

## Marblehead attorney lands largest settlement against a national therapy company servicing patients in skilled nursing facilities

It took more than a few nights and weekends poring over documents and constructing detailed spreadsheets with her lawyer, **Jeffrey A. Newman** of Marblehead, but Janet Halpin can now say it was all worth it.

Halpin is the former rehabilitation manager at a skilled nursing facility in Haverhill owned and operated by RehabCare Group and its parent company, Kindred Healthcare. Last month, Kindred agreed to pay \$125 million to the U.S. government to settle a lawsuit under the False Claims Act alleging Medicare billing fraud by the company in providing therapy services across the country.

According to Newman, it's the largest case of its kind against a national company.

Along with fellow "relator" Shawn Fahey, a licensed occupational therapist at a different Haverhill RehabCare skilled nursing facility, Halpin will receive 19 percent of the government's recovery in the qui tam suit filed in December 2011. That amounts to nearly \$24 million plus interest, a rate Newman notes is related to the amount of work the whistleblowers have put into the case. With respect to RehabCare, more than 25,000 documents were reviewed, Newman says.

A week later, a related but separate settlement was announced with Wingate Healthcare, owner and manager of 16 skilled nursing facilities in Massachusetts and New York that had contracted with RehabCare. The settlement netted the government an additional \$3.9 million and Halpin and Fahey another \$741,000 plus interest and counsel fees.

However, the cases were never about money for Halpin and Fahey, Newman says. Instead, their primary motivation was that they could no longer stomach seeing their patients' care decisions being driven by a desire to maximize Medicare reimbursements rather than to help the patients rebuild their strength and self-sufficiency.

The corporate mandate, Newman says, was to have a certain percentage of their patients in the "ultra-high" reimbursement category at any given time, regardless of their medical needs. Halpin tried for "weeks and weeks" to raise red flags internally about the practices, but she was rebuffed, he says.

While many potential relators may have

knowledge of fraud, Newman says a key hurdle in False Claims Act cases is whether a scheme can be documented. In the case of RehabCare, Newman, with Halpin and Fahey's help, was able to take a sampling of 500 patients and, using an Excel spreadsheet, create graphs that painted a clear picture of the artificial ramping up and down of therapy provided.

According to the complaint the government filed when it intervened in February 2015, there were several facets to RehabCare's scheme to fudge the numbers and open a firehose of Medicare funds.

Instead of being evaluated individually, patients were placed presumptively in the highest therapy category, the complaint states. Their therapy would then be "ramped" up to as much as 720 minutes per week during "assessment reference periods," the one week per month that matters to Medicare, enabling the facilities to bill at the highest reimbursement level. After those critical periods passed, the therapy would slow down, reducing the labor burden and increasing profits.

RehabCare's fraud took other forms as well, according to the government. Patients were scheduled and reported to have received therapy even after their therapists had recommended that they be discharged. The number of minutes of planned therapy was shifted between different disciplines to ensure that reimbursement-level targets would be hit, again without regard for medical need.

Also, time spent on initial evaluations was improperly reported as therapy time, minutes were estimated or rounded, and in some cases, it was reported that skilled therapy had been provided to patients when the patients were asleep or otherwise unable to benefit from skilled therapy, including after they had been transitioned to end-of-life care.

How did the facilities go so adrift? Newman notes that many skilled nursing homes are now publicly traded companies.

"They are concerned only about their shareholders, not doing the right thing," he says.

Newman is quick to credit the "extraordinary diligence and persistence" of the leaders of the federal investigation, Assistant U.S. Attorneys **Gregg**



**Jeffrey A. Newman, Esq.**

**Shapiro, Patrick M. Callahan and Kriss Basil.** Department of Justice trial attorneys **Christelle Klovers** and **Rohith Srinivas** also assisted with the cases.

While he acknowledges that the False Claims Act may be an inefficient means of addressing Medicare fraud, Newman is heartened to have at least struck a solid blow against the rampant problem.

"This particular settlement is an excellent example of what the False Claims Act is designed to encourage," Newman says of the RehabCare case. "When a person has sufficient information about a major fraud against the government, this law provides strong incentive to come forward."

Newman hopes his success and that of his clients will help change the perception of whistleblowers as "renegades" or "rats" and prompt others to come forward. Indeed, while Congress is still "distracted" and mired in partisanship, such efforts may be the country's best defense against the looting of its coffers, he says.

— KRIS OLSON

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