

**Record-Breaking \$500 Million-Plus
Medicaid False Claims Settlement
Qui Tam Whistleblower
Breaking Legal NEWS**

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Half-Billion-Dollar-Plus Settlement, America's Biggest
Government Medicaid False Claims Case, Began With Whistleblower's Allegations
of Improper Speech Therapy Billing By One Upstate New York County,
New York City-Based Whistleblower Attorney David A. Koenigsberg Reveals

New York State and City Settle Medicaid Billing Allegations Involving
Speech, Physical and Occupational Therapy, Psychological
Counseling and Transportation Services For Up To Seven Years

School and Preschool Health Supportive Services Programs Allegedly
Billed for Services Not Rendered According to Program Requirements

SYRACUSE, NY — When New York State and City agreed on July 20th to repay the federal government nearly \$540 million to settle whistleblower-sparked Medicaid false claims allegations, it ended a lone whistleblower's long struggle to correct speech therapy billing problems in an upstate New York county and across the state. When improper billing wasn't corrected, the whistleblower sued on behalf of the federal government under the qui tam provisions of the federal False Claims Act ("FCA"), New York City qui tam whistleblower attorney David A. Koenigsberg of Menz Bonner & Komar LLP revealed.

"The information and cooperation that my client provided led directly to the U.S. Department of Health and Human Services' audits that ultimately confirmed the state-wide billing problems that are the subject of this historic settlement," Koenigsberg said.

"As a result, New York State and City agreed to pay the seventh largest whistleblower settlement in the largest government False Claims Act Medicaid case in United States history," Koenigsberg added. "The value of whistleblower law in repatriating federal dollars back to United States taxpayers should be crystal clear."

Under the agreement settling allegations of improperly billed pre-school and older students' speech, physical and occupational therapy, psychological counseling and transportation over a seven-year period, New York State will pay approximately \$331,879,000 and allow the federal government to retain approximately \$108,000,000 of nearly \$303,000,000 it withheld for

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questionable billing during a seven-year period ending in December 2008. New York City will pay \$100,000,000.

Additionally, New York State agreed to enter into a "Program Compliance Agreement" with the federal Centers for Medicare & Medicaid Services ("CMS") governing the manner in which the state Department of Education offers future School and Preschool Supportive Health Services Programs. This agreement is believed to be the first of its kind between the federal government and a state or local government. It is similar to Corporate Integrity Agreements reached with private entities settling Medicaid fraud allegations.

Audits by the Office of Inspector General ("OIG") of the U.S. Department of Health and Human Services released in 2004 and 2005 alleged school services billing abuses. Among conclusions in the reports: in 99.2 percent of transportation claims by New York City, 119 of 120, investigators were unable to verify that services were rendered; 88 percent of transportation claims presented for payment in New York State did not comply with state and federal requirements; 56 percent of speech services payments claimed by school and preschool providers in the state were unallowable; and 86 percent of speech claims by New York City did not comply with federal and state requirements.

An April 2000 report by the former U.S. General Accounting Office, now called the Government Accountability Office, stated that Illinois, Michigan, and New York accounted for more than 60 percent of total school-based medical claims, while New York accounted for 44 percent of that total. When the Inspector General's audits were released New York officials loudly criticized the agency's methodology and conclusions. In the settlement the city and state did not admit liability, nor did the federal government concede that its claims were not well founded.

In the late 1980's the federal government began allowing school districts and counties to bill Medicaid for school and preschool speech, physical and occupational therapy, psychological counseling services and transportation. Medicaid, the program for the poor, is underwritten in part by the federal government. The school services addition, "opened the floodgates for potential abuse," said Koenigsberg, a former federal prosecutor who served as an Assistant U.S. Attorney in the Southern District of New York. "As a result, school districts and counties across the United States obtained program reimbursement but failed to provide mandated services or maintain records as required."

A 2004 OIG audit found that Houston, Texas public schools had overcharged the federal government almost \$2.7 million for such services and a 2006 OIG audit of New Jersey identified more than \$51 million in improper claims.

"Billions and billions of stimulus, bailout, TARP and related recovery dollars are being pumped into the economy now by the federal government. In the years to come, the money-saving value of the False Claims Act and concerned-citizen qui tam whistleblowers who step forward to do the right thing will be proven again and again," John Menz, name partner of Koenigsberg's firm predicted.

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Under the FCA, “qui tam” actions, a term derived from English Common Law meaning “he who sues on behalf of the king as well as himself,” allow private citizens with knowledge of fraud to help the government recover ill-gotten gains and additional civil penalties. The FCA allows the government to collect up to three times the amount it was defrauded, in addition to civil penalties of \$5,500 to \$11,000 per false claim. Under the FCA, whistleblowers could receive awards representing 15 to 25 percent of qui tam recoveries, according to Koenigsberg, whose firm represents whistleblowers across the U.S.

Koenigsberg singled out Judith Rabinowitz, Assistant Director of the U.S. Department of Justice’s Civil Division Commercial Litigation Branch (Fraud Section), Fraud Section Trial Attorneys David T. Cohen and Carol L. Wallack, and HHS OIG auditors for their dedicated efforts in bringing about this historic settlement.

Federal lawsuits were unsealed in the United States District for the Northern District of New York with the settlement.

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This complete Menz Bonner & Komar LLP news release also will be posted at <http://www.PRforLAW.com> and on a new <http://www.MBKlawyers.com> Web site to be launched in the near future.

About Menz Bonner & Komar LLP

With offices in New York and New Jersey, Menz Bonner & Komar LLP

<http://www.MBKlawyers.com> is a boutique litigation law firm representing both plaintiffs and defendants in complex commercial litigation, including qui tam whistleblowers in False Claims Act cases.

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