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U.S. Joins Constantine Cannon Whistleblower's Suit Against UnitedHealth Group for Allegedly Overcharging Medicare Hundreds of Millions of Dollars

Suit alleges UnitedHealth Group fraudulently overcharged Medicare by claiming its members were sicker than they were – nationwide.

February 16, 2017 (San Francisco, CA) – Constantine Cannon LLP announced today that the U.S. Department of Justice has joined its client's whistleblower lawsuit claiming that UnitedHealth Group — the nation's largest health insurer and largest operator of Medicare managed healthcare insurance plans — and various subsidiaries and affiliates defrauded the Medicare managed care program to the tune of hundreds of millions of dollars. UnitedHealth Group is accused of improperly gaming a program known as risk adjustment, or risk scoring, by claiming its members were treated for conditions they either did not have or were not treated for. The Justice Department has also joined in allegations against WellMed, a Texas-based healthcare entity UnitedHealth acquired in 2011 in spite of evidence WellMed was fraudulently inflating its risk scores.

Taxpayers have paid out hundreds of millions of dollars to UnitedHealth and its affiliates for false claims, the suit alleges. The "qui tam" whistleblower suit, filed under the federal False Claims Act, was unsealed today. A copy of the complaint, pending in federal court in Los Angeles, California, is available here.

UnitedHealth allegedly submitted exaggerated risk-adjustment claims to Medicare under its Part C (managed care) and Part D (prescription drug) programs. Medicare makes additional payments to managed-care plans based on plan enrollees' health-risk scores, which are calculated using patients' medical diagnoses. Higher risk scores are supposed to reflect treatment of sicker patients, and risk-adjustment reimbursement is designed to offset increased costs associated with treating these patients.

The suit claims that UnitedHealth collected and retained payments from claims that falsely stated its beneficiaries were treated during the relevant period for:

- diagnoses the beneficiaries did not have;
- more severe diagnoses than the beneficiaries had;
- diagnoses for which beneficiaries were previously treated but that were not treated in the relevant year; and/or

- diagnoses that otherwise failed to meet CMS requirements for risk adjustment.

The complaint states that UnitedHealth failed to correct previously submitted Medicare risk adjustment claims even though it knew, or should have known, that those claims were false. Under Medicare rules and regulations, the company was required to report and reimburse the government for any overpayments.

UnitedHealth's top executives created a culture that demanded and rewarded increasing financial success of its risk adjustment efforts, the suit claims. Allegedly, this led to programs, masked as clinical initiatives, that simply sought additional reimbursement while ignoring information that showed UnitedHealth was being overpaid in many instances.

One way UnitedHealth overstated its members' risk scores was by performing a "one way look" into patient medical records for additional risk-adjusting diagnoses rather than "looking both ways" by also reviewing for previously submitted, unsupported diagnoses and deleting those invalid claims, according to the complaint. Allegedly, when UnitedHealth did do audits of its previously submitted claims, it found high error rates yet, according to the whistleblower, UnitedHealth refused to take meaningful, widespread steps to identify and rectify the problems with the claims it submitted to the Centers for Medicare & Medicaid Services (CMS).

The complaint alleges UnitedHealth's limited efforts to look both ways merely created a veneer of compliance. Although its internal audit results put UnitedHealth on notice of serious provider overcoding, the company failed to act on this knowledge to correct errors and return overpayments.

"Through the scheme outlined in the suit, UnitedHealth has allegedly fraudulently claimed and retained hundreds of millions of dollars. That money would have been far better used to provide care for our nation's seniors rather than simply padding UnitedHealth's bottom line," said Tim McCormack, a partner in Constantine Cannon's Washington, D.C., office and co-lead counsel on the case.

"Medicare fraud is a pervasive and pernicious issue that affects not only taxpayers, but also the millions of Americans who rely on the program to meet their healthcare needs." said Jessica T. Moore, a partner at Constantine Cannon's San Francisco office who is co-lead counsel on the case.

The whistleblower, who is represented by Constantine Cannon LLP and Phillips and Cohen LLP, filed his amended complaint on October 27, 2011 against UnitedHealth. The suit has been kept under seal while the Justice Department investigated the claims.

"The federal government's decision to join this case after a 5-year investigation demonstrates the gravity of these allegations," said Mary A. Inman, a partner in Constantine Cannon's San

Francisco office and co-lead counsel. “This case demonstrates the benefit of the False Claims Act and the importance of whistleblowers in detecting complex fraudulent schemes.”

The False Claims Act promotes collaboration among corporate insiders and the government to fight fraud on taxpayers. The law encourages whistleblowers to expose companies that are defrauding the government by allowing a private party to file a civil lawsuit on the government’s behalf and providing for a reward of 15 to 25 percent of the government’s civil recovery if the government joins, or intervenes in, the case.

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About Constantine Cannon’s Whistleblower Practice:

Constantine Cannon’s team of dedicated whistleblower lawyers has extensive experience representing whistleblowers in federal and state courts and before the Securities & Exchange Commission, the Internal Revenue Service, the Commodity Futures Trading Commission, and the Department of Transportation. It has brought those matters under the False Claims Act as well as other federal and state whistleblower laws. The firm was one of the first in the country to bring a claim under the whistleblower provisions of the Dodd-Frank Act.

To learn more about Constantine Cannon’s whistleblower practice, click here.

About Constantine Cannon LLP

Constantine Cannon, with offices in New York, Washington, D.C., San Francisco, and London, has deep expertise in practice areas that include antitrust and complex commercial litigation, whistleblower representation, government relations, securities, and e-discovery. The firm’s antitrust practice is among the largest and most well recognized in the nation. Constantine Cannon’s experience spans across multiple industries including healthcare, banking, electronic payments, insurance, high tech, telecommunications, the Internet, and government contracting.

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