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John S. Hoff

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by John S. Hoff

A patient is not simply a potential plaintiff. He or she could also be a private attorney general. The Federal False Claims Act was amended in 1986 to encourage private citizens to bring claims against individuals who defraud the United States government. A person who brings such a *qui tam* action sues on behalf of the government as well as on behalf of him or herself. He or she is entitled to a share of any recovery (the amount varies depending on whether the government takes up the cudgels or leaves the *qui tam* plaintiff to prosecute the case him or herself.) The procedure is available only if the citizen's

John S. Hoff is ACCC Legal Counsel with Swidler & Berlin, Washington, D.C.

allegation has not previously been disclosed publicly (unless the plaintiff is the original source of the disclosure). A fraud case, consequently, can be brought by a person who is aware of any false claim filed by a provider or insurer against the federal government or of any false statement made by them to the government.

A recent case demonstrates the power of this remedy.¹ James Cooper was older than 65 but still working for the U.S. government. He was insured by Blue Cross/Blue Shield of Southern Florida under the Federal Employees Health Benefits Program. He was also Medicare-eligible. In these circumstances, Blue Cross is required by the Medicare law to be the primary payor; Medicare is secondary. Blue Cross, nevertheless, refused

to pay Cooper's bills and passed them on to Medicare. Cooper saw the bills and notified Blue Cross of its obligation to pay, but the claims were shifted back and forth between Blue Cross and Medicare. When Blue Cross refused to pay the bills as primary payor, Cooper brought a *qui tam* action against Blue Cross alleging that it committed fraud against the government by submitting his claims to Medicare when Blue Cross knew it was required to be the primary payor. The Court of Appeals upheld the lawsuit.

The case is a dramatic example of the ability of a patient to bring fraud action against a provider if that patient believes that the provider has made a false statement to the government or filed a false claim with it. ■

¹Cooper v. Blue Cross and Blue Shield of Florida, Inc. 19 F.3rd 562 (11 Cir. 1994).

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