CLIENT ALERT

Crowell & Moring Attorneys Successfully Rebuff Challenge to Modification of Medicare Coordination of Benefits Contract

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In a decision important to increasing the efficiency of the Medicare claims payment process, the U.S. Court of Federal Claims in *HDM Corp. v. United States*, No. 04-694 C, rejected a claim that a modification to the Coordination of Benefits ("COB") contract by the Centers for Medicare and Medicaid Services ("CMS") circumvented federal competition-in-contracting requirements. The Court's decision allows CMS to continue its years-long effort to transition its COB operation to a centralized system.

Plaintiff HDM Corporation is a clearinghouse in the business of receiving Medicare crossover claims files from Fiscal Intermediaries ("FIs") and Carriers and re-transmitting them to its third party payer clients who pay health care claims secondary to Medicare. In recent years, CMS announced plans to consolidate the work of FIs and Carriers to transmit crossover claims files and instead establish one contractor – the COB contractor – to centrally gather and singularly transmit these files. CMS issued a modification to the COB contract held by Group Health Incorporated ("GHI") to add this task to its other contractual responsibilities.

HDM, concerned that the centralization of the transmission of Medicare crossover claims files would hurt its clearinghouse business, brought suit in the U.S. Court of Federal Claims, claiming that CMS' plans constituted a "taking" of HDM's property without just compensation, in violation of the 5th Amendment. Later, HDM added allegations that the modification of the COB contract was improper because the new task was beyond the scope of the original COB contract, and therefore unlawfully circumvented rules requiring competition for federal contracts. Crowell & Moring successfully represented GHI in defense of CMS' action.

In a decision announced December 14, 2005, Judge George Miller of the U.S. Court of Federal Claims rejected HDM's claim that the modification exceeded the scope of the COB contract, and further rejected HDM's claim that HDM was irreparably harmed by the modification. Whether a contract was modified beyond its scope depends upon the breadth of the stated objectives of the solicitation, whether bidders were told that work might be added, and the nature of the added work. The Court found that the consolidation of crossover services was well within the general scope of the COB contract. The Court rejected HDM's argument that a pre-solicitation agency statement that it did not initially intend crossover claims consolidation to be part of the COB was dispositive, holding that the more important facts were that the scope of the COB contract was broad, the nature of the modification was consistent with the contract's objectives, and that bidders were told that the agency may modify the contract at some point in the future.

The Court held, in the alternative, that even if the modification had been unlawful, HDM would not be entitled to an injunction preventing CMS from continuing its effort to consolidate crossover tasks. HDM, the Court found, made a "weak showing" of irreparable harm in part because HDM seemed more interested in preventing centralization than in competing for the revised contract. Moreover, the public interest strongly favored continuing the consolidation process, because of the expected

efficiencies, because so many have relied and planned for the transition, and because stopping the transition would be disruptive to the implementation of Medicare Part D.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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