

QUI TAM QUARTERLY - COVID-19 AND THE BIG-DATA REVOLUTION OF HEALTH CARE FALSE CLAIMS ACT LITIGATION

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The regulatory scheme governing the submission and payment of claims for health care services to government payers is complex and convoluted. It is a slippery slope for the unaware or ill informed. The health care claims system is predicated on the concept that the government pays submitted claims without review or comment and thereafter seeks to recover improper payments—including through the potential application of penalties and damages—if providers do not adhere to the relevant regulations. That system became exponentially more complex as a result of COVID-19, which created a staggering number of regulatory changes to the system since March 2020.

Key Takeaways Include:

1. The history of big data in health care FCA investigations and litigation.
2. How the government has increased its ability to gather health care claims data and use it to support FCA allegations.
3. How big data will most likely be used as a primary tool for investigations to evaluate potential fraud due to regulatory changes brought on by COVID-19.
4. How providers can use big claims data to control discovery costs in investigations and to better understand the operations of their compliance programs to prevent improper claims from being filed.

This edition concludes with key strategies for defending allegations supported by extrapolated overpayments and some best practices for using claims data to proactively defend against scrutiny. Specifically, information and recommendations are provided on how to undermine the validity of findings on a sample set of claims that can be used to invalidate the extrapolated assumptions, how to effectively challenge an extrapolation based on improper sampling and auditing processes, and how to dispute the statistical extrapolation process after an extrapolated overpayment has been asserted against a provider. Finally, resources and suggestions are provided on how providers can take advantage of currently available claims data to reduce the risk of scrutiny.

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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.

Members of [our team](#) are regular contributors to [Triage: Rapid Legal Lessons for Busy Health Care Professionals](#), a podcast created by K&L Gates to inform our clients and friends of the firm about the latest developments in health law. Subscribe to Triage through [Apple Podcasts](#), [Google Podcasts](#), or [Spotify](#).

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