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PHYSICIAN LAW BLOG

Recent Decision Concerning "Identification" Of Provider Overpayments And The False Claims Act

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The Affordable Care Act (PPACA) expanded the False Claims Act (FCA) to require providers to report and return any overpayment within 60 days of identification. Just what "identification" means under this rule has been unclear until now. With the SDNY's recent ruling in *Kane v. Healthfirst, Inc.*, No. 1:11-cv-02325-ER (SDNY Aug. 3, 2015), there is now guidance. The Kane decision, a whistleblower/false claims case, clarifies what constitutes "identification" for purposes of triggering FCA liability related to the 60 day rule to report overpayments.

The Kane court took an expansive view on what constitutes "identification," as only requiring a person to be put on notice that a certain claim may have been overpaid. However, the court limited that obligation when it comes to establishing a violation of the FCA. The provider must have "knowingly concealed or knowingly and improperly avoided or decreased" an obligation before a violation occurs in the context of the FCA. Since PPACA places the burden on the provider to identify the overpayments, providers will need to act with "reasonable haste" to determine overpayments and refund same promptly if they wish to avoid the potential for FCA liability.