

## US False Claims Act: Court Finds Grounds For Suit Over False Coding Of Patient Data.

The US False Claims Act (FCA) allows a private individual to sue on behalf of the US government to recoup money paid by the government for a false or fraudulent claim.

If the lawsuit is successful, the private individual is allowed to keep a certain percentage of the legal recovery. Some FCA cases have awarded private individuals millions of dollars.

A major hurdle for potential whistleblowers, and some measure of protection for potential defendants, is the fact the courts have interpreted the FCA to require private individuals to have very specific facts about the schemes to defraud the government they allege in their lawsuits.

The courts have dismissed numerous FCA cases in the healthcare industry that alleged only in general terms that Medicare or Medicaid was billed even though patient care was substandard in some vaguely articulated way.

### Employee Told to Falsify Assessment Data To Increase Medicare Payments

In contrast, a recent case involved an employee of a home health agency who was instructed to code all surgical wounds less than thirty days old as “non-healing.”

According to the US District Court for the Middle District of Florida, which upheld her right to sue under the FCA, the employee pointed to M1342 as the data point on the OASIS-C assessment instruments she was told to code as she was told, regardless of patients’ actual clinical conditions which she herself verified by communicating with certain clinicians whom she was able to identify.

The employee had emails on her office laptop computer from the company confirming that she had coded certain patients’ wounds as “non-healing” even though she had not coded them that way. That meant that her own correct coding was changed by someone else in furtherance of her employer’s scheme to qualify for and enhance Medicare reimbursement falsely.

In fact, before her departure from the company she met with the corporate president. He actually admitted he knew improper claims were being submitted based on the false coding of patient data and knew that it resulted in substantial financial reimbursement to the company that was not justified. **Balko v. Senior, 2015 WL 997873 (M.D. Fla., March 6, 2015).**

## Family And Medical Leave Act: Complications Make Dentist Visit A Serious Health Condition.

Complications of a nurse’s tooth extraction included root fracturing which led to days of excessive bleeding and needing to take a narcotic pain medication.

The dentist excused her from work for the rest of the day. The nurse called in sick for her shift later that day.

The next day she called in sick again. The day after that she did not show up for work and did not call. A hospital employee called her and reported back that her speech was slurred.

Worried, her co-workers called law enforcement who went to her house and verified that she was all right but reported back that she was “really out of it.” For the next two days a friend called the hospital on the nurse’s behalf and let her supervisors know that she would not be coming in to work.

***Ordinarily a common cold, flu, earache, upset stomach, headache or routine dental appointment is not a serious health condition for purposes of the Family and Medical Leave Act.***

***However, what was supposed to be a routine dental visit for a tooth extraction kept the nurse off work with a dentist’s note for four days due to bleeding and needing to take a pain med.***

UNITED STATES DISTRICT COURT  
TENNESSEE  
March 13, 2015

When she did report back to work she was terminated for having too many unexcused absences.

The US District Court for the Western District of Tennessee saw grounds for the nurse’s lawsuit for employer interference with her right under the US Family and Medical Leave Act (FMLA) to take medical leave for a serious health condition.

A routine dental appointment is not a serious health condition for which an employee has the right to FMLA leave.

However, this nurse’s dentist provided a note that she needed to be off work four days due to complications.

Federal FMLA regulations say that a condition for which there is medical validation for three or more days off work is a serious health condition. **Barger v. Jackson, 2015 WL 1179861 (W.D. Tenn., March 13, 2015).**