



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Advocate Hospital, Physician Must Face FCA Claims

By Dave Simpson

Law360 (April 23, 2018, 8:45 PM EDT) -- Advocate Medical Group and one of its doctors were released from a False Claims Act whistleblower suit in Illinois federal court Monday, but an Advocate hospital and some staff members still must face the bulk of the claims related to their alleged practice of charging the government for operations performed by assistants.

U.S. District Judge John Robert Blakey moved many of the claims forward, finding that the relator, Luay Ailabouni, a former medical resident at Advocate Christ Medical Center, had pled them properly.

Ailabouni sued Advocate Health System, the largest health care provider in Illinois, in federal court in March 2013, alleging that billing the government for operations performed with assistant surgeons and physician assistants as if residents were unavailable is a form of Medicare and Medicaid fraud. The suit was unsealed in August 2016. The U.S. government and the state of Illinois have declined to intervene in the case.

Defendant Cardiothoracic & Vascular Surgical Associates SC had argued that Ailabouni failed to show that it had submitted false claims to Medicare; Judge Blakey disagreed.

"Relator worked as a resident physician, not a coder in CVSA's billing department," he said. "Given Relator's position — one that 'does not appear to include regular access to medical bills' — this court finds no basis to require that he 'plead more facts pertaining to the billing process.'"

Likewise, the judge said, Ailabouni's pleadings against Advocate Christ Medical Center suffice for materiality pertaining to claims under 42 CFR 415.190, which deals with conditions of payment for surgery assistants in teaching hospitals.

"He alleges (and Section 415.190 explicitly says) that Medicare will not pay for assistant-at-surgery services that do not meet section 415.190(c)'s conditions," Judge Blakey said. "He also alleges that ACHC's fraud 'undermined' the essence of the relationship between Medicare and teaching hospitals, and that Medicare would not have made the [Graduate Medical Education] payments if it knew about the fraud."

Judge Blakey did knock out claims against two staff members pertaining to surgery performed on a private insurance holder because FCA liability cannot arise from submitting claims to a private payer.

He also dismissed newer claims against staffers stemming from operations performed in 2010, finding the claims time-barred.

The court let Advocate Medical Group and a staffer out of the suit because the payment restrictions that Ailabouni accuses the staffer, William Hopkins, of violating do not apply to assistant-at-surgery services provided by physicians' assistants.

"AMG ... cannot face liability for submitting false claims if Hopkins did not engage in any underlying misconduct that rises to the level of an FCA violation," the judge said.

Ailabouni is represented by Bruce C. Howard of Siprut PC.

Advocate is represented by Daniel S. Reinberg of Polsinelli PC. The physician defendants are represented by Laura G. Hoey and Charles D. Zagnoli of Ropes & Gray LLP.

The case is U.S. ex rel. Ailabouni et al. v. Advocate Health and Hospitals Corp. et al., case number 1:13-cv-01826, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Hannah Meisel. Editing by Peter Rozovsky.

All Content © 2003-2018, Portfolio Media, Inc.