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United States Intervenes in False Claims Act Lawsuits Against Evercare Hospice and Palliative Care, Now Known as Optum Palliative Care and Hospice

The United States has partially intervened against defendants in two whistleblower lawsuits in the Federal District Court for the District of Colorado alleging Evercare Hospice and Palliative Care (Evercare) submitted false claims for the Medicare hospice benefit. Evercare is now known as Optum Palliative and Hospice Care, which provides hospice services across the United States. One of the suits names Evercare’s parent companies, including UnitedHealth Group Inc.

“The hospice benefit is designed for patients who are terminally ill and need end-of-life care,” said Assistant Attorney General Stuart F. Delery for the Department of Justice’s Civil Division. “We will continue to protect the ability of Medicare recipients to receive appropriate treatment by ensuring that entities providing hospice care are only treating, and billing for, qualified patients.”

The Medicare hospice benefit is available for patients who elect palliative care (medical care focused on providing patients with relief from pain, symptoms or stress) for a terminal illness, and have a life expectancy of six months or less if their illness runs its normal course. When a Medicare patient is admitted to hospice, that individual is no longer entitled to Medicare coverage for care designed to cure his or her illness.

The lawsuits, filed by former employees of Evercare, allege that defendants violated the False Claims Act by knowingly submitting false claims for hospice benefits for patients who did not have a life expectancy of six months or less. The complaints include allegations that management pressured employees and physicians to admit and retain patients who were not terminally ill and challenged or disregarded physicians’ decisions that patients should be discharged.

“Hospice care plays a critical role in our healthcare system, providing for end-of-life care as opposed to curative life care,” said U.S. Attorney John Walsh for the District of Colorado. “When companies systematically overbill Medicare by keeping people in hospice when they don’t need to be there, it jeopardizes this important benefit for others under the program. We will not tolerate such conduct.

“The decision to provide hospice services should be prompted by a patient’s terminally ill medical condition and desire for palliative care, not a hospice provider’s desire to boost its profits,” said Special Agent in Charge Gerald T. Roy of the U.S. Department of Health and Human Services Office of Inspector General (HHS-OIG). “Our agency is dedicated to safeguarding both the Medicare program and Medicare patients.”

The lawsuits were filed under the qui tam, or whistleblower, provisions of the False Claims Act, which permit private parties to sue on behalf of the United States for the submission of false claims to the government. The private plaintiffs are entitled to receive a share of any funds recovered through the lawsuit. The False Claims Act authorizes the United States to intervene in a whistleblower lawsuit and take over primary responsibility for litigating it as the United States has done here, and permits the government to recover three times its damages plus civil penalties. The United States has notified the court that it intends to file its own complaint.

The government’s intervention in these actions is part of the government’s emphasis on combating health care fraud and another step for the Health Care Fraud Prevention and Enforcement Action Team (HEAT) initiative, which was announced in May 2009 by the Attorney General and the Secretary of Health and Human Services. The partnership between the two departments has focused efforts to reduce and prevent Medicare and Medicaid financial fraud through enhanced cooperation. One of the most powerful tools in this effort is the False Claims Act. Since January 2009, the Justice Department has recovered a total of more than $22.4 billion through False Claims Act cases, with more than $14.2 billion of that amount recovered in cases involving fraud against federal health care programs.

This matter was investigated by the Commercial Litigation Branch of the Justice Department’s Civil Division, the U.S. Attorney’s Office for the District of Colorado, and the Department of Health and Human Services’ Office of Inspector General. The claims asserted against defendants are allegations only, and there has been no determination of liability.

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The lawsuits are consolidated and captioned *United States ex rel. Fowler and Toul v. Evercare Hospice, Inc.*, et al., No. 11-cv-00642 (D. Colo.); *United States ex rel. Rice v. Evercare Hospice, Inc.*, No. 14-cv-01647 (D. Colo.).