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## Blowing the Whistle on Healthcare Fraud

***By Cristen Leaper***

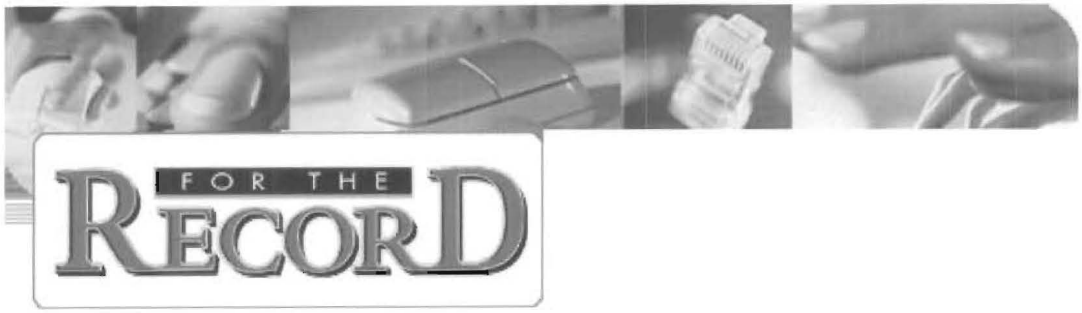
When Congress amended the Federal False Claims Act (FCA) in 1986, the potential for uncovering fraudulent activity within the healthcare industry increased. According to the FCA, "it imposes civil liability on any person or entity who submits a false or fraudulent claim for payment to the United States government."

The amendments meant stronger laws and larger monetary awards. They also provided private citizens with the right to help in the enforcement of the FCA—a qui tam (short for a Latin phrase meaning "he who is as much for the King as for himself") action. By definition, qui tam "is a unique mechanism in the law that allows persons and entities with evidence of fraud against the federal or some state programs or contracts to sue the wrongdoer on behalf of the government."

"In 1985, when Congress was looking at amending the FCA, government estimates were that 10% of all Medicare billing was due to fraud," says Kenneth J. Nolan, a lawyer in Fort Lauderdale, Fla., who is experienced in qui tam cases. In 1987, 12% of all FCA cases were healthcare fraud cases, and in 2000 that number jumped to 60%. Why? After the amendments, "the issue of healthcare fraud became more prominent as people became more aware," says Nolan. "It spurred incentive to come forward and file claims."

Once thorough evidence of suspected fraud is gathered, claims are taken to qui tam lawyers who have experience in the FCA arena, says Nolan. Generally, those who file qui tam claims (most often known as qui tam relators, or whistleblowers) have already complained about conduct within their healthcare organization, but have been ignored. These people know the details of the fraudulent schemes and have documented them by writing them down themselves, according to Nolan. Cases are worked up, and disclosure memorandums (books that include witness briefs and documents to provide background information for the case) are prepared.

According to Nolan, these claims are generally filed in federal court, but they can also be filed at the state level in states that have their own FCAs, although only a dozen states have such laws with qui tam provisions. When the claims are filed, they are sealed, meaning that no one knows about them except the government and the qui tam relators. The Department of Justice and the attorney general are notified. "The government investigates—usually the FBI and Health and Human Services' Office of Inspector General—if it chooses to proceed and get involved," he says. Should the government decide to intervene, the seal is lifted, the company is informed of the allegations, and a lawsuit proceeds, most often ending in a settlement agreement to negotiate reimbursement of overpayments, according to Nolan.




A qui tam claim has been filed in Odessa, Tex., by Edgardo Valle, MD, a former emergency department (ED) physician at Medical Center Hospital (MCH)—a case that has recently been partially unsealed at the state level. Valle filed a lawsuit in March 2002 against Team Health, which is contracted by MCH to staff and manage ED physicians, says Nolan. Valle is alleging that Team Health falsified codes for reimbursement, billing for services not rendered, billing for patients doctors didn't see, and exaggerating procedures performed on patients (***Odessa American***, December 4, 2003). The state is currently investigating the claim, which could take quite some time. There is no telling how long this Texas State FCA case will last, says Nolan. He adds that federal cases can run "anywhere from two years to eight years before they are resolved."

There are also other uncertainties in the Odessa case. Nolan points out that a federal claim could have been filed as well, but if it's sealed, there is no way of knowing. There is also no way of knowing how much money could or would have been earned by MCH and Team Health, at least not without an audit—something that requires a lot of manpower. Nolan says that if the state finds Valle's accusations to be true, he would be granted a minimum of 10%—but no greater than 25%—of the damages awarded.

Qui tam cases are not for everyone, Nolan says. "People must be able to endure the process," he says. He notes that qui tam relators tend to take abuse from management and sometimes from their colleagues, but quickly adds that most people praise qui tam relators if their accusations are proven to be correct.

Healthcare fraud is almost invisible, according to Nolan. "In the healthcare industry, if a bill is submitted, it's generally going to be paid," he says. "Most industries don't work that way because people must see the product that's delivered to decide whether or not to pay for it." He adds that many people need to be involved when it comes to fraudulent information on healthcare claim forms. "As to why people go along with the schemes, it's hard to say. A lot of people just go along with it because they don't want to lose their jobs."

Those who do speak out against healthcare fraud seem to have made a difference in recent years. In 2001, 6.3% of all Medicare billing was due to fraud, down nearly 4% from the years prior to the FCA amendments. "Overpayment is going down a lot," says Nolan. "There are two reasons for that. One is publicity and awareness. The other is the use of corporate integrity agreements—signed upon the settling of a qui tam case—to ensure that healthcare providers bill correctly. There aren't too many repeat offenders."

Nolan does note, however, that there will always be dishonest providers in the healthcare industry. The good news is that there is increased awareness and willingness to "blow the whistle" on such fraudulent activities.

**— Cristen Leaper is an editorial assistant at *For the Record.***