



Care Alternatives v. United States (S. Ct.)

Topics Covered: False Claims Act

Outcome: Somewhat Unfavorable

Issue

The issue in this case was whether a physician’s honestly held clinical judgment regarding hospice certification can be “false” under the False Claims Act (FCA) based solely on a reasonable difference of opinion among physicians.

AMA Interest

The AMA will work in a coalition of other health care organizations to lobby for restrictions on the use of the FCA.

Case Summary

Former employees of a hospice provider filed a *qui tam* action alleging that their employer had improperly admitted patients who were ineligible for Medicare’s Hospice Benefit and directed employees to falsify Medicare certifications to reflect eligibility. The provider filed for summary judgment, arguing that a difference of opinion between the parties’ experts was insufficient to create a triable dispute of fact as to the element of falsity under the FCA. The lower court agreed, holding that an “objective falsehood” – something more than a retrospective difference of opinion – was instead required.

On appeal, the Third Circuit disagreed and reversed the district court’s decision. The Third Circuit’s ruling created a circuit split on the issue of clinical judgment in the FCA context, and the hospice provider petitioned the United States Supreme Court for review. The Supreme Court denied the petition for *certiorari*.

AMA Involvement

The AMA joined several hospice providers and other health care organizations in an *amicus* brief in support of the provider’s petition for *certiorari*.

United States Supreme Court Brief