

Fraud and Abuse

DOJ Reaches 'First of Its Kind' Settlement With Home Care Provider on Overpayments

A home health-care provider agreed to pay \$6.88 million to resolve allegations it failed to refund overpayments from government programs, in what the Department of Justice described as a "first of its kind" settlement in an Aug. 3 announcement (*United States ex rel. Odumosu v. Pediatric Servs. of Am. Healthcare*, N.D. Ga., No. 1:11-cv-1007settlement announced 8/3/15; *United States ex rel. McCray v. Pediatric Servs. of Am.*, S.D. Ga., No. 4:13-cv-127, settlement announced 8/3/15).

Atlanta-based Pediatric Services of America Healthcare and affiliated corporations (PSA) plus PSA's former owner, Portfolio Logic LLC, reached the joint settlement in two separate whistle-blower cases in the U.S. District Courts for Georgia's northern and southern districts, in which the U.S. and multiple states intervened. The U.S. claimed PSA failed to refund overpayments from TRICARE and the Medicaid programs of 20 states including California, Florida, Georgia, Illinois, New York and Texas between 2007 and 2013, according to the settlement agreement.

Failure to Identify Potential Overpayments. This is the first False Claims Act settlement related to a health-care provider's failure to investigate credit balances on its books to identify potential overpayments, the DOJ said in a written statement.

"Participants in federal health care programs are required to actively investigate whether they have received overpayments and, if so, promptly return the overpayments," said U.S. Attorney for the Northern District of Georgia John Horn. "This settlement is the first of its kind and reflects the serious obligations of health care providers to be responsible stewards of public health funds."

The DOJ statement alluded to an Affordable Care Act requirement that providers refund overpayments within 60 days after discovering them, although at least half of the covered conduct time period came before the ACA was enacted.

Company Cites Minor Errors. PSA attributed the alleged overpayment problems to billing errors involving a small fraction of its claims, according to a written statement provided to Bloomberg BNA on Aug. 4.

"PSA Healthcare is pleased that after cooperating fully with the government we have resolved an issue that arose in part from our own self-disclosure, including an internally identified billing error stemming from a software upgrade in 2008 that resulted in 0.08% of charges being billed incorrectly," the company said. "We take pride in our track record of compliance and we work hard to get it right every single time. We invest heavily in compliance and continue to allocate further resources to our compliance program."

The company has employees in 17 states and focuses on providing care to "medically fragile patients," particularly children. PSA denied the allegations of the U.S. and the whistle-blowers, according to the settlement agreement.

PSA until recently was owned by private equity investment firm Portfolio Logic, whose founder Jeffrey Zients is now a chief economic adviser to the White House. Portfolio Logic sold PSA to J.H. Whitney Capital Partners in early 2015.

'First Case in a Series.' Given the new overpayment refund requirements of the ACA, one plaintiff's attorney suggested the PSA case would be the beginning of a trend.

"Our case sets a precedent that the U.S. government and the states are going to vigorously enforce the provisions of the Affordable Care Act in pursuing refunds of overpayments," Raymond Moss, of Moss & Gilmore, told Bloomberg BNA on Aug. 4. Moss represented the whistle-blower in one of the two lawsuits, Sheila McCray. "Ours is the first case in a series of cases."

McCray was a billing specialist for PSA who informed her supervisors of billing and overpayment problems that she discovered and also claimed wrongful termination, according to Moss. Yvette Odumosu, the whistle-blower in the other case, was PSA's director of clinical nursing. The whistle-blowers are due to receive \$1.1 million collectively as their share of the settlement, Moss said.

He cited another whistle-blower case proceeding now in the U.S. District Court for the Southern District of

New York. That case, *United States ex rel. Kane v. Healthfirst*, S.D.N.Y., No. 1:11-cv-2325, also involves the issue of refunding overpayments, although under somewhat different circumstances, Moss said. The judge in the case denied defendants' motion to dismiss the case on Aug. 3 (*see related article*).

Additional Allegations for PSA. In addition to the allegations that PSA failed to refund overpayments, the U.S. also alleged PSA submitted claims to the Georgia Pediatric Program that weren't reimbursable because the company hadn't documented the required monthly

supervisor visits, according to the PSA settlement agreement.

The U.S. also alleged PSA overbilled some states' Medicaid programs and the TRICARE program between 2008 and 2014, because the company billing system "double rounded" the length of time for a service between 23 and 30 minutes.

BY CHRIS MARR

To contact the reporter on this story: Chris Marr in Atlanta at cmarr@bna.com

To contact the editor responsible for this story: Nancy Simmons at nsimmons@bna.com

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