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WHISTLEBLOWER RECEIVES $2.79 MILLION IN SETTLEMENT OF MEDICARE FRAUD AND RETALIATION LAWSUIT AGAINST EXTENDICARE

Former Employee's *Qui Tam* Lawsuit Leads to $10 Million Taxpayer Recovery From Nursing Home Company

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Washington, D.C., October 10, 2014. A whistleblower who filed a False Claims Act lawsuit against Extendicare Health Services, Inc., a nationwide nursing home company based in Milwaukee Wisconsin, will receive $1.8 million as a reward in connection with the resolution of allegations that the company provided inappropriate rehabilitation therapy services to elderly patients in order to increase Medicare billings. As part of a settlement announced today by the Department of Justice, Extendicare will pay $10 million to resolve the allegations made in a whistleblower *qui tam* lawsuit filed in April 2010 by Tracy Lovvorn, a former Area Director of Rehabilitation at Progressive Step Corporation, a division of Extendicare. In addition, Extendicare will pay Lovvorn $990,000 in settlement of her claims for unlawful retaliation and attorney's fees.

The lawsuit, *United States ex rel. Lovvorn v. EHSI, et. al.*, C.A. 10-1580 (E.D. Pa.), was filed on Lovvorn's behalf by the Washington D.C. whistleblower law firms Katz, Marshall & Banks, LLP and Vogel, Slade & Goldstein, LLP.

Lovvorn's lawsuit alleged that during her employment with Extendicare in 2008-2009, she learned that the company's skilled nursing facilities in Pennsylvania and Delaware were providing patients with unnecessary therapy for the sole purpose of obtaining higher reimbursements from Medicare and increasing the company's profits. Medicare reimburses skilled nursing centers for rehabilitation services based on the amount of therapy provided during specified assessment periods. Among other things, the lawsuit alleged that Extendicare would "ramp up" patients' therapy minutes during those assessment periods in order to boost Medicare reimbursement levels and then "ramp down" the therapy minutes once the assessment periods had ended, thus decreasing its own costs. The lawsuit further alleged that Extendicare reimbursement managers carefully monitored the number of minutes the patients received on a daily and weekly basis, and criticized therapists who missed opportunities to maximize Medicare payments regardless of the patients' true medical needs.

In one instance in 2009 at a nursing home facility in Pennsylvania, the lawsuit alleged that Extendicare management sought to schedule an excessive amount of physical and occupational therapy for a terminally ill patient in order to reap a maximum profit. In a second instance in 2009, the lawsuit alleged that another patient whose seizures made her unable to tolerate a high level of therapy was caught in the cross-hairs of an Extendicare manager who characterized her less-than-maximum level of therapy as a "missed opportunity." "Financial loss of 2300 bucks!!!!" the manager wrote in an email. "We have to step up and make sure that this doesn't happen again!!!!"

Today's announcement by the Department of Justice marks the end of a four-year government investigation. Lovvorn welcomed the settlement, saying, "I am grateful that this lawsuit has come to a successful conclusion." She said: "Our profession is full of dedicated individuals who do amazing work on a daily basis to help the frail and elderly regain their function. There should be no place in our industry for a culture of greed that puts company profits first and patient well-being far behind. I'm grateful for the opportunity, with the help of my counsel, to send a message that a company's concerns about maximizing reimbursement will not be allowed to trump patients' medical needs."

Remarking on the lawsuit, whistleblower attorney Robert L. Vogel, a partner at Vogel, Slade & Goldstein who represented Lovvorn, said: "Our client's lawsuit alleged that management was placing improper pressure on physical therapists to increase company profits, instead of focusing on the needs of the patients. We deeply appreciate the outstanding efforts of the attorneys and investigators in the U.S. Attorney's Office in Philadelphia, as well as the Department of Justice attorneys in Washington, D.C., who worked on this case and achieved this resolution. They demonstrated that federal law enforcement officials will spend significant resources pursuing claims involving patient harm and elder abuse."

In addition to alleging fraud against the Medicare program, Lovvorn's lawsuit claimed that Extendicare officials retaliated against her when she tried to put a halt to its allegedly fraudulent practices. The lawsuit alleged that almost immediately after she complained about these practices to higher management, her supervisors began a campaign of harassment and retaliation against her, which resulted in her leaving her employment in November 2009.

According to whistleblower lawyer David J. Marshall, a partner with Katz, Marshall and Banks, LLP, who also represented Lovvorn in the litigation, "Tracy Lovvorn stood up and opposed practices that harmed patients and cheated taxpayers, and it cost her her job. But Tracy fought back and helped the government achieve a settlement that recoups taxpayer dollars, vindicates her, and, most importantly, protects vulnerable patients from abusive practices."

For more information, and to read the case's complaint and settlement agreement, access the KMB website or the VSG website.

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