

QUI TAM QUARTERLY - UNCERTAIN RELIEF: NAVIGATING CARES ACT PROVIDER RELIEF FUND GUIDANCE AND FALSE CLAIMS ACT RISKS

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By: John H. Lawrence, Michael D. McKay, Leah D'Aurora Richardson, John C. Rothermich

This edition of the Qui Tam Quarterly focuses on the potential False Claims Act (FCA) risk areas faced by health care provider recipients of payments from the Provider Relief Fund (PRF) created by the CARES Act, as well as potential defenses to FCA actions based on some of the PRF “Terms and Conditions” and related “FAQs” issued by Department of Health and Human Services (HHS). In particular, the article considers the extent to which (1) ambiguous or changing guidance and/or regulations may create enforcement problems where recipients interpreted the regulations in good faith, (2) the materiality element may not be satisfied where HHS knows about provider non-compliance with certain guidance requirements but declines to request reimbursement or initiate an investigation, and (3) the government and relators will be able to establish falsity through relying on the informal and frequently updated FAQ guidance documents. The article also considers whether the government may more aggressively move to dismiss qui tam actions brought by relators in marginal cases pursuant to the guidelines in the so-called “Granston Memo.”

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Qui Tam Quarterly is a quarterly publication authored by members of the [health care fraud and abuse team](#) highlighting emerging and pressing issues in health care fraud and abuse, including litigation and governmental investigations involving the False Claims Act, the Stark Law, the Anti-Kickback Statute, and other health care fraud related statutes.

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KEY CONTACTS



JOHN H. LAWRENCE
PARTNER

RESEARCH TRIANGLE PARK, NASHVILLE
+1.919.466.1112
JOHN.LAWRENCE@KLGATES.COM



MICHAEL D. MCKAY
SENIOR OF COUNSEL

SEATTLE
+1.206.370.7613
MIKE.MCKAY@KLGATES.COM



LEAH D'AURORA RICHARDSON
PARTNER

RESEARCH TRIANGLE PARK
+1.919.466.1126
LEAH.RICHARDSON@KLGATES.COM

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