

Alabama Court Dismisses Hospice Whistleblower Suit, Reinforcing Pleading Standards and First-to-File Protections Under the FCA

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On February 19, 2026, the United States District Court for the Middle District of Alabama (the Court) dismissed a declined *qui tam* whistleblower suit brought against Comfort Care Hospice, LLC and several related hospice and home health service providers based in Alabama and Tennessee (collectively Comfort Care), claiming improper billing practices in violation of the False Claims Act (31 U.S.C. § 3729) (the FCA) and the Tennessee Medicaid False Claims Act (Tenn. Code §§ 71-5-181 to -185) (the TMFCA).

Whistleblowers Brandy Bryant and Carol Blackwood (the Relators) are registered nurses who previously worked for Comfort Care. Relators claimed, among other things, that Comfort Care violated the FCA by submitting claims for reimbursement for non-rendered medical care and for hospice care rendered to ineligible patients. Specifically, Relators alleged that they witnessed fraudulent activities regarding systematic enrollment, re-enrollment, and lack of discharge of ineligible patients and that Comfort Care fraudulently submitted claims for payment to Medicare and Medicaid related to the same, including in Alabama and Tennessee.^[1] Relators filed suit in November 2020, and the case remained under seal for nearly four years while the United States conducted its investigation, ultimately declining to intervene in September 2024 and prompting Comfort's Care's motion to dismiss.

THE COURT'S DECISION

The Court granted Comfort Care's motion to dismiss in its entirety, addressing four key issues. The Court (1) found that Relators failed to plead with particularity that false claims were actually submitted to the government; (2) held that Relators' Tennessee state-law claims were unsupported by any state-specific factual allegations; (3) barred several claims under the FCA's first-to-file rule based on an earlier-filed whistleblower suit; and (4) rejected Comfort Care's constitutional challenge to the FCA's *qui tam* provisions. Each aspect of the ruling is discussed below.

Particularity Standard Requires More Than Merely Detailing the Scheme

The Court dismissed Relators' claims related to non-rendered medical care (Counts 1–2),^[2] finding they failed to plead with particularity that Defendants actually submitted claims for payment to the government.^[3] The Court detailed the obligation of a plaintiff-relator bringing claims under §§ 3729(a)(1)(A) or (B) to either (i) submit billing data or a representative sample claim or (ii) provide direct, firsthand knowledge that proves that the allegedly false claims were actually submitted in order to satisfy the particularity standard in *qui tam* actions—rather than inferring submission from the circumstances.^[4] Here, the Court found that Relators' positions as nurses with Comfort Care—employed to

provide medical care, not billing or other administrative support—were not sufficient to support their conclusory allegations of billing fraud. The Court held that while Relators had worked with Comfort Care for several years and “accept[ed] as true that they have first-hand knowledge of the fraudulent schemes they allege,” their claims fell short because they “do not allege that they were in a position to know that false claims *really were submitted* to the government.”^[5] Moreover, while Relators “‘*exhaustively*’ detailed the alleged fraudulent scheme,” the Court determined that “it is insufficient to meticulously outline violations of federal regulations without also alleging the *submission* of false claims.”^[6] The Court dismissed these claims without prejudice and with leave to amend by March 6, 2026—which Relators declined to do, resulting in the Court’s dismissal of the case in its entirety without prejudice and closure on March 10, 2026.

“Corporate Mentality” Does Not Substitute for State-Specific Factual Allegations

The Court also found Relators’ TMFCA allegations lacking (Counts 8–10), as they failed to present any factual allegations that similar fraudulent activities were occurring in Tennessee that were allegedly witnessed in Alabama. Relators instead relied on the assumption that the “corporate mentality” of Comfort Care would suggest that the fraudulent activity was also occurring in Tennessee. These claims were also dismissed without prejudice and with leave to amend, but Relators did not exercise this right, as discussed above.

First-to-File Bar Blocks Claims Based on Earlier Whistleblower Suit

Finally, the Court dismissed four of Relators’ claims (Counts 4–7) without prejudice and without leave to refile on the basis of the FCA’s first-to-file bar—including the alleged reimbursement for hospice care rendered to ineligible patients and a fraudulent marketing claim—based on a previously filed FCA suit against Comfort Care alleging “fundamentally similar” facts.

Constitutional Challenge to FCA Qui Tam Provisions Falls Short

Notably, the Court rejected Comfort Care’s constitutional challenge to the FCA’s qui tam provisions. Comfort Care sought to dismiss Relators’ complaint in its entirety, citing *United States ex rel. Zafirov v. Florida Medical Associates, LLC*, 751 F. Supp. 3d 1293, 1322 (M.D. Fla. 2024), and largely mirroring that court’s holding that the qui tam provisions of the FCA violate the Appointment Clause. However, the Court determined that while *Zafirov* is on appeal to the Eleventh Circuit (where oral arguments were recently heard), at present there is no controlling authority in the Middle District of Alabama that would allow the Court to “disregard ‘decades—nay, centuries—of litigation through the use of the qui tam device under the FCA,’ all of which runs counter to [Comfort Care’s] arguments.”^[7]

KEY TAKEAWAYS

The Court’s decision comes at a time when the Department of Justice (DOJ) has once again sharpened its focus on enforcing issues of medical necessity under the FCA, particularly in the post-acute care space, suggesting that the downturn of such enforcement efforts in 2024 was a statistical aberration.^[8] It follows several other cases in which courts have found plaintiff-relator allegations regarding medical necessity lacking,^[9] as well as settlements that led to substantial recoveries arising from claims that were alleged to lack medical necessity.^[10]

While it appears that post-acute care providers will remain at the forefront of FCA enforcement, recent case law suggests that laboratories could see a decrease in challenges of medical necessity in light of a recent decision that heightens the pleading standards for such cases. In *United States ex rel. OMNI Healthcare, Inc. v. MD Spin Solutions LLC*, the First Circuit held that clinical laboratories may generally rely on physician orders to determine medical necessity without the requirement to independently reassess the physician’s clinical judgment, creating a “safe harbor of medical necessity” that shifts the burden to relators in such cases.^[11] Several other circuits have reached similar conclusions in recent years.^[12]

The ruling in *Comfort Care* and outcomes of other recent cases, like *OMNI Healthcare*, highlight the importance of vigorously defending against vague allegations and confirm the following central themes to be expected of FCA enforcement in 2026:

- Pleading standards (i.e., the particularity standard and falsity element) remain essential to combating FCA allegations of medical necessity; however, courts still differ on the level of specificity required at the pleading stage.^[13]
- Post-acute-care providers will remain a target for FCA claims, particularly as they relate to medical necessity, while laboratories may see a dip in such claims due to recent case law.
- Increase in data-driven audits will lead to more FCA claims of medically unnecessary billing practices.
- State enforcement of FCA claims related to issues of medical necessity will become an increasingly popular route to seeking recovery.^[14]

If you have any questions about this subject or related subjects, or if you need assistance, please contact the authors of this article, [Amandeep Sidhu](#) (Partner, [White Collar & Government Investigations](#)), [Matt Graves](#) (Partner, [White Collar & Government Investigations](#)), [Meredith Heim](#) (Associate, [Healthcare Transactions](#)), or your [Winston & Strawn](#) relationship attorney. You can also visit our [White Collar & Government Investigations](#) practice page and our [Government Program Fraud, False Claims Act & Qui Tam Litigation](#) practice page. For additional thought leadership on this and related topics, please visit [Investigations, Enforcement & Compliance Alerts](#) and our [False Claims Act Playbook](#).

[1] *United States ex rel. Bryant v. Comfort Care Hospice, LLC*, No. 2:20-cv-911-ECM, 2026 BL 55362 at 13, 16, 19 (M.D. Ala. 2026).

[2] The Court dismissed Relators' Count 3, brought under the "reverse false claim" provisions of § 3729(a)(1)(G), both for substantive reasons and because Relators failed to present any argument in response to Comfort Care's motion, effectively conceding this claim.

[3] *Bryant*, 2026 BL 55362, at 16 ("A plaintiff bringing a claim under §§ 3729(a)(1)(A) or (B) . . . must 'plead with particularity that an actual claim has been submitted' . . . [which requires the plaintiff to] allege the who, what, where, when, and how of fraudulent submissions.").

[4] *Id.* at 16–17.

[5] *Id.* at 17 (emphasis added).

[6] *Id.* at 18 (emphasis added).

[7] *Id.* at 7 (quoting *United States ex rel. Butler v. Shakira*, 748 F. Supp. 3d 1277, 1295 (S.D. Fla. 2024)).

[8] See, e.g., Press Release, DOJ, Justice Department Files False Claims Act Complaint Against Priority Hospital Group and Three Long Term Care Hospitals (Jan. 21, 2026), available at <https://www.justice.gov/opa/pr/justice-department-files-false-claims-act-complaint-against-priority-hospital-group-and>; see also 14th Annual Healthcare Fraud & Abuse Review 2025 (Feb. 17, 2026) (identifying medical necessity claims as one of the major FCA enforcement trends to watch in 2026 following an uptick in 2025).

[9] See *United States ex rel. Oak Bull, LLC v. Cedar-Sinai Med. Ctr.*, 2025 WL 3035111 (C.D. Cal. 2025) (dismissing allegations with prejudice because relator failed to specify whether allegedly false claims were submitted to or paid by the government and failed to satisfy the FCA's falsity element); *United States ex rel. Devarapally v. Ferncreek Cardiology, P.A.*, 2023 WL 2333872 (E.D.N.C. 2023) (finding a genuine dispute as to the falsity of the claims).

[10] See, e.g., U.S. DOJ Settlement Agreement with Traditions Health, LLC (Jan. 9, 2026), available at <https://www.justice.gov/opa/media/1425436/dl>; see also U.S. DOJ Settlement Agreement with Saad Enterprises, Inc. (Feb. 14, 2025), available at <http://justice.gov/opa/media/1390331/dl>; Press Release, DOJ, Physicians Toxicology Laboratory and Its Owners to Pay \$4.425 Million to Settle Allegations of Unnecessary Drug Testing (Jan. 3, 2025), available at https://www.justice.gov/usao-wdmi/pr/2025_0103_physicians_toxicology_laboratory_settlement; Press Release, DOJ, Agendia, Inc., Knoxville Comprehensive Breast Center, PLLC, and Knoxville Dermatopathology Laboratory, LLC Agree to Settle False Claims Act Allegations for More Than \$3,750,000, available at <https://www.justice.gov/usao-edtn/pr>

/agenda-inc-knoxville-comprehensive-breast-center-pllc-and-knoxville-0; Press Release, DOJ, Urgent Care Operator Pays \$3 Million Dollars to Resolve Alleged Violations of the False Claims Act (July 15, 2025), available at <https://www.justice.gov/usao-id/pr/urgent-care-operator-pays-3-million-dollars-resolve-alleged-violations-false-claims-act>.

[11] 160 F.4th 248, 261 (1st Cir. 2025).

[12] See *United States v. Bertram*, 900 F.3d 743 (6th Cir. 2018) (finding that a laboratory may rely on a doctor’s order to determine medical necessity when submitting a claim for reimbursement).

[13] For instance, there remains a circuit split on whether relators challenging medical necessity must plead “objective falsity,” as is the case in the Eleventh Circuit, or whether allegations grounded in clinical disagreement can survive the motion to dismiss phase, as is currently the standard recognized by the Third, Fifth, Ninth, and Tenth Circuits. See, e.g., *United States v. AseraCare, Inc.*, 938 F.3d 1278 (11th Cir. 2019) (finding a difference in medical opinion insufficient to suggest objective falsity under the FCA); cf. *United States ex rel. Druding v. Care Alternatives*, 952 F.3d 89 (3d Cir. 2020) (declining to adopt the “objective” falsity standard and finding a “mere difference of opinion between experts” sufficient to create a triable dispute of fact as to falsity); *United States ex rel. Winter v. Gardens Reg’l Hosp. & Med. Ctr., Inc.*, 953 F.3d 1108 (9th Cir. 2020) (finding the FCA did not impose a requirement of proving “objective falsity”); *United States ex rel. Polukoff v. St. Mark’s Hosp.*, 895 F.3d 730 (10th Cir. 2018) (reversing district court decision that had adopted an “objective” falsity requirement for FCA claims and finding that falsity under the FCA may fall on whether the procedure was “reasonable or necessary” according to the government’s definition of the phrase); see also *United States v. Crumb*, 2016 WL 4480690 (S.D. Ala. 2016) (rejecting arguments that plaintiffs must enumerate specific physician opinions as to medical necessity at the pleading stage); *United States ex rel. Groat v. Bos. Heart Diagnostics Corp.*, 255 F. Supp. 3d 13, 27–29 (D.D.C. 2017) (declining to determine medical necessity at the motion to dismiss stage); *United States ex rel. Riedel v. Bos. Heart Diagnostics Corp.*, 332 F. Supp. 3d 48 (D.D.C. 2018) (citing *Groat* to note that it is not the court’s role to make a determination of medical necessity at the pleading stage, instead focusing on relator’s ability to prove the requisite scienter of Boston Heart).

[14] See, e.g., Press Release, Mass. Off. of Att’y Gen., AG Campbell Secures \$6 Million Settlement with Weymouth-Based Ambulance Companies for MassHealth False Claims (Aug. 4, 2025), available at <https://www.mass.gov/news/ag-campbell-secures-6-million-settlement-with-weymouth-based-ambulance-companies-for-masshealth-false-claims>.

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