

Tennessee Federal Judge Rules to Allow Extrapolation on More Than 50,000 Claims in FCA (False Claims Act) Case

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Last week, a Tennessee federal district court judge ruled that government attorneys can extrapolate from a small sample of billing statements to over 50,000 claims submitted by Life Care Centers of America, Inc. (a nursing home operator) to try to hold Life Care Centers liable under the **False Claims Act (FCA)**.

Life Care Centers is accused of billing for unnecessary care between 2006 and 2012. To prove its claims, the government wants to review a random sample of 400 patient admissions and then extrapolate its findings related to false billings to more than 50,000 additional patient admissions. In ruling for the government and rejecting Life Care Centers' motion for summary judgment, the judge noted that FCA cases often involve a high number of claims and it would be too burdensome to require government attorneys to build a discrete case for every allegedly false claim. He further explained that "[t]he purpose of the FCA, as well as the development and expansion of government programs as to which it might be employed, support the use of statistical sampling in complex FCA actions where a claim-by-claim review is impracticable."

In rejecting Life Care Centers' objections, the judge found that the defendants could still fight the government's extrapolation by challenging the government's methodology, cross-examining statistical experts and calling its own expert witnesses (thus curing any due process concerns). He also acknowledged that while the FCA does not explicitly authorize the use of extrapolation, it does not bar the practice – a restriction that Congress could have easily imposed had it intended to preclude the use of statistical sampling.

Health care attorneys know that the government has used statistical sampling and extrapolation as a means to estimate overpayments in administrative actions. But here the government was seeking permission to use extrapolation to meet its burden of proving the claims were false, and establish civil liability in the first place.

The implications of this decision are potentially staggering because in an FCA action a defendant is facing more than an estimated overpayment: any finding that a claim is, in fact, false under the FCA brings with it a mandatory trebling of damages plus mandatory fines of between \$5,500 and \$11,000

per claim. Thus, in this case, if a fact finder were to conclude that each of the 50,000 claims to which the government's findings are extrapolated are to be considered false, Life Care Centers could be facing fines of between \$275 million and \$550 million, plus treble damages – all without the fact finder ever having reviewed any evidence about those claims.

We will have to wait and see whether this decision is appealed, or whether the government is moved to offer a reasonable settlement to Life Care Centers in order to preserve this decision as precedent. We will be monitoring this case closely and will provide updates on any further developments.

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