an ongoing basis.

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