

# Health Law Alert

A report  
for clients  
and friends  
of the Firm

October 2008

## Alleged Sham Joint Venture Challenged in *qui tam* FCA Case

As many of you know, the OIG has frequently raised concerns about “sham” joint ventures and management agreements pursuant to which the real provider of a Medicare-covered service purports to assist another entity (owned or controlled by a referral source) in rendering the service that would otherwise be referred. The government believes that many of these arrangements are designed to allow the referring entity to keep a portion of the reimbursement paid for the service, which in the OIG’s view, amounts to a kickback running from what they deem to be the true service provider to the referral source.

The mechanism of kickback is the ostensible services agreement or joint venture pursuant to which without any material investment or risk or other significant involvement, the referring entity gets to treat the referral as a referral to itself or an affiliate from which it profits; it is that profit which the government views as a kickback from the “true” provider.

Actual instances of enforcement in this area have been relatively rare. However, in a recently unsealed *qui tam* False Claims Act case, *United States of America ex rel., Thomas F. Jamison v. McKesson Corporation*; et al., the Department of Justice has intervened in an action challenging the relationship between a DME supplier, McKesson, and a long-term care provider,

Beverly Enterprises, Inc. The *qui tam* action challenges the bona fide nature of a DME company that was created by Beverly to capture the needs of its long-term care patients for DME. McKesson is alleged to have been the actual supplier of the DME, which engaged in a “turnkey” services agreement with the Beverly entity, which “left nothing for Beverly to do.”

Obviously, the possibility of *qui tam* False Claims Act liability related to such “turnkey” operations is likely to increase enforcement activity dramatically. Providers are advised to review any services relationship to assure compliance, and to carefully review any future transactions that may be viewed as improper.

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