

SCHAUM LAW OFFICES

600 Old Country Road, Suite 320, Garden City, NY 11530
516-228-8766 Fax: 516-228-3559 SCHAUM@SCHAUMLAW.COM

December 17, 2017

**TO: MEMBERS OF THE LONG ISLAND JEWISH
ORGANIZED MEDICAL STAFF**

Your office receives an overpayment for a service rendered to a Medicare or Medicaid patient. Perhaps this was simply an error on the part of the paying entity or perhaps it was the result of an improper submission on your part. Whatever the reason you are now in the thicket of what may constitute a False Claim Act violation and the consequences flowing from that event or events.

If you have submitted an improper charge for a number of related claims you should be comforted to know that the False Claims Act (FCA) statute provides that a single penalty should be imposed for a violation – hence, in most cases there will be one penalty for the error and not a multiple because the same error was perpetuated. Please also bear in mind that the FCA applies to all false claims which may be submitted to the federal government and is not limited to the health care industry.

If you return the payment prior to the institution of a formal FCA proceeding but after the 60 day statutory deadline the maximum penalty imposed should be limited to treble the amount of the time value of the money while in your possession. This conclusion is based upon the language of the statute providing that the person is liable to the Government for “3 times the amount of damages which the Government sustains because of the act of that person.”

If reimbursement is not made prior to the commencement of a FCA prosecution the penalties and fines sought are limited to fact specific circumstances. Based upon language in prior FCA cases before the Supreme Court, there is a presumptive maximum of 10:1 between penalty and damages.

You would be interested to know that the Supreme Court has ruled in related types of cases that it would consider whether a punitive forfeiture occurs when a fine is “grossly disproportional to the gravity of a defendant’s offense” and thus violative of the Excessive Fines Clause. The Court will review, however, the reprehensive nature of the person’s actions and thus one engaged in a deliberate pattern of fraudulent billing will remain in jeopardy.

Respectfully submitted,

Schaum Law Offices