

# HEALTH LAW

## Update

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

## East Tennessee Heart Consultants Case: False Claims Investigations Based On Alleged Failure To Refund Overpayments

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A recently concluded government investigation of East Tennessee Heart Consultants (ETHC), a practice group of 42 cardiology physicians with offices in Knoxville, Tennessee, and surrounding counties, centered on alleged failures by ETHC to refund overpayments to Medicare, Medicaid, and other federal and state payers over a six-year period. The parallel civil and criminal investigations, conducted by the U.S Attorney's office for the Eastern District of Tennessee as well as other federal and state authorities, resulted in a settlement requiring ETHC to pay an aggregate of \$2.9 million dollars in payments to the federal and state governments and in patient refunds.

The government's investigations arose after two former billing employees of ETHC filed a *qui tam* action under the federal False Claims Act<sup>1</sup> and the Tennessee Medicaid False Claims Act<sup>2</sup>, alleging fraudulent and improper claims and refund practices and policies on the part of ETHC.<sup>3</sup> Specifically, the former employees claimed that ETHC had established a company policy of retaining overpayments received from government care programs (commonly known as credit balances) and of not issuing refunds to such programs unless the programs specifically requested a refund.

According to the government, claims for patient services submitted to federal and state healthcare programs during the six-year period in question were false because, among other reasons, they were made at a time when ETHC had an existing legal obligation to pay or transmit money to the government previously received by ETHC as overpayments on prior claims. ETHC submitted all of these claims, according to the government, despite and notwithstanding knowledge that it had a legal obligation to promptly refund all such overpayments.

<sup>1</sup> False Claims Act (31 U.S.C. §§ 3729-3733).

<sup>2</sup> Tennessee Medicaid False Claims Act (T.C.A. §71-5-181 et. seq.)

<sup>3</sup> See *U.S ex rel. v. East Tennessee Health Consultants, P.C.*, E.D. Tenn., 3:03-cv-00577, filed 11/06/2003.

The government's investigation ended ETHC entering into (1) a criminal pretrial diversion agreement, (2) separate civil settlements with the federal and state governments, and (3) a five-year corporate integrity agreement (CIA) with the Department of Health and Human Services Office of Inspector General. With respect to penalties, of the \$2.9 million dollars, approximately \$1.5 million was paid to the Department of Justice (DOJ); \$200,00 to the state of Tennessee; and \$1.2 million to patients and/or their private health plans. In addition, the relators received a reward of more than \$300,000, plus attorney's fees of close to \$72,000. ETHC made no admission of liability as part of the settlement agreements with the federal and state governments.

This settlement is significant because it illustrates that the government may use false claims statutes to pursue enforcement actions against providers who submit claims to government programs while they are knowingly retaining credit balances or overpayments from those programs. In other words, the claims submitted to the programs may otherwise be perfectly valid, but if they are made at a time that the provider is knowingly retaining credit balances from those programs, the government may characterize those claims as false under various false claims statutes. If you have any questions about this *Health Law Update*, please contact any of the attorneys listed in our Healthcare Practice Area at the end of this Update.

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