

CLIENT ALERT

Advantage United Healthcare: U.S. District Court Judge Tosses Allegations in Medicare Advantage Lawsuit

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The Department of Justice will need more than a vague “shotgun pleading” to attack health insurers for allegedly inflated Medicare Advantage payments. While DOJ alleges that United Healthcare ignored questionable diagnoses to increase its Medicare Advantage profits, a California federal judge decided that it was DOJ who ignored information in its questionable complaint.

In *United States ex rel. Swoben v. Scan Health Plan et al.*, U.S. District Judge John F. Walter granted defendant’s motion to dismiss in a False Claims Act case accusing United Healthcare of submitting false Risk Adjustment Attestations to obtain greater Medicare Advantage payments. Significantly, Judge Walter strongly condemned DOJ’s “classic shotgun pleading.” The judge found that the complaint included only “conclusory allegations” that United Healthcare’s alleged misconduct was material, and therefore the complaint failed to allege that the government would have refused to make the risk adjustment payments if it had known of United Healthcare’s alleged wrongdoing. Applying the heightened materiality standard espoused by the U.S. Supreme Court’s landmark decision in *Escobar*, the judge found that mere conclusory allegations that the defendant’s conduct is material are insufficient to allege materiality under the FCA.

Judge Walter also attacked DOJ’s complaint for its failure to allege that anyone at United Healthcare possessed the requisite scienter necessary for FCA liability. The judge rejected the idea that a complaint may rely on the notion that a corporation has “collective scienter” separate from the scienter of any individual. Instead, the judge found that the complaint failed to identify anyone at United Healthcare who knew that attestations submitted to the government were false. According to Judge Walter, “other than explaining the relationship between the various United Defendants in the opening paragraphs, the majority of the allegations . . . simply refer to the United Defendants as if they were a single collective entity.” Despite the judge’s strong condemnation of DOJ’s complaint, the judge dismissed the allegations with leave to amend, granting the DOJ another opportunity to provide the relevant details. Nevertheless, the DOJ declined to amend its allegations and dropped the lawsuit on October 13, 2017.

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