

E. FCA Case Trends: *Qui Tam* Cases

- ❑ Whistleblowers are current and former employees of MAOs, Providers, and Vendors.
- ❑ Include physicians, coders, auditors, compliance officers, etc.
- ❑ Many complaints include retaliation claims after whistleblower raised concerns internally.
- ❑ Government has filed at least 2 FCA complaints (e.g., *Janke*, *Anthem*) without a whistleblower.

MA Risk Adjustment FCA Cases - Whistleblowers

| CASE NAME | Relator's Position | Clinician | Auditor Coder or Biller | Exec. / Mngr |
|--------------------------------------|--|-----------|-------------------------|--------------|
| <i>Swoben v. Scan</i> | Former data manager of Scan Health Plan | | Yes | |
| <i>Sewell v. Freedom Hlth</i> | CMO at Freedom Health | Yes | | Yes |
| <i>Graves v. Plaza MC</i> | Physician who ran practice sold to Def. Cavanaugh, then operated by Def. Plaza MC. | Yes | | |
| <i>Poehling v. UHG</i> | Former Dir. Finance for UHS; ran the RA team. | | Yes | Yes |
| <i>Valdez v. Aveta</i> | President of MSO of Puerto Rico | | | Yes |
| <i>Ross v. Group Health</i> | Former medical billing manager at Group Health | | Yes | Yes |
| <i>Baez v. Thompson</i> | Physician who was business partner with Defendant physician Thompson | Yes | | |

MA Risk Adjustment FCA Cases - Whistleblowers

| CASE NAME | Relator's Position | Clinician | Auditor Coder or Biller | Exec. / Mngr |
|----------------------------------|--|-----------|-------------------------|--------------|
| <i>Silingo v. MMEx</i> | Former Compliance Officer for MedXM | | Yes | Yes |
| <i>Ramsey-Ledesman v. Censeo</i> | Medical billing Lead Coder at Censeo | | Yes | |
| <i>Ormsby v. Sutter Health</i> | Former RAF Project Manager & RAF Coding Manager, for PAMF | | Yes | Yes |
| <i>Rasmussen v. Essence HC</i> | Physician and former employee of Def. medical centers | Yes | | |
| <i>Nutter v. Beaver Medical</i> | Physician and former employee of Beaver Medical Group, on Coding & Compliance Comm. | Yes | | |
| <i>Villamil v. MMEx</i> | Both relators employed by MedXM in Data Processing Dept; one was DP Assist. Supervisor | | Yes | |

F. FCA Case Trends: Government Intervention Decisions

- ❑ The U.S. has intervened (at least partially) or sought to intervene (*Ross*) in 7 of the 13 *qui tam* cases filed. Much higher rate than *qui tam* cases generally.
- ❑ The U.S. has filed a Complaint-In-Intervention in 4 of the 16 *qui tam* cases and presumably will do so in *Ross*.
- ❑ The U.S. has declined to intervene in 6 cases, but filed a SOI in 2 of these cases in support of the relator.
- ❑ Failure to intervene does not necessarily mean case lacks merit. Many factors go into the intervention decision. DOJ reserves right to intervene later in a case.
- ❑ The U.S. has not moved to dismiss any RA *qui tam* cases.

MA Risk Adjustment FCA Cases – Govt. Intervention

| CASE NAME | Full Intervention | Partial Intervention | Govt. Complaint-in-Intervention | Govt St. of Interest |
|---------------------------------|-------------------|-------------------------------------|---------------------------------|----------------------|
| <i>Swoben v. Scan</i> | | Yes (UHG) | Yes | |
| <i>Sewell v. Freedom Health</i> | Yes | | No (Settlement) | |
| <i>Graves v. Plaza MC</i> | Declined | Declined | No | Yes |
| <i>Poehling v. UHG</i> | | Yes (UHG) | Yes | |
| <i>Valdez v. Aveta</i> | Declined | Declined | | Yes |
| <i>Ross v. Group Health</i> | GHC Settling | Mtn. Pending (IH, DxID, Indvds.) | Pending | |
| <i>Baez v. Thompson</i> | | Yes (Dr. Thompson) | Yes | |

MA Risk Adjustment FCA Cases – Govt. Intervention

| CASE NAME | Full Intervention | Partial Intervention | Govt. Complaint-in-Intervention | Govt St. of Interest |
|----------------------------------|-------------------|----------------------|---------------------------------|----------------------|
| <i>Silingo v. MMEx</i> | Declined | Declined | | |
| <i>Ramsey-Ledesman v. Censeo</i> | Declined | Declined | | |
| <i>Ormsby v. Sutter Health</i> | | Yes (SH and PAMF) | Yes | |
| <i>Rasmussen v. Essence HC</i> | Declined | Declined | | |
| <i>Nutter v. Beaver Medical</i> | Yes | | No (Settlement) | |
| <i>Villamil v. MMEx</i> | Declined | Declined | | |

G. FCA Case Trends: Settlements

- ❑ There have been 8 settlements of FCA MA risk adjustment cases to date.
- ❑ Total FCA settlement amount to date = approx. \$660M (plus undisclosed).
- ❑ 2 more settlements appear to be pending (*Ross, Silingo*).
- ❑ 1 case (*Baez*) was resolved on default judgment following a criminal conviction.
- ❑ Only 2 cases (*Rasmussen, Villamil*) have been resolved without any settlement or payment by the defendants.
- ❑ Total settlement amount to date pales in comparison to Government estimates of MA Risk Adjustment overpayments.

MA Risk Adjustment FCA Cases - Status

| CASE NAME | STATUS | SETTLEMENT NOTES | \$ AMT. |
|---------------------------------|---------------|--|---------|
| <i>U.S. v. Janke</i> | Closed (2010) | Settlement (Nov. 2010) | \$22.6M |
| <i>Swoben v. Scan</i> | Closed (2017) | Aug. 2012: settlement with SCAN (\$320M) but only \$3.8M for RA claims; rest for LTC overpayments; Oct. 2018: settlement w/ DaVita \$270M. | \$590M |
| <i>Sewell v. Freedom Health</i> | Closed (2017) | Settlement with Freedom Health and former COO (May 2017) | \$32.5M |
| <i>Graves v. Plaza MC</i> | Closed (2017) | Settlement (Oct. 2017) | \$3M |

MA Risk Adjustment FCA Cases - Status

| CASE NAME | STATUS | SETTLEMENT NOTES | \$ AMT. |
|----------------------------------|---------------|--|-------------|
| <i>Valdez v. Aveta</i> | Closed (2020) | Settlement (June 22, 2020) | TBD |
| <i>Ross v. Group Health</i> | On-going | Tentative settlement with GHC (Jan. 2020). Litigation continuing w/r to DxID and Indpt. Health Assn. | TBD |
| <i>Baez v. Thompson</i> | Closed (2018) | Default judgment (Apr. 2018) following criminal conviction. | \$6.3M |
| <i>Silingo v. MMEx</i> | On-going | Tentative settlement all defendants (Nov. 2019). Status conference scheduled for June 25, 2020. | TBD |
| <i>Ramsey-Ledesman v. Censeo</i> | Closed (2018) | Settlement (Jan. 2018) | Undisclosed |

MA Risk Adjustment FCA Cases – Status

| CASE NAME | STATUS | SETTLEMENT NOTES | \$ AMT. |
|---------------------------------|------------------|---|--------------|
| <i>Ormsby v. Sutter Health</i> | Ongoing | Settlement of non-FCA claims (Apr. 2019) | \$30M Refund |
| <i>Rasmussen v. Essence HC</i> | Closed (4/29/20) | Dismissed w/o settlement and w/ prejudice | \$0 |
| <i>Nutter v. Beaver Medical</i> | Closed | Settlement (June 2019) | \$5M |
| <i>Villamil v. MMEx</i> | Closed (2020) | Dismissed w/o settlement | \$0 |