

Report on Medicare Compliance Volume 33, Number 21. June 10, 2024 Court OKs Insurer's FCA Lawsuit Against Lab After Private Lawsuit

By Nina Youngstrom

A federal court has given the go-ahead to a False Claims Act (FCA) lawsuit filed by an insurer-turned-whistleblower against a clinical lab based on the same allegations in its private lawsuit over urine drug testing (UDT). The whistleblower, Allstate Insurance Company, alleges Phoenix Toxicology and Laboratory Services in Arizona submitted false claims to Medicare, Medicaid and the Federal Employees Health Benefits Program for duplicative, excessive and medically unnecessary UDT between 2016 and 2022.

The U.S. District Court for the District of New Jersey May 30 denied Phoenix's motion to dismiss the case.^[1] "Allstate has asserted just enough facts to raise a plausible inference that false claims were submitted to the federal government, based in part on the claims that Phoenix Toxicology submitted to Allstate and other private insurers," the court ruled. Allstate is a property and casualty insurer that pays claims for people who seek pain management because of injuries from car accidents.

"I haven't seen an insurance company be a whistleblower before," said attorney Jeff Fitzgerald, with Polsinelli. "What the court allows Allstate to do here, which is say we think we were misbilled and therefore we think federal plans were misbilled—that's a huge leap."

Attorney Max Voldman, with Whistleblower Partners LLP, was struck by how rare this type of case is. But now that a federal district court is endorsing the idea that "you can learn reliable indicia of fraud against the government from discovery in a commercial case," it might give other litigants ideas about going down this path, he said. Although the legal arguments are very different because the insurer isn't pursuing two causes of action from the same contract—one lawsuit is based on a contract dispute and the other on the FCA—the allegations of the underlying scheme are the same, Voldman said.

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