



United States v. GGNSC Administrative Services (11th Cir.)

Topics Covered: False Claims Act

Issue

The issue in this case is whether, for purposes of the False Claims Act (FCA), proof that medical records falsely showed “a life expectancy of 6 months or less if the terminal illness runs its normal course” requires something more than a difference of expert interpretation of the medical records.

AMA interest

The AMA believes health care fraud should be limited to acts of intentional misconduct.

Case summary

Medicare pays hospice benefits for Medicare-eligible individuals with a life expectancy of 6 months or less if the individual’s illness runs its normal course. Life expectancy is to be based on “the ... clinical judgment [of a physician or medical director] regarding the normal course of the individual’s illness.” The regulations further provide: “Clinical information and other documentation that support the medical prognosis must accompany the certification [of the physician or medical director] and must be filed in the medical record.” 42 CFR § 418.22(b).

In what started as a consolidation of several qui tam actions brought by former employees of a hospice facility, the Department of Justice (DOJ) sued the hospice under the FCA. The DOJ asserted that the hospice had falsely claimed Medicare benefits for ineligible patients. Although there was no dispute as to the hospice’s having obtained the necessary physician certifications of life expectancy, the patients’ medical records, according to the DOJ, did not sufficiently support the medical prognoses.

In this regard, the DOJ called a medical school professor to testify regarding the adequacy of the medical records. The professor testified that the records failed to support the prognoses of 6-month life expectancy for 123 patients. The hospice called its own medical experts, who testified that the medical records were adequate.

Following a seven week trial, the case was submitted to a jury, which found the hospice had submitted false claims as to 104 of the 121 patients. The judge, however, sua sponte vacated the verdict and invited the hospice to move for summary judgment. She then granted summary judgment for the hospice, based primarily on her findings that (a) because “certifying physicians and medical experts look[ed] at the very same medical records and disagree[d] about whether the medical records support hospice care eligibility, the opinion of one medical expert alone cannot prove falsity without further evidence of an objective falsehood,” (b) her jury instructions, which had not included this requirement, were inadequate, and (c) the DOJ had failed to corroborate the professor’s testimony.

DOJ has appealed, contending that the testimony of its expert witness was sufficient to prove the falsity of the hospice's Medicare claims under the FCA.

AMA involvement

The AMA, along with several associations of hospice facilities and hospice employees, filed an *amicus* brief to support the trial court decision.

United States Court of Appeals for the Eleventh Circuit brief