

## CORPORATE COMPLIANCE ALERT

6/30/14

### Department of Justice Intervenes in False Claims Act Suit over Fraudulent Delay in Repayment of Overcharges

By [Brian E. Dickerson](#)

On Friday, June 27, the United States Attorney for the Southern District of New York announced the unsealing and filing of a civil fraud lawsuit against Continuum Health Partners and others for their delay in fully repaying nearly \$1 million in Medicaid overpayments for nearly 900 claims from 2009 and 2010. The complaint requests the maximum penalty under the False Claims Acts (FCA) of \$11,000 for every improperly retained overpayment, in addition to treble damages. All told, a complete victory by the Department of Justice (DOJ) could result in a \$30 million fine for the defendants.

The suit, originally filed by whistleblower and former Continuum employee Robert Kane, alleges that the hundreds of improper claims submitted to Medicaid in 2009 and 2010 came about via a computer glitch that improperly coded private Medicaid Managed Care Organization (MCO) claims for submission to Medicaid for additional reimbursement. Under the Medicaid reimbursement laws, traditional Medicaid bars providers paid by private MCO plans from any additional payments through the auspices of Medicaid. Despite being made aware of the glitch by late 2010, and having been provided by Kane with a thorough analysis of all affected claims in early February 2011, the defendants failed to take appropriate steps to repay the claims, dragging out full repayment over nearly two full years, and only then under pressure from the DOJ and New York State Comptroller.

The suit against Continuum appears to be one of the first of its kind in applying new rules under the Affordable Care Act (ACA) requiring that recipients of government health care funds repay any overpayments within 60 days of discovery. Enforcement of the 60-day rule in this type of “reverse false claim” situation has been the subject of no small amount of concern by a multitude of health care providers across the country. This suit should make it clear that the government plans to strictly enforce the 60-day rule under the ACA and providers should plan on a very quick turnaround from the moment of discovery of an overpayment, through an audit, and to the refund of any overpayment.

As a part of the announcement, U.S. Attorney for the Southern District of New York Preet Bharara remarked, “The law requires hospitals that receive federal funds to which they are not entitled to promptly return them. They cannot just keep the money – after learning that they should not have received it – in hopes that the government will not figure it out. To do so is fraud.”

The full text of the complaint against Continuum and others is available [here](#).

Roetzel’s white-collar litigation and corporate compliance attorneys are available to assist you with any questions regarding the repayment statutes for Medicaid and other government health care programs. Please contact the following Roetzel attorneys for further information:

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