United States ex rel. Walker v. R & F Properties

433 F.3d 1349 (11th Cir. 2005)

Topics Covered: Fraud and Abuse

Outcome: Unfavorable

Issue

The issue in this case was whether the federal False Claims Act (FCA) was violated by physicians submitting claims to Medicare for services rendered by non-physicians when physicians were not on the premises.

AMA Interest

The AMA believes that FCA liability should require a violation of definite and understandable laws.

Case Summary

In this qui tam ("whistleblower") action under the FCA, Karyn Walker contended that the defendant physicians should have been bound by the Medicare Carrier's Manual (MCM) rules for the billing of "incidental" services, even though those rules were not set forth in the Medicare Act or the Code of Federal Regulations.

R & F Properties of Lake County, Inc. was a medical corporation in Lake County, Florida, which provided family care. Most of its patients were covered by Medicare. R & F formerly employed Karyn Walker as a nurse practitioner. From time to time, R & F used its physician assistants/nurse practitioners, including Walker, to service its Medicare patients without a physician's being physically present on the premises. The physicians were, however, available by telephone or pager. R & F's billings to Medicare included charges for the services rendered by the physician assistants/nurse practitioners.

At the time covered by the lawsuit (prior to 2002), the relevant federal regulation stated:

"Medicare Part B pays for services and supplies incident to a physician's professional services … if the services or supplies are of the type that are commonly furnished in a physician's office or clinic, and are commonly … included in the physician's bill."

The Medicare regulations did not explicitly say whether a physician had to be physically present on the premises in order to qualify as "incidental" services for payment. However, the MCM

stated that services rendered by non-physicians could be deemed "incident to a physician's professional service" only if the physician were "present in the office suite and immediately available to provide assistance and direction throughout the time that the aide is performing services."

Walker filed a qui tam action, alleging that R & F had violated the FCA by billing for services of non-physicians while physicians had not been physically present. She claimed that R & F was bound by the MCM requirement that a physician be physically present on the premises when the services were rendered.

The trial court entered summary judgment for R & F. It held that, during the relevant time period, "neither the Medicare statutes nor the regulations provided much guidance on the level of supervision required in order to bill … services … as 'incident to.'" R & F had complied with the federal law and regulations in existence at the time of the billings, and the MCM requirements did not carry the force of law. The court noted that its holding was consistent with Florida law, which encouraged physicians to delegate health care tasks to qualified assistants.

Walker appealed to the Eleventh Circuit, which reversed the trial court's opinion. While the appellate court acknowledged that the Medicare regulations did not fully define the term "incident to" during at least the majority of the time at issue, it held that Walker should be allowed to introduce evidence as to how the industry and CMS defined that term.

Litigation Center Involvement

The Litigation Center filed a brief amicus curiae in the Eleventh Circuit to support R & F.

United States Court of Appeals for the Eleventh Circuit brief