

# **Court Calls Underlying Legal Standards “No Model of Clarity” but Allows False Claims Act Case To Proceed Anyway**

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Does violating requirements amount to fraud under the False Claims Act (FCA) when the requirements allegedly violated are unclear? There is currently a circuit split and petitions for review pending to the Supreme Court as to when the purported violation of ambiguous requirements can give rise to a FCA suit. In light of this, district courts appear to be taking a cautious approach and avoiding ruling on this issue at the motion to dismiss stage. This is despite that whether a requirement is ambiguous often is a matter of law (proper for deciding on a motion to dismiss for failure to state a claim), not a matter of fact (to be considered at later case stages).

One recent example of this cautious district court approach is a January 3, 2023, ruling by the Western District of New York where the court predominantly denied the Medicare Advantage Organization (MAO) Defendants’ motion to dismiss the government’s complaint in *United States ex rel. Ross v. Indep. Health Corp.*, No. 12-cv-299S, 2023 WL 24055 (W.D.N.Y. Jan. 3, 2023).

In this case, the government alleged the MAO Defendants implemented (1) a retroactive medical records review program to search for additional diagnoses codes and (2) an addenda process whereby medical providers were “nudged” to retroactively add diagnoses to medical records. The relator and government alleged these services resulted in the Defendants collecting and retaining higher payments from Centers for Medicare & Medicaid Services (CMS) than they were entitled to by allegedly “overstating members’ health conditions through the submission of inaccurate and unsupported diagnosis codes” and that this practice “violated both the CMS regulations and Defendants’ contractual obligations to CMS.” In particular, the government alleged Defendants violated the [ICD guidelines](#) which govern diagnosis coding for managed care plans.

This decision stands out – not for what was decided – but what was not.

## **Knowledge & Objectively Reasonable Interpretation**

The Medicare reimbursement scheme is notoriously byzantine, creating interesting questions of what it means for a claim to be “false” when the regulatory scheme is difficult for providers to understand. Medicare managed care is no exception. The MAO Defendants argued (among other arguments) that

the ICD guidelines they purportedly violated do not say what the government says they say; that they did not violate the guidelines; and, that they acted within an objectively reasonable interpretation of the guidelines.

[Several circuit courts](#) have held an objectively reasonable interpretation of governing law defeats the requisite element of “knowingly” under the FCA. For example, under the “objectively reasonable” standard many courts have borrowed from Fair Credit Reporting Act (FCRA) case law and applied in the FCA context: a defendant cannot be found liable under the FCA if (1) its reading of applicable statutory or regulatory requirements was objectively reasonable and (2) no authoritative guidance warned it away from that interpretation.

In this latest case, the Court called the relevant ICD guidelines “no model of clarity,” but held that the reasonableness of Defendants’ interpretation could not be determined at the motion to dismiss stage. The Court did not engage in any analysis of whether the Defendants’ reading was objectively reasonable nor whether there was any *authoritative* guidance that warned the Defendants away from this interpretation. (The Court did mention allegations by the government that *some* guidance warned Defendants away from their interpretation, but the Court did not hold that it was “authoritative guidance.”)

Will the Supreme Court weigh in to give District Courts more guidance? Stay tuned.

## **Want to Learn More About Managed Care FCA Cases or the Objectively Reasonable Standard?**

- [FCA Managed Care Case Update: A Court’s View of ICD Guidelines in Risk Adjustment Cases](#)
- [Managed Care & The FCA: Are Courts Getting It Right?](#)
- [Seventh Circuit Court of Appeals Reiterates Validity of Objective Reasonableness Defense to FCA Claims](#)

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