

A large Pennsylvania hospital network is invoking a statute intended to deal with organized crime in claiming another hospital fraudulently took state money that should have gone to the network.

St. Luke's Health Network, based in Bethlehem, Pa., alleged in a complaint that Lancaster General Hospital, a member of the University of Pennsylvania Health System located in Lancaster, Pa., fraudulently duped state officials into sending it millions of dollars from a state fund for charity medical care.

St. Luke's alleged that from fiscal years 2008 to 2012, Lancaster General and two employees submitted hundreds of false claims to Pennsylvania's Extraordinary Expense Program (EE Program) in a pattern of illegal activity that led other hospitals, including its own, to be undercompensated.

The case is a reminder to health-care providers that fraud cases don't always come from whistleblowers as their peers are always watching, especially over pots of funds. It's also a notice that hospitals could face accusations that the Racketeer Influenced and Corrupt Organizations Act (RICO), a law intended to fight organized crime, could be used against them on issues of fraud.

Stuart Gerson, an attorney in Epstein Becker Green's health care and life science practice in Washington and a former acting U.S. attorney general, also wasn't surprised to see RICO used in cases like the St. Luke's case. "You're charged with racketeering, that besmirches you in your community. The fact is, given what the Supreme Court has decided, civil RICO doesn't just apply to Mafia cases," Gerson told Bloomberg Law.

But Anne Murphy, a partner at Hinckley Allen in Boston and former general counsel at Rush University Medical Center in Chicago, said it is "relatively unusual to see one group of hospitals sue another group of hospitals in the same jurisdiction."

"I think, historically, more often than not hospitals have thought of themselves as part of the same health-sector community, especially where it relates to not-for-profit tax exempt hospitals," Murphy told Bloomberg Law.

Lancaster General Hospital spokesman John Lines told Bloomberg Law the hospital believes "that the allegations by St. Luke's are without merit, and past findings by the Commonwealth on this issue support our position." He declined to provide further comment on the matter.

Sticking Their Hand in Cookie Jar

St. Luke's alleged May 22 that Lancaster General, with the help of two employees, submitted invalid and overstated claims to the state and continued to do so after Pennsylvania's auditor general flagged the claims as fraudulent. Because the claims were submitted online, St. Luke's also alleged that Lancaster General committed wire fraud.

Under the EE Program, the state reimburses hospitals for "extraordinary expenses" incurred while treating people without health insurance. Extraordinary expenses are considered services a hospital provides to uninsured patients that are more than twice the hospital's average cost per stay for all patients.

The money in the EE Program comes from the 1998 master settlement agreement among 46 states, including Pennsylvania, and cigarette manufacturers. The settlement released the cigarette manufacturers from claims about the advertising, marketing, and promotion of cigarettes for \$206 billion to be distributed to the states over 25 years.

Pennsylvania hospitals submit their extraordinary expenses to the Pennsylvania Health Care Cost Containment Council on a quarterly basis. Pennsylvania's Department of Human Services allocates the funds and the state's auditor general reviews the distributions.

According to St. Luke's, Lancaster General unjustly received over \$13 million from fiscal years 2008 to 2012 and has not returned the \$8.7 million it received from 2010 to 2012 to underpaid hospitals. That included the hospital being paid more than \$4.9 million over its legitimate entitlement in 2010.

St. Luke's alleged the overpayments to Lancaster General led to St. Luke's network being underpaid at least \$580,000 in that time frame. The hospital network said during that time, about 74 hospitals across the state were underpaid about \$8.4 million.

Aware of Overpayment

The complaint said Lancaster General didn't keep the \$4.5 million in overpayments it was paid in fiscal years 2008 and 2009 and the money has gone to the hospitals that were underpaid during that time. St. Luke's argued that because Lancaster General didn't object to the overpayment determination for 2008 and 2009, it has admitted it's not entitled to any overpayments it received.

St. Luke's referred to a conversation finance employees from Lancaster General had with their St. Luke's counterparts in which they allegedly said the overpayments for 2010 to 2012 are listed as "reserves" in the financial books to be distributed to underpaid hospitals for that time. St. Luke's noted that it and the other underpaid hospitals relaxed their investigation after relying on Lancaster General's promise to pay them back.

Allegations of Racketeering

St. Luke's raised two claims against the employees of Lancaster General Hospital under the Racketeer Influenced and Corrupt Organizations Act (RICO).

RICO makes it illegal for a person employed by an organization to be involved in racketeering activities that affect interstate or foreign commerce. Racketeering is a pattern of illegal activity carried out as part of an enterprise owned or controlled by the people committing the illegal acts. There are 35 offenses that can constitute RICO violations, including wire fraud.

St. Luke's alleged that the two employees, named in the complaint as John Doe 1 and John Doe 2, used their discretion to submit the fraudulent claims to the EE Program on behalf of Lancaster General Hospital. St. Luke's said this meant the employees had a role in directing the hospital's affairs.

Laura Angelini, a partner in Hinckley Allen's Government Enforcement and White Collar Defense practice group in Boston who has experience defending clients subject to RICO actions, said she's not surprised to see it used in a case like the one St. Luke's is bringing.

"While RICO is primarily a criminal statute, it also permits plaintiffs to pursue civil actions that allow them to recover treble damages and attorneys' fees. The threat of stiffer penalties makes it an attractive weapon for plaintiffs who are alleging fraudulent conduct in the course of business dealings," Angelini told Bloomberg Law.

Gerson told Bloomberg Law there has been a number of civil RICO cases in recent years after the Supreme Court made it easier to bring such cases. "In a case where a federal false claim is questionable, this could be an attractive option," Gerson said.

But both Angelini and Gerson said St. Luke's has hurdles to leap before being successful.

"RICO is not intended to govern 'garden variety' fraud or commercial disputes, and courts, at the motion to dismiss stage, are willing to weed out RICO allegations that don't set forth a 'pattern of racketeering activity,' as defined by the statute and case law," Angelini said.

Gerson noted that St. Luke's will have to prove an intent to commit the violation, answer why Pennsylvania didn't require repayment of the sums held in escrow, and deal with RICO's statute of limitations.

Murphy said the RICO allegations should put health-care providers on alert.

"My primary advice to hospitals and health systems would be to assure that in-house legal counsel, the compliance team, and perhaps the audit committee that oversees complaints should be aware of these trends in terms of bringing RICO actions so the enterprise is evaluating its legal risk and legal risk management," Murphy said.

Attorneys for St. Luke's Health Network didn't respond to Bloomberg Law's request for comment.

The case is St. Luke's Health Network, Inc. v. Lancaster Gen. Hosp. , E.D. Pa., No. 18-2157, complaint filed 5/22/18 .

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