Seventh Circuit Requires Objective Standards in Medical Necessity Cases

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The Seventh Circuit recently held that a relator's subjective evaluation of medical necessity, standing alone, is not a sufficient basis for a fraud claim under the False Claims Act (FCA). In *U.S. ex rel. Presser v. Acacia Mental Health Clinic, LLC*, the nurse-relator alleged that a number of her employer's practices and policies were not medically necessary, including (1) mandating patients be assessed by at least four different individuals before provided with medication; (2) requiring that patients undergo mandatory drug screening during each visit; and (3) requiring patients to come to the clinic in person in order to obtain prescription refills or speak with physicians.[1] In support of her claims, the relator cited to her own personal view and experience, but provided "no medical, technical, or scientific context" explaining why the clinic's policies and procedures constituted medically unnecessary care.

The Seventh Circuit held that the relator's own personal opinion that such policies and procedures were unnecessary was not enough to state a claim under Federal Rule of Civil Procedure 9(b). The relator did not reference policies or practices at other clinics, regulations, or other publications to support her conclusion. Further, the relator failed to put the clinic's activity into relevant context. Without additional context as to why the policies and practices were inappropriate, the court found the allegations to be too indefinite. The court pointed out that many relators could state that the clinic's activities were contrary to their own personal experience, but it is possible that those relators might not see the entire picture, might simply have a subjective disagreement, or might be affected by personal bias. Emphasizing that the "heightened possibility of mistake or bias supports the need for a higher standard of specificity for fraud," the court affirmed the lower court's dismissal of the medical necessity-related claims.

The implications of the Seventh Circuit's opinion are significant for FCA defendants facing similar claims. Under *Presser*, relators not only must provide context as to why particular policies and practices are inappropriate or unnecessary, but also must support their theory with something more than their own personal opinion or experience in the industry. Such requirements present a substantial hurdle for FCA relators and should protect defendants against claims by relators who might simply have a difference of opinion or lack full information.

[1] The relator also alleged the clinic misused a certain billing code, the only claim that the Seventh Circuit allowed to move forward.

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