

HEALTH LAW

Update

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

Illinois Joins Lawsuit Against Radiology Centers: A New Era Of Enforcement Under State Fraud and Abuse Laws?

February 9, 2007

The Illinois Attorney General (AG) recently joined a whistleblower lawsuit against several Chicago area radiology centers over alleged payments of illegal kickbacks to referring physicians. The AG's complaint claims that 11 radiology companies operating 19 centers in the Chicago area entered into "sham 'lease' agreements" to pay physicians for MRI and CT scan referrals.

Under these arrangements, according to the complaint, physicians pay the radiology centers a reduced rate for MRI and CT scans, but then charge the patients' insurance a higher rate and keep the difference. For example, a physician may pay \$400 to a center as a "lease rate" for conducting the scan, and then the physician will bill the patient's private insurance company \$800, retaining the difference for doing nothing, the complaint alleges, other than referring the patient. The complaint asserts that both the technical and professional components of the scans were provided by the radiology centers and their employees or contractors (the centers employed not only the services of technicians to operate the machines but also the services of radiologists to read the scans and provide the diagnosis relative to each patient's condition). In some cases, according to the AG, the centers even prepared insurance bills on the physicians' behalf for the physicians simply to forward on to the insurance company. In essence, the Illinois action represents state enforcement against arrangements of the same type as the "pod labs" that are already on the radar screen of federal regulators.

The Illinois AG claims that these arrangements violate several state laws, including the Consumer Fraud and Deceptive Business Practices Act, the Illinois anti-kickback law, and the Insurance Claims Fraud Prevention Act. The complaint also argues that these arrangements compromise quality of care and drive up healthcare costs and states that the purported lease kickback schemes have "permeated the MRI scan industry in Illinois." Interestingly, unlike false claims enforcement actions in other states, no physicians were named in the Illinois lawsuit.

Illinois is seeking an injunction to stop these arrangements permanently and is also requesting monetary damages equal to three times the amount of each false claim submitted by the defendants to insurers, plus a civil penalty of between \$5,000 and \$10,000 for each false claim. In this respect,

the damages and penalties under the Illinois state laws are similar to the federal False Claims Act (31 U.S.C. § 3729), which has seen increasing use in recent years as a tool for pursuing fraud and abuse under federal healthcare programs. Because the arrangements in the Illinois suit have been in place for more than 18 months and involve potentially thousands of improper claims, the damages and penalties available under the Illinois statute are, like those under the federal False Claims Act, potentially very significant.

The Illinois lawsuit was originally filed in early 2006 by the owner of a competing radiology service. The lawsuit was made public after the Illinois AG chose to intervene in the case on January 17, 2007. Although the AG has taken charge of the case, the original private plaintiff, as “relator,” will be entitled to 30% of the proceeds of the action, plus fees and costs. The ability of private relators, or “whistleblowers” as they are commonly known, to initiate actions under the Illinois statutes is another feature that is similar to the federal False Claims Act. Given that the Deficit Reduction Act of 2005 (42 U.S.C. § 1396h) contains incentives for states to enact false claims acts that meet certain guidelines administered by the Office of Inspector General of the Department of Health and Human Services (OIG), it is reasonable to expect a new era of state enforcement activity in the area of healthcare fraud and abuse (note that Tennessee’s false claims act has already been approved by the OIG under these guidelines).

Indeed, officials in other states are scrutinizing the same types of arrangements that are involved in the Illinois case. Federal regulators in Florida are looking into a similar arrangement in that state in an investigation that received prominent coverage in the *Wall Street Journal*¹. The Louisiana State Board of Medical Examiners has warned physicians that certain leasing arrangements similar to those described in the Illinois case may be illegal².

If you have any questions about the matters described in this *Health Law Update* please contact one of the Bass, Berry & Sims attorneys in the Healthcare Practice Area referenced at the end of this Update.

¹ Armstrong, David. “Medical Center Is Investigated for Scan Deals.” *Wall Street Journal*. 28 July 2005: B1.

² Statement of Position, *Referrals for Imaging Services*, Louisiana State Board of Medical Examiners, June 2005

Bass, Berry & Sims Healthcare Attorneys

H. Stanford Adams, Jr.
(615) 742-7775
sadams@bassberry.com

Renard François
(615) 742-7792
rfrancois@bassberry.com

Pooneh Ghiassi
(615) 742-7782
pghiassi@bassberry.com

J. James Jenkins, Jr.
(615) 742-6236
jjenkins@bassberry.com

Leslie Maclellan
(615) 742-7818
lmaclellan@bassberry.com

Shannon Pinkston
(615) 742-7727
spinkston@bassberry.com

Catherine J.B. Sloan
(615) 742-7789
csloan@bassberry.com

Leigh Walton, Chair
(615) 742-6201
lwalton@bassberry.com

H. Lee Barfield, II
(615) 742-6202
lbarfield@bassberry.com

Valere B. Fulwider
(615) 742-7742
vfulwider@bassberry.com

Anna Grizzle
(615) 742-7732
agrizzle@bassberry.com

Nancy S. Jones
(615) 742-6239
njones@bassberry.com

Claire F. Miley
(615) 742-7847
cmiley@bassberry.com

Cynthia Y. Reisz
(615) 742-6283
creisz@bassberry.com

Danielle M. Sloane
(615) 742-7763
dsloane@bassberry.com

Elizabeth S. Warren
(615) 742-7719
ewarren@bassberry.com

Philip F. Berg
(615) 742-7908
pberg@bassberry.com

Clevonne M. Gaillard
(615) 742-7769
vgaillard@bassberry.com

Angela Humphreys
(615) 742-7852
ahumphreys@bassberry.com

David King
(615) 742-7890
dking@bassberry.com

T. Scott Noonan, Co-Chair
(615) 742-6273
snoonan@bassberry.com

Scott B. Shanker
(901) 543-5932
sshanker@bassberry.com

Krista Thornton
(615) 742-7734
kthornton@bassberry.com

The materials contained herein have been abridged from the statutory sources and should not be construed or relied upon for legal advice. Readers are urged to consult legal counsel concerning particular situations and specific legal questions.

To ensure compliance with requirements imposed by the IRS, we inform you that this message is not intended to be used, and cannot be used, by the addressee or any other person for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code.

NASHVILLE Downtown
AmSouth Center
315 Deaderick St. · Ste. 2700
Nashville, TN 37238-3001
(615) 742-6200

KNOXVILLE
1700 Riverview Tower
900 S. Gay St.
Knoxville, TN 37902
(865) 521-6200

MEMPHIS
The Tower at Peabody Place
100 Peabody Place · Ste. 900
Memphis, TN 38103-3672
(901) 543-5900

NASHVILLE Music Row
29 Music Square East
Nashville, TN 37203-4322
(615) 255-6161