

From: [Susan Ruscher](#)
To: [Fitzgerald, Scott](#); [Mucchetti, Peter](#); [Owen, Jay](#); heather.hoesterey@doj.ca.gov; Malinda.Lee@doj.ca.gov; Emilio.Varanini@doj.ca.gov; [REDACTED]; [REDACTED]; rodney.l.kimura@hawaii.gov; luminitan@atq.wa.gov
Cc: [Susan Ruscher](#)
Subject: ***IMPORTANT - Fraudulant reasons CVS and Aetna should not be in business together OMNICARE COMMITS FRAUD ON A DAILY BASIS
Date: Tuesday, December 11, 2018 3:53:53 PM
Attachments: [President Triumph.docx](#)
[Ruscher Presentation 2011 v2.3\[1\] \(2\).pptx](#)
[USDOJ Laws.docx](#)

<!--[if lte mso 15 || CheckWebRef]-->

Susan Ruscher has shared OneDrive files with you. To view them, click the links below.

-  [For Govmnt Facilities by tab by system 3.xls](#)
-  [OCR receivables for Govmt by system and NY.xls](#)
-  [Ruscher_Presentation_2011_v2.3\[1\] \(2\) 4.pptx](#)
-  [2015-08-12 Dkt 449 Government's Statement of Interest to Address Issues from July 29, 2015 Hearing.pdf](#)
-  [09.11.14 Statement of the United States Re Relator's Retention and Use of Documents Shared by the US.pdf](#)
-  [omnicare Gale page 8 #25.pdf](#)
-  [USDOJ Laws.docx](#)

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All,

I am writing to you because the CVS and Aetna should not be together, it is conflict of interest. There is so much Fraud in Omnicare/CVS that it is unbelievable. I filed suit against them and it took 10 years and all the Secretary of Stares and people in the Government were on my side, even the Judge knew it was wrong and then at the last minute he changed his mind?? Joel Gemunder serviced his own nursing homes (Vitas) which never had to pay there bills and if you called the facilities you were gone. I have copies of so many illegal things they did it is ridiculous, the largest Fraud was letting the nursing Facilities owners keep the checks they received from Medicare to retain the business. Thus, all those nursing facilities filed false cost reports for years, I know, I requested them through FOIA. So much more to the story. Please review and attached and if you need any further documentation, please let me know. File a delay until we can talk.

Very, very concerned citizen/Whistleblower,
Susan Ruscher
[REDACTED]

From: Susan Ruscher

Sent: Sunday, October 15, 2017 7:00 PM

To: president@whitehouse.gov; vice_president@whitehouse.gov; scheduling@hhs.gov; Jennifer.Main@cms.hhs.gov; Jennifer.Main@cms.hhs.gov

Cc: comments@whitehouse.gov; CSBG@acf.hhs.gov; media@oig.hhs.gov; media@hhs.gov

Subject: Largest Pharmacy Medicare Fraud Ever

If Nursing Facilities are receiving Pharmaceuticals (Rx) for there patients, submitting the bills to Medicare, getting reimbursed but not paying there Pharmacy bills is that fraud? They know they are not going to pay there bills when they submit them. Hundreds and hundreds of Nursing Homes are doing this and submitting False Cost Reports. I know because I obtained the Cost Reports through FOIA. Most of them were large groups of homes. These Groups of homes grew and grew, I am guessing because they had Medicare money/our tax payer dollars to purchase more!!!

I worked at Omnicare, owner of hundreds of Pharmacies that serviced these facilities. I was told they didn't care if they paid as it was only 20% and they made 80% off of Medicaid, so no big deal. I said that they have to pay because they have been reimbursed by the Government and have to pay us per there contract with the Medicare. I was told that if I wanted to keepmy job to keep my mouth shut!! I was then told to never request a Cost Report again because it was none of my business. I was there Corporate Litigation Manager and when I was there, neither me or my staff was allowed to make collection calls to large groups of SNF's (skilled nursing facilities). some of the SNF's had not paid in years. Is this Fraud??? You cannot tell me that this is ok? It is not Omnicares money, it is the Governments money (our tax dollars) and they should not be able to decide which SNF's have to pay and which don't. This is wrong in so many ways. Also to make it worse, Omnicare's Senior Managements bonuses were based on sales, not collections so the more homes they services the more they made! They rarely wrote anything off, so the Accounts Receivable were out of control. I wanted to collect the monies due them and they did not want me to, so eventually they let me go. Is this ok with you, the Government?

I filed a lawsuit against Omnicare. I am a Whistleblower, Omnicare (08-cv-3396, 15-20629). No one has ever filed a suit like this. I am the first, thus no case history. I don't think the Judges understood it. It is clearly wrong and if the Government thinks it is ok, then we have bigger issues. The judge found in Omnicare's favor for the following reasons, one of which are valid.

- **Omnicare said that they did not know it was wrong to not collect**
- **then they said there were billing errors**

- then pricing errors
- then oh we should have had more auditors
- then Omnicare's attorneys said it was standard in the industry
- now Ashley Hardin, Omnicar's Atty. said "from the company's standpoint, a standard way of working with financially struggling client"

<http://www.law360.com/articles/782763/rising-star-williams-connolly-s-ashley-w-hardin>

Rising Star: Williams & Connolly's Ashley W. Hardin - Law360

www.law360.com

The stakes were enormous in two False Claims Act cases that threatened to expose clients of Williams & Connolly to billions of dollars in damages and penalties — ...

If there were actual cost/pricing issues, my understanding from calling HHS is that the Pharmacy has 90 days to make the corrections. Also if there really was billing/cost issues, then the SNF's were overbilling the Government and knew it as well as Omnicare knew it. If there was a settlement at any time with a SNF, Omnicare cut them a check so it would not appear on the invoice as a credit, thus they did not have to report it to Medicare for receiving an overpayment from the Government/Medicare. I wouldn't have a problem if the SNF's would have short paid the invoices and noted why so the pricing issue could be resolved and they would receive the credit they were looking for, but to not pay at all is wrong.

If the SNF's are really struggling then how come the national groups keep growing??? Because they use the funds to purchase more SNF's and give the business to Omnicare!! Funny how that works! Free meds, woo hoo, who wouldn't do business with them. Sales increased and so did the bonuses. Next thing I knew they had 2 Qui tam attorneys come in and talk to me for over 4 hours and then I was terminated a couple days later.

What about Government oversight? **Also since the Omnicare Pharmacies collected the Medicaid portion, legally they have to collect the Medicare portion or pay back the Medicaid portion?**

Please help me stop this Fraud. Apparently it is ok per the Judge. Attached hereto are documents that I have sent to HHS, OIG, CMS, President, etc. with no response. Please review

the attached. This is so wrong in so many ways. I did the right thing in filing suit and yet now my life is over. The Government is supposed to be of the people and for the people, so please let's stop this Medicare Fraud together. I have so many documents. I would like to have a meeting if possible to discuss this. I can come there or you are more than welcome to come here. Please advise.

Thank you in advance,
Susan Ruscher



06/12/2017

President Trump,

I heard you say how important Medicare and Medicaid Fraud are to you. I would like to help you stop some of it, if you would afford me the opportunity? I have so much Medicare and Medicaid Fraud information with all supporting documents it is crazy. I want to help you be the Hero in helping stop Fraud. The Taxpayers would love you for exposing what is actually going on behind the scenes in the Pharmacy/Long Term Care world. Tax dollars are not going where they should be on a huge alarming scale and it is continuing and there is so much unjust enrichment. You are my last hope as I have e-mailed everyone in the Government (HHS, DOJ, OIG, etc.) with no response. That is scary as the Government is supposed to be of the people and for the people. Well, are they? I think you are but what about the others. There are some huge Medicare issues that I would like to help you with and there is a simple resolution believe it or not. People like me who have worked in the industry for years see a different side then the Government and I would give anything to sit down and have a conversation with someone who wants to see it from the Public eye. You have been where I am today, I am confident that when you read my story you will want to reach out to me and help the American people. This is what I previously sent to all areas of the Government.....

I am a Whistleblower in a lawsuit against Omnicare (08-cv-3396, 15-20629). I was Omnicare's National Credit and Collections Manager and Corporate Litigation Manager. I have over 25 years' experience and when I started, I found it odd that Omnicare would not let me or my staff collect payment on some of the open Medicare invoices due them from certain Skilled Nursing Facility groups. **I was told NOT to make collection calls if I wanted to keep my job because Medicare is only approx. 20% of the total billed, because Omnicare made 80% off of Medicaid from these SNF's?** Wow, I thought thanks for pointing out to me that you are allowing misuse of Government Funds! I could not be a part of that because it is not legal. I kept asking them to please let me collect the monies due Omnicare because if not someone is going to jail?

The Skilled Nursing Facilities would receive an invoice from one of the Omnicare Pharmacies, then the SNF's would submit them to Medicare for

payment. Once the SNF's received payment, instead of paying the open invoice due Omnicare, Omnicare allowed the SNF's to keep the money. (Tax Payer Money)

The Groups that did not have to pay would purchase more Skilled Nursing Facilities and they did not have to pay either, but sales increased. (As did Accounts Receivables) All of Senior Management was involved as they all received *bonuses based on sales, not collections or profit*. Again, they sold Rx but did not collect on the invoices. Senior Management was also the board members and of course the board voted and approved everything to *enrichen themselves*.

Again, the receivables were not written off; the accounts receivables were out of control. I was told multiple times that if I wanted to keep my job to keep my mouth shut. They let me go because I wanted to do the right thing, protect the company's profits and collect on the invoices due them, which was my job.

I have worked with Government funds for years and I know all the laws regarding it. Most Government money is bonded, this is not. The Government also has the Prompt Pay Act so suppliers can be paid in a timely fashion. **Pharmacies should collect on the open invoices but since they are not, they are misleading the stock holders, putting the SNF's in a position to submit false cost reports, while at the same time overstating the receivables and understating the bad debt.** Omnicare does not write these invoices off.

Is it legal for a SNF to submit invoices to Medicare knowing that they are not going to pay the bill for which the funds were intended? No. Is it considered overbilling? Yes. Also what about the SNF's cost reports?? Obviously they are submitting false cost reports or they would have been cut off from Medicare funding by the Government. Many, many, many of the SNF's haven't paid in years!! Copies of the accounts receivables are attached hereto for review, over \$700M past due. Medicare supposedly monitors the Cost Reports but they look at what is reported on paper which is completely inaccurate. I would like to have a conversation with someone in the Government, especially since Omnicare's Attorney said that this is standard in the industry. This is not only abuse of Government funds but also Tax dollars

During all this litigation, Omnicare had to answer to the out of control Accounts Receivable and here are their reasons, of which none are valid as there is no legal excuse:

- **Omnicare said that they did not know it was wrong to not collect**
- **then they said there were billing errors**
- **then pricing errors**
- **then oh we should have had more auditors**
- **then Omnicare's attorneys said it was standard in the industry**
- **now Ashley Hardin, Omnicare's Atty. said "from the company's standpoint, a standard way of working with financially struggling client"** <http://www.law360.com/articles/782763/rising-star-williams-connolly-s-ashley-w-hardin>

If there were actual cost/pricing issues, my understanding from calling HHS is that the Pharmacy has 90 days to make the corrections. Also if there really was billing/cost issues, then the SNF's were overbilling the Government and knew it as well as Omnicare knew it. If there was a settlement at any time with a SNF, Omnicare cut them a check so it would not appear on the invoice as a credit, thus they did not have to report it to Medicare for receiving an overpayment from the Government/Medicare. I wouldn't have a problem if the SNF's would have short paid the invoices and noted why so the pricing issue could be resolved and they would receive the credit they were looking for, but to not pay at all is wrong.

If the SNF's are really struggling then how come the national groups keep growing??? Because they use the funds to purchase more SNF's and give the business to Omnicare!! Funny how that works! Free meds, woo hoo, who wouldn't do business with them. Sales increased and so did the bonuses. Next thing I knew they had 2 Qui tam attorneys come in and talk to me for over 4 hours and then I was terminated a couple days later.

What about Government oversight? **Also since the Omnicare Pharmacies collected the Medicaid portion, legally they have to collect the Medicare portion or pay back the Medicaid portion?**

I don't understand why Omnicare is allowed to make decisions about the Medicare funds that the SNF's receive from the Government? It is not there money, it is the tax payers. Again since they are giving the funds away, they need to write it off and stop overstating the accounts receivable and understating the bad debt. The stock holders and tax payers will be livid when they find out.

This situation needs to be looked into seriously; there are so many things wrong with this, especially if it is standard among the LTC Pharmacies and SNF's. I've always heard follow the money, so please can you follow the money and look into this. I want someone from HHS, OIG, GAO, Medicare, HEAT or Tax Payers Against Fraud to afford me the opportunity to sit down with them and talk about this, please. I never got to speak in court once in 8 years. Also note that all of Senior Managements bonuses were based on sales, not collections. They did whatever they had to do to make the sales look good. Of course anyone would do business with them if they didn't collect on the invoices? Right? It's called **UNJUST ENRICHMENT**. It is betrayal of Medicare and the tax payer dollars for personal gain. It was all about them. Someone should be held accountable. Omnicare is also in Breach of their Corporate Integrity Agreement. Poor stockholders and tax payers have no idea what was really going on. It also disgusts me that Omnicare won in the Omnicare versus Laborer's District Council.

I see all the time, call to report Medicare/Medicaid Fraud. Why? When you do, you are discriminated against for life and after 8 years of fighting this because it is the right thing to do. I know why people don't report it. I have no job no one will hire me because of the lawsuit. I have applied for over 700 jobs last check. I had to move because they had someone going through my garbage and my mail. Omnicare had someone following me for a year or longer. They would follow me to the doctor, grocery, out to eat, etc. They would come in and sit right next to me. They followed me walking the dogs, everywhere. Why? I didn't do anything. I was afraid they were going to kill me, talk about stress. No one knows what it is like to be a whistleblower. I did it because it was the right thing to do and I cannot let it go. If all of you agree that it is ok to let the SNF's keep the Medicare money, then fine, I will drop it, but then I will let the taxpayers and stockholders know.

My case was denied in the Appeals Court. I do not understand, or maybe the Appeals court doesn't understand what is actually going on since no one has ever filed a case like this before. I am the first one, ever. I wish they would have let me talk as this is very complex. I cannot believe that **the Appeals court let Omnicare win because that means that it is ok to misuse tax payer dollars and SNF's can submit false cost reports and the Pharmacies do not have to collect payment on the invoices.** I do not understand how this can be ok. Would someone from the Government please contact me and afford me the opportunity to discuss this and let me know if I am right or wrong.

I would like to be afforded the opportunity to be involved in helping protect the Governments Medicaid and Medicare funds. I have so much knowledge to offer. No one will hire me since I was a Whistleblower but I want to work. Being a Whistleblower has ruined my life however I would do it again because it was the right thing to do and I should have won. I know you are busy but is it possible to talk to you or one of your staff regarding this and discuss working with Medicaid and Medicare to help you, well and me? If you could send me to work with CMS, GAO, OIG, or whoever else for 3 months and you do not like the outcome, you can fire me. I know it is crazy writing you this letter, but I am a Gemini, thus a hard worker and go after what I want and help others.

Also.....

You may or may not remember me, but back in 2011, I did a lot of research on Medicaid Fraud and was working with Kathleen Sibelius's office in regard to it but was final told in an e-mail from someone in her office that they are the Government and they do not have to do Credit Checks on new Pharmacies?? No one would listen to me, so I thought of you and if anyone could help me it would be you as you understand business and the Government needs some business direction. I put a package together, came to New York, went to Trump Towers and talked to your Bellman/Guard? In the Lobby, he took the package and I had to sign my name and phone number down. He assured me it would get to you. Someone took it and got on the elevator to take it to you. I was so excited. I had so much faith in you. The documents were entitled: **Payment Bonds, why they would work and**

perhaps the government should consider using CMS Payment Bonds to save Billions in Medicaid and Medicare Fraud? (Payment Bonds protect material suppliers against nonpayment in the Construction Industry and are required by law on any Public Construction job since Public funds are used to pay for such projects and or materials. When a private surety is used as a prequalifier, the problem of nonpayment is eliminated for the government. When a government prequalifier makes a mistake in judgment, the taxpayer pays for the loss, not the government. When a surety makes a mistake, it pays. This forces the surety to make prudent prequalification decisions, thus the government and the taxpayers are protected. Currently if materials/products are not paid for, the government is without remedy and lawsuits are expensive and time consuming. When sureties are used, the potential for corrupt activity is practically eliminated as prequalification by the government is an unattractive alternative)

I never heard from you, but now I have an additional opportunity for you and even better since you are now the President. Congratulations!! I have heard you talk about Medicare and Medicaid Fraud and I have seen so much I would like the opportunity to help you with Medicaid and Medicare Fraud and Abuse if you would allow me.

Thank you for your time,

Susan Ruscher



*Remuneration: If the nursing facility receiving free or below market rate items for services from a provider or supplier

cc: Mike Pence

976. Health Care Fraud—Generally

Health care fraud imposes an enormous cost to the health care system and to our nation's economy as a whole. While no one has an exact figure, the General Accounting Office estimates that health care fraud, waste and abuse may account for as much as 10 percent of all health care expenditures. Health care expenditures now exceed one trillion dollars each year, so that more than \$100 billion may be lost in fraud, waste and abuse annually. Health care fraud also undermines both the cost and quality of health care provided to patients.

The Department's health care fraud efforts are centered in the United States Attorneys' Offices, the Criminal Division and the Civil Division. These efforts are coordinated by the Special Counsel to the Deputy Attorney General.

Yet successful health care fraud enforcement cannot be achieved by the Department of Justice acting alone. Americans currently receive health care from a plethora of private health insurance companies and several public programs. Each public program has its own rules for the provision of services, reimbursement for the costs of services, and the investigation of fraud. Perpetrators of health care fraud, however, rarely infiltrate just one health care system.

85. Medicare Overpayment Cases

A. Regulatory Overview. The Secretary of Health and Human Services administers the Health Insurance for the Aged and Disabled Program, 42 U.S.C. §§ 1395 - 1395aaa (Medicare Program), and has delegated that responsibility to the Health Care Financing Administration (HCFA). HCFA contracts with private insurance companies to act as fiscal intermediaries and reimburse participating health care providers for services provided to Medicare beneficiaries. 42 U.S.C. § 1395u.

Part A of the Medicare Program pays for inpatient hospital, home health, and skilled nursing services provided to Medicare beneficiaries. Part B is a voluntary program which provides coverage for physician services, outpatient hospital services, and other supplementary medical insurance benefits. The providers of services must meet the statutory criteria and enter into Health Insurance Benefit Agreements (Provider Agreements) with the Secretary, through HCFA, pursuant to 42 U.S.C. § 1395cc. HCFA may not reimburse a provider unless it executes a Provider Agreement.

Under the provider agreements, Medicare providers are reimbursed for services on the basis of "reasonable costs" as defined in the federal regulations. 42 C.F.R. § 413.1 et seq. The fiscal intermediary, such as Blue Cross and Blue Shield, determines reasonable costs and makes payment. 42 U.S.C. § 1395h.

The fiscal intermediary makes estimated payments based on historical levels of service. These payments are subsequently reconciled with the actual reasonable costs incurred by means of an annual cost report which the Medicare Provider is required to submit. 42 C.F.R. §§ 413.20, 413.24. Based on the audited cost report, the intermediary makes a final determination whether the facility was overpaid or underpaid during the year. *Id.*

The intermediary adjusts the estimated payments if it receives information that the compensation will be excessive based upon the projected level of services, 42 C.F.R. § 413.64, or because the provider refuses to furnish the required information to allow the fiscal intermediary to determine the correct amount due to the provider, 42 C.F.R. § 1395g(a).

In addition, the intermediary reconciles the total payments made with actual reimbursement due based on annual cost reports filed by the provider after the end of each fiscal year. 42 C.F.R. § 413.20. If the provider was underpaid, the intermediary immediately remits the difference. If the provider was overpaid, the intermediary notifies the provider of the overpayment, adjusts ongoing payments to reflect the fact that the provider was overpaid by the Medicare program, recoups funds owed the provider until the overpayment has been collected. 42 U.S.C. § 1395g(a); 42 C.F.R. § 405.1803(c).

A provider dissatisfied with the fiscal intermediary's determination may appeal. Depending on the amount in controversy, the provider's appeal is disposed of through a hearing before the fiscal intermediary or by appeal directly to the Provider Reimbursement Review Board (PRRB). 42 U.S.C. § 1395oo(a). Board decisions are final, 42 U.S.C. § 1395oo(f), and may be appealed to the federal district court, 42 U.S.C. § 405(g). The statutes require exhaustion of administrative remedies before a federal court has jurisdiction over a Medicare Program related matter. 42 U.S.C. § 405(h).

Medicare payments to suppliers may be suspended, in whole or in part, when overpayments are found or reasonably suspected. 42 C.F.R. § 405.370(a) (1992). The suspension must protect the program against financial loss. 42 C.F.R. § 405.370(b) (1992). Generally, suspension requires prior notice. 42 C.F.R. § 405.371(a) (1992). However, where fraud or misrepresentation is suspected, notice may be provided concurrently with the suspension. 42 C.F.R. § 405.371(b) (1992). Amounts suspended are segregated. Once imposed, a suspension remains in effect until either the overpayment is returned, a liquidation agreement is reached with the supplier, or the agency determines that no overpayment was made. 42 C.F.R. § 405.373 (1992).

The Medicare relationship is generally not considered a contractual one. *Memorial Hospital v. Heckler*, 706 F.2d 1130, 1136-37 (11th Cir. 1983) (Existence of the provider agreement "did not obligate the Secretary to provide reimbursement for any particular expenses."), cert. denied, 465 U.S. 1023 (1984); *The Germantown Hospital and Medical Ctr. v. Heckler*, 590 F. Supp. 24, 30-31 (E.D. Pa. 1983), aff'd, 738 F.2d 631 (3d Cir. 1984) ("There is no contractual obligation requiring HHS to provide Medicare reimbursement."). Cf. *Hollander v. Brezenoff*, 787 F.2d 834, 835-39 (2d Cir. 1986) ("Signing a provider agreement does not convert statutory mandates into a contract claim;" "[a]lthough the [Medicaid] relationship may be effectuated by means of a provider contract, all rights to reimbursement arise under the applicable statutes."). But see *In re University Medical Ctr.*, 973 F.2d 1065 (3d Cir. 1992) (holding that Medicare provider agreement is an executory contract for bankruptcy purposes).

The Medicare statute, 42 U.S.C. § 405(h), bars judicial relief until a party exhausts administrative remedies. See, e.g., *Heckler v. Ringer*, 466 U.S. 602 (1984); *Weinberger v. Salfi*, 422 U.S. 749 (1975); *American Fed'n of Home Health Agencies, Inc. v. Heckler*, 754 F.2d 896, 897-98 (11th Cir. 1984). Thus, unless a provider exhausts its administrative remedies, federal courts do not have jurisdiction over claims arising under the Medicare Program for reimbursement. 42 U.S.C. §§ 1395oo(f), 405(h), 1395ii; see, e.g., *Westchester Management Corp. v. U.S. Dept. of Health and Human Services*, 948 F.2d 279, 282 (6th Cir. 1991), cert. denied, 504 U.S. 909 (1992); *Bodimetric Health Services, Inc. v. Aetna Life & Casualty*, 903 F.2d 480, 483-84 (7th Cir.), cert. denied, 498 U.S. 1012 (1990); *Charter Medical Corp. v. Bowen*, 788 F.2d 728 (11th Cir. 1986). But see *In re University Med. Ctr.*, supra (exhaustion of administrative remedies not required where adversary proceeding is based on Bankruptcy Code and does not involve issue inextricably intertwined with any dispute within agency's normal review process); *In re Town & Country Home Nursing Services, Inc.*, 112 B.R. 329 (Bankr. 9th Cir. 1990), aff'd, 963 F.2d 1146 (9th Cir. 1992) (same).

Fiscal intermediaries are merely conduits between the government and the Medicare providers. 42 U.S.C. § 1395(h). Thus, while a fiscal intermediary determines amounts to be paid on claims and disburses funds provided by the government, the United States is the real party in interest in Medicare litigation, and the claims against the fiscal intermediaries should be dismissed. *Bodimetric Health Servs., Inc. v. Aetna Life & Casualty*, 487-488 supra; *Matranga v. Travelers Ins. Co.*, 563 F.2d 677 (5th Cir. 1977); *Peterson v. Weinberger*, 508 F.2d

45, 51-52 (5th Cir.), cert. denied, 423 U.S. 830 (1975); *Pine View Gardens, Inc. v. Mutual of Omaha Ins. Co.*, 485 F.2d 1073, 1075 (D.C. Cir. 1973).

B. Medicare Overpayment Cases. Providers of Medicare services, usually nursing homes, are advanced funds by HHS for medically necessary services based on estimates of costs. If data furnished annually by a provider shows the provider was paid more than its reasonable costs for medically necessary services, the fiscal intermediary sends the provider a notice of provider reimbursement explaining the overpayment and demanding reimbursement. If the provider fails to repay the amount owed, HHS collects by offset. See *Mt. Sinai Hospital of Greater Miami v. Weinberger*, supra; but see *In re University Medical Ctr.*, supra (Medicare offset not permissible in bankruptcy proceedings). [See banksetf.out]. A provider no longer in the Medicare Program may be sued to recover the overpayments. **If the provider fails to submit complete accurate cost reports within the designated time there is a presumption that all Medicare payments during the relevant time period were overpayments.** See *United States v. Upper Valley Clinic Hospital, Inc.*, 615 F.2d 302, 306 n.8 (5th Cir. 1980). Administrative review of overpayment determinations is permitted for accounting periods ending on or after December 31, 1971, and before June 30, 1973, see 20 C.F.R. §§ 405.1801-1833, formerly 20 C.F.R. §§ 405.490-405.49(I). For accounting periods ending on or after June 30, 1973, see 42 U.S.C. § 11395oo, 20 §§ 405.1801-1889. The provider should be encouraged to seek administrative review of the overpayment claims against it even for earlier periods.

The statute of limitations is a serious factor in many of these cases. Thus, the government should obtain a waiver of the statute of limitations from the provider if administrative consideration of the overpayment determination is delayed.

C. Medicare Fraud Cases. Although Medicare's right to suspend payments where fraud is suspected is respected, *Visiting Nurse Ass'n of Greater Tift County, Inc. v. Heckler*, 711 F.2d 1020, 1031-1035 (11th Cir. 1983), some courts in bankruptcy proceedings hold that Medicare's suspension is barred by the bankruptcy filing or have restrained HCFA from suspending payments postpetition. Compare *In re Medicar Ambulance Co., Inc.*, 166 B.R. 918, 926-27 (Bankr. N.D. Cal. 1994) (HHS fraud suspension violates the stay) with *In re Orthotic Center, Inc.*, 193 B.R. 832 (N.D. Ohio 1996) (HHS suspension for fraud does not violate the stay).

Consult with HHS with respect to all compromise proposals and keep HHS apprised of developments in these cases. USA should contact the HHS Regional Counsel if support from HHS is requested

<https://www.justice.gov/usam/criminal-resource-manual-924-defrauding-government-money-or-property>

924. Defrauding the Government of Money or Property

Under 18 U.S.C. § 371 the act of defrauding the government of money or property may take many forms, including the inducement of payment

1. for services or supplies not provided or provided at inflated prices;
2. for work for which the government is not responsible. *United States v. Vincent*, 648 F.2d 1046 (5th Cir.1981); *United States v. Cella*, 568 F.2d 1266 (9th Cir.1978); and
3. **of money or property to which the applicant is not lawfully entitled because of the applicant's status.**

Proof that the United States has been defrauded does not require any showing of pecuniary or proprietary loss.

921. False Claims

Title 18, United States Code, section 287--the false claims statute--provides in part:

Whoever makes or presents to any person or officer in the civil, military or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years . . . See Project, *Tenth Annual Survey of White Collar Crime*, 32 Am. Crim. L. Rev. 137, 309-32 (1995)(discussing § 287). There is also a companion conspiracy statute, 18 U.S.C. § 286.

In 1863 Congress enacted a false claims and statements statute "in the wake of a spate of frauds upon the government." *United States v. Bramblett*, 348 U.S. 503, 504 (1955). As originally enacted the statute penalized presentment "for payment or approval" of false claims upon or against the Government. . ." (*Bramblett*, 348 U.S. at 504) as well as false statements made "for the purpose of obtaining, or aiding in obtaining, the approval or payment of such claim." On June 25, 1948, the statute was divided into 18 U.S.C. § 287 and 18 U.S.C. § 1001, respectively. 62 Stat. 749.

The Section 287 statute is designed to "protect the government against those who would cheat or mislead it in the administration of its programs" (*United States v. White*, 27 F.3d 1531, 1535 (11th Cir. 1994)), and it has been employed to combat fraudulent claims filed under numerous Federal programs, including Medicare and Medicaid. *White* (Medicare claims by a chiropractor); *United States v. Hooshmand*, 931 F.2d 725, 733 (11th Cir. 1991)(Medicare claims for tests); see also *United States v. Abud-Sanchez*, 973 F.2d 835, 836 (10th Cir. 1992)(Medicare and Medicaid claims); *United States v. Siddiqi*, 959 F.2d 1167, 1171-72 (2d Cir. 1992)(physician submitted Medicare claims for a period when he was out of the country); *United States v. Nazon*, 940 F.2d 255, 258, 261 (7th Cir. 1991)(Medicaid claims for lab work not done); *United States v. Beasley*, 550 F.2d 261, 263-64 (5th Cir.), cert. denied, 434 U.S. 863 (1977)(claims for costs of clinics never built).

<https://www.justice.gov/usam/criminal-resource-manual-930-major-fraud-against-us>

930. Major Fraud Against the U.S.

The Major Fraud Act of 1988 (Pub.L. No. 100-700, § 2, 102 Stat. 4631) created a new offense, 18 U.S.C. § 1031:

- a. Whoever knowingly executes, or attempts to execute, any scheme or artifice with the intent --
 1. to defraud the United States; or
 2. to obtain money or property by means of false or fraudulent pretenses, representations, or promises, in any procurement of property or services as a prime contractor with the United States or as a subcontractor or supplier on a contract in which there is a prime contract with the United States, if the value of the contract, subcontract, or any constituent part thereof, for such property or services is \$1,000,000 or more

The statute has been upheld against vagueness attacks. *United States v. Nadi*, 996 F.2d 548 (2d Cir. 1993), cert. denied, 114 S. Ct. 347 (1993); *United States v. Frequency Electronics*, 862 F. Supp. 834 (E.D.N.Y. 1994). For more on the Act, see S. MacKay, *The Major Fraud Act After Seven Years: an Update*, 64 Federal Contracts Report 1 (Sept. 25, 1995, Bureau of National Affairs). The Criminal Division's Fraud Section Federal Procurement Fraud Unit also has prepared a monograph on the Act, as well as a sample indictment.

The Act also establishes a "bounty-hunter" provision under 18 U.S.C. § 1031(g), which allows payments from the Department of Justice to persons who furnish information under the Act; however, to date, no fund has been authorized and no payments awarded.

<https://www.justice.gov/usam/criminal-resource-manual-914-concealment-failure-disclose>

914. Concealment--Failure to Disclose

Although 18 U.S.C. § 1001 is often referred to as a false statement statute, its scope extends beyond statements. The statute proscribes the acts of making false statements, falsifying, concealing or covering up. The statute also covers half-truths if there is a duty to speak the truth. See generally *United States v. Lutwak*, 195 F.2d 748 (7th Cir. 1948), *aff'd*, 344 U.S. 604 (1953).

Concealment and cover-up are essentially identical concepts and often result from falsification. These acts need not have any relation to a statement or representation. A concealment may involve a failure to disclose or partial disclosures of information required on an application form; however, when using such a theory, the government must prove that the defendant had a duty to disclose the facts in question at the time of the alleged concealment of them. *United States v. Irwin*, 654 F.2d 671, 678-79 (10th Cir. 1981), *cert. denied*, 455 U.S. 1016 (1982). Concealment may also involve a merely physical act of concealment such as transferring inspection stamps, changing numbers on bottles to conceal rejection, conceal use of certain drugs, or using false stamps to conceal ownership of tobacco. Some courts have required that the government be prepared to prove that the "concealment by trick" consisted of affirmative acts. *United States v. London*, 550 F.2d 206 (5th Cir. 1977)

<https://www.justice.gov/usam/criminal-resource-manual-925-obstructing-or-impairing-legitimate-government-activity>

925. Obstructing or Impairing Legitimate Government Activity

Under 18 U.S.C. § 371, the fraud or impairment of legitimate government activity may take any of several forms:

1. Bribery of a government employee, kickbacks to government employees or extortion of money or favors by government employees, misrepresentations of financial capability, alteration or falsification of official records, submission of false documents; and
2. Obstructing, in any manner, a legitimate governmental function.

<https://www.justice.gov/usam/criminal-resource-manual-929-obstruction-federal-audit>

929. Obstruction of Federal Audit

The Anti-Drug Abuse Act of 1988 (Pub.L.No. 100-690, § 7078, 102 Stat. 4181) created an obstruction of Federal audit offense, codified at 18 U.S.C. § 1516. The statute provides:

- a. Whoever, with intent to deceive or defraud the United States, endeavors to influence, obstruct, or impede a Federal auditor in the performance of official duties relating to a person receiving in excess of \$100,000, directly or indirectly, from the United States in any 1 year period under a contract or subcontract . . .
- b. For purposes of this statute --
 1. the term "Federal auditor" means any person employed on a full- or part-time or contractual basis to perform an audit or a quality assurance inspection for or on behalf of the United States;

2. the term "in any 1 year period" has the meaning given to the term "in any one-year period" in section 666 [of Title 18, United States Code]

(parenthetical added). The legislative history suggests that Section 1516 will be applied in a manner similar to the application of other obstruction of justice statutes. *See* Project, *Tenth Annual Survey of White Collar Crime*, 32 Am. Crim. L. Rev. 137, 525-548 (1995)(discussing 18 U.S.C. §§ 1503, 1512).

[cited in USAM 9-42.001]

<https://www.justice.gov/usam/criminal-resource-manual-904-purpose-statute>

904. Purpose of Statute

The purpose of 18 U.S.C. § 1001 is to prohibit deceptive practices aimed at frustrating or impeding the legitimate functions of government departments or agencies. *See United States v. Tobon-Builes*, 706 F.2d 1092, 1101 (11th Cir. 1983); *Bryson v. United States*, 396 U.S. 64 (1969) (statute prohibits the "perversion which might result from the deceptive practices described"). The statute is viewed as seeking to protect both the operation and the integrity of the government, and "covers all matters confided to the authority of an agency or department." *United States v. Rogers*, 466 U.S. 475, 479 (1984). The pre-1996 version of section 1001, however, may be limited by case law to the executive branch. In 1995, the Supreme Court reversed long-settled precedent in *Hubbard v. United States*, 115 S.Ct. 1754 (1995), and held that a court is neither a "department" nor an "agency" under § 1001. Although the Court's opinion left open the possibility that a judicial or legislative entity might still be considered an "agency" under section 1001, several courts have interpreted *Hubbard* broadly to mean that section 1001 applies only to false statements made to the executive branch. *See, e.g., United States v. Dean*, 55 F.3d 640 (D.C. Cir. 1995), cert. denied, 116 S.Ct. 1288 (1996); *United States v. Rostenkowski*, 59 F.3d 1291, 1301 (D.C. Cir. 1995). As of this writing, there is still pending in the District of Columbia Circuit an interlocutory appeal concerning whether the old version of section 1001, even after *Hubbard*, still applies to financial disclosure statements that Members of Congress filed, pursuant to the Ethics in Government Act, with the Clerk of the House of Representatives before October 11, 1996. *See United States v. Oakar*, No. 96-3084 (D.C. Cir.). Prosecutors therefore should not concede, in any pleadings or arguments presented in federal courts, that the old section 1001 does not apply to such statements, at least until the Court of Appeals for the District of Columbia Circuit decides this case.

<https://www.justice.gov/usam/criminal-resource-manual-905-items-not-required-be-proved>

905. Items Not Required to be Proved

The courts have concluded that 18 U.S.C. § 1001 does not require any proof of the following:

1. any financial or property loss to the Federal government (though one often exists), *United States v. Richmond*, 700 F.2d 1183, 1188 (8th Cir.1983);
2. that the false statement be made or submitted directly to the federal government, *United States v. Uni Oil Co.*, 646 F.2d 946, 954-55 (5th Cir. 1981), cert. denied, 455 U.S. 908 (1982);
3. any favorable agency action based upon the statement, *Brandow v. United States*, 268 F.2d 559 (9th Cir. 1959); *United States v. Quirk*, 167 F. Supp. 462 (E.D. Pa. 1958), aff'd, 266 F.2d 26 (3d Cir. 1959);
4. reliance by the government, *United States v. Lichenstein*, 610 F.2d 1272, 1278 (5th Cir. 1980);
5. the defendant's actual knowledge of Federal agency jurisdiction, *United States v. Yermian*, 468 U.S. 63 (1984); on remand, 741 F.2d 267 (1984) ; or
6. that the false statement be written, signed or sworn, *United States v. Beacon Brass Co.*, 344 U.S. 43, 46 (1952).

922. Elements of 18 U.S.C. § 287

Under 18 U.S.C. § 287, the government must establish that the defendant:

1. made or presented a false, fictitious, or fraudulent claim to a department of the United States;
2. knew such claim was false, fictitious or fraudulent; and
3. did so with the specific intent to violate the law or with a consciousness that what he was doing was wrong.

United States v. Slocum, 708 F.2d 587, 596 (11th Cir. 1983)(citing *United States v. Computer Sciences Corp.*, 511 F. Supp. 1125, 1134 (E.D. Va. 1981), *rev'd on other grounds*, 689 F.2d 1181 (4th Cir. 1982)).

Under Section 287, unlike 18 U.S.C. § 1001, there may not be a requirement that the statements or claims be material; the United States Courts of Appeals are split on the issue. *United States v. Parsons*, 967 F.2d 452, 455 (10th Cir. 1992)(no materiality component); *United States v. Elkin*, 731 F.2d 1005, 1009 (2d Cir.), *cert. denied*, 469 U.S. 822 (1984)(same); *United States v. Pruitt*, 702 F.2d 152, 155 (8th Cir. 1983) (materiality component); *United States v. Snider*, 502 F.2d 645, 652 n.12 (4th Cir. 1974) (same). The conflict was noted in *United States v. White*, 27 F.3d 1531, 1535 (11th Cir. 1994), which did not resolve the issue. Presumably, if a materiality component exists, it is a matter for jury resolution in light of *United States v. Gaudin*, 115 S.Ct. 2310 (1995).

Although it is clear from the case law that specific intent to defraud is not required for a conviction under 18 U.S.C. § 287, the United States Courts of Appeals are divided on the issue of whether willfulness is an essential element of the crime. For example, the United States Courts of Appeals for the Tenth, Fifth and Second Circuits have held that willfulness is not an essential element of Section 287, while the Ninth, Eighth and Fourth Circuits appear to indicate that willfulness is an essential element of Section 287.

Presentation of a claim is more than an intention to make a claim. The claim must be presented actually and physically, and thereby made to the government. The clearest case is presentation directly to the government; however, the claim may go through an intermediary. *United States v. Murph*, 707 F.2d 895, 896 (6th Cir.) *cert. denied*, 464 U.S. 844 (1983), (court rejected the argument that defendant did not cause a violation of Section 287 because the claim was submitted by an intermediary; the defendant sold a tax return, falsely claiming a refund, to the intermediary and knew that the return would be presented to the government to claim the refund). Presenting or cashing a refund check constitutes making a false claim on the United States. *See United States v. Branker*, 395 F.2d 881 (2d Cir. 1968), *cert. denied*, 393 U.S. 1029 (1969). Although Section 287 does not define the term "claim" (*United States v. Barsanti*, 943 F.2d 428, 432-33 (4th Cir. 1991), *cert. denied*, 503 U.S. 936 (1992)), in *United States v. Cohn*, 270 U.S. 339 (1926), the United States Supreme Court wrote:

While the word "claim" may sometimes be used in the broad juridical sense of "a demand of some matter as of right made by one person upon another, to do or to forbear to do some act or thing as a matter of duty," it is clear, in the light of the entire context, that in the present statute, the provision relating to the payment or approval of a "claim upon or against" the government relates solely to the payment or approval of a claim for money or property to which a right is asserted against the government, based upon the government's own liability to the claimant.

216. Reformation

Reformation is almost always asserted as a preliminary to some other remedy which is to be pursued. **This equitable remedy is available when a written contract or conveyance fails to express the agreement of the parties, due to the fraud or misrepresentation of one party and the mistake of the other.** Restatement of Contracts § 491 (1932). In such a situation, rescission is an alternative to the innocent party. Restatement of Contracts § 491, Comment (a) (1932). Reformation is also available in the case of mutual mistake. Restatement of Contracts § 504, Comment (a) (1932).

9-44.150 - Fraud and Abuse Control Program and Joint Guidelines Mandated by the Health Insurance Portability and Accountability Act of 1996

The Health Insurance Portability and Accountability Act, signed by the President on August 21, 1996, established and funds a Health Care Fraud and Abuse Program to combat fraud and abuse committed against all health plans, both public and private.

In addition, joint Guidelines issued by the Attorney General and the Secretary of the Department of Health and Human Services to carry out the Fraud and Abuse Program stress the importance of communication and shared information between private and public plans and the federal, state and local governments. The Guidelines also note the importance of parallel or joint proceedings to help maximize the government's recovery while minimizing duplication of effort. See the **Criminal Resource Manual 978** for the text of the Program and Guidelines, and **Criminal Resource Manual 979** (2003 Deputy Attorney General Memorandum "Impact of HHS Privacy Rules on Department Operations").

There are restrictions on the derivative use of protected health information. Derivative use must be approved by the Deputy Attorney General. Please see Executive Order 13181, *available at* <https://www.gpo.gov/fdsys/pkg/FR-2000-12-26/pdf/00-33004.pdf>. Such requests should go from the USAO to the Deputy Chief for HCF, Criminal Division, Fraud Section.

[updated October 2016]

United States
v. Omnicare, Inc. et al.



Introduction and Overview

- **Illegal scheme by Omnicare, Inc. to offer unlawful kickbacks to certain skilled nursing facilities (“SNF”):**
 - **Omnicare forgoes payments for Medicare Part A patients to induce and retain business derived from Medicaid or Medicare Part D patients.**

Omnicare's Fraudulent Conduct

- 3 types of SNFs benefit most from Omnicare's scheme:
 - "National Accounts": large SNF chains that control large proportion of SNF beds; and
 - "Pharmacy Holds" and "Regional Holds": smaller but still significant SNFs or regional chains.
- As of August 2008, SNFs owed Omnicare over \$400 million past-due over 180 days.
 - As of November 2009, SNFs owed Omnicare over \$700 million past-due over 180 days.
 - National Accounts, Pharmacy Holds, and Regional Holds account for half of the past-due amounts.

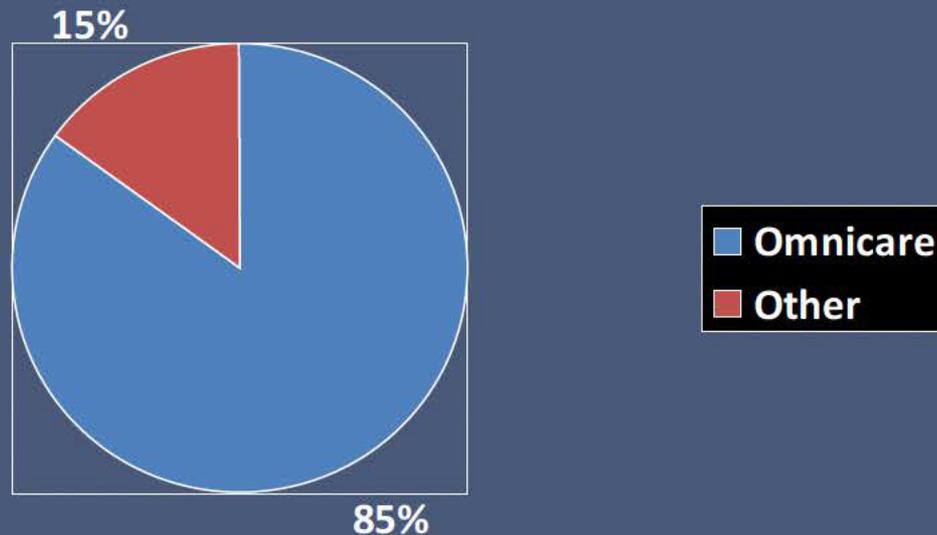
Status of Case

- This is a *qui tam* case brought under the False Claims Act. The United States government is entitled to recover funds equal to the defrauded amount, trebled, plus penalties, under 31 U.S.C. §§ 3729–3732.
- Original Complaint filed in Southern District of Texas (Houston Division) and Original Disclosure submitted November 14, 2008.

Omnicare, Inc.

Overview of Omnicare

- One of largest long-term care (“LTC”) pharmacy providers in US: est. 50–85% of market.



Overview of Omnicare, cont.

- In 2005, Omnicare acquired NeighborCare, Inc., creating a company with \$6 billion in annual revenue and serving nearly 1.4 million LTC beds in 47 states.
- Omnicare owns more than 250 individual pharmacies.

What Omnicare Provides

○ Pharmaceuticals:

- Specialty unit-dose packaging,
- Delivery,
- Infusion and respiratory therapy, and
- Medical supplies.



○ Pharmacist consulting:

- Direction and oversight of acquisition, disposition, handling, storage, and administration of pharmaceuticals, extensive involvement in patient care.



Omnicare, Medicaid, and Medicare



Omnicare and Medicaid

- Through 2005, 80% of Omnicare's SNF business came from Medicaid.
- Omnicare contracted directly with state Medicaid programs for pharmaceuticals and related services.
- Omnicare was reimbursed directly by state Medicaid programs.

Overview of Medicare Part D

- After Jan. 1, 2006, Medicare Part D supplanted Medicaid in covering drug costs of dually-eligible patients whose drugs had been covered by Medicaid.
- Part D insurance plan sponsors provide prescription drug coverage.



Omnicare and Medicare Part D

- After Jan. 1, 2006, 80% of Omnicare's SNF business came from Medicare Part D.
- Omnicare contracts directly with Part D insurance plan sponsors for pharmaceuticals and related services.
- Omnicare is reimbursed directly by Part D insurance plan sponsors.

Overview of Medicare Part A

- Medicare provides federal health insurance for approximately 44 million people who are aged or disabled.
- SNF care is reimbursed by Medicare Part A on per diem basis.
- Part A covers SNF care for up to 100 days only—not long-term or “custodial” care.



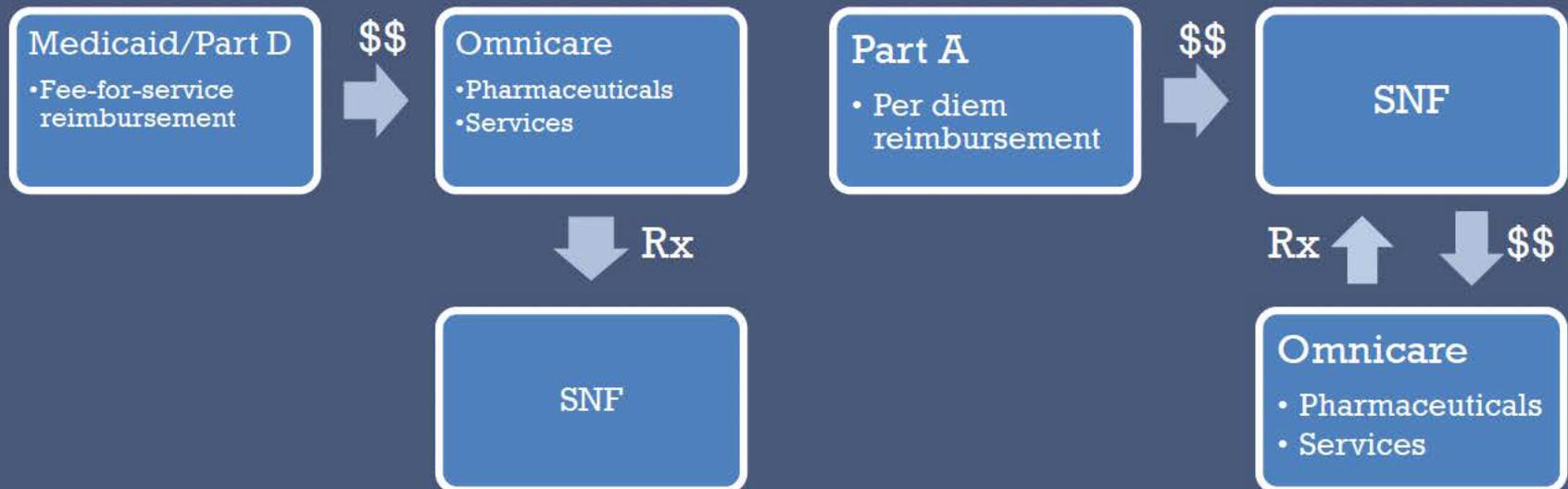
Omnicare and Medicare Part A

- 20% of Omnicare's SNF business comes from Medicare Part A.
- SNFs are reimbursed by Part A on a monthly, prospective, capitated basis.
- SNFs contract with Omnicare for pharmaceuticals and services.
- Omnicare bills SNFs for pharmaceuticals and services when provided.

Medicaid/Part D vs. Part A

MEDICAID/ MEDICARE PART D

MEDICARE PART A



Omnicare's Scheme

Omnicare's Scheme

- 4 types of customers:
 - National Accounts;
 - Pharmacy Holds or “P-Holds”;
 - Regional Holds; and
 - Individually-owned SNFs.
- Each is treated differently with regard to collections. In general:
 - Larger SNFs—coded as National Accounts, P-Holds, or Regional Holds—are allowed to incur large past-due balances as incentive to keep Medicaid/Part D business.
 - Smaller SNFs—individually-owned—are pursued vigorously unless the volume from Medicaid/Part D business is sufficiently great.

National Accounts

- SNF chains with multiple locations in multiple states and therefore a high volume of Medicaid/Medicare Part D business.
- Currently, approximately 40 SNFs are designated in Omnicare's billing system as National Accounts.
 - Include Assisted Living Concepts, Extendicare Health Services, Family Senior Care, Five Star Quality Care, Genesis HealthCare, HCR Manor Care, Life Care Centers of America, Shoreline Healthcare Management, Sovereign Health Care, SunBridge Healthcare Corp., and Sunrise Senior Living.

National Accounts, cont.

- ◉ Neither terminated nor referred to litigation if past-due balances are unpaid.
- ◉ Only token payments made at year's end for sake of appearances.
- ◉ Debts written off only when inescapable, e.g., bankruptcy.

National Accounts, cont.

- Collections staff is expressly prohibited from contacting National Accounts.
- Debts handled by senior management: CEO and President Joel Gemunder, COO and Executive VP Patrick Keefe, CFO and Senior VP David Froesel, and VP of Credit and Collections Richard Richow.

National Accounts, cont.

- ◉ If National Account mistakenly contacted, SNF would tell collector to “talk to Joel [Gemunder]”—leave us alone, because we don’t have to pay.
- ◉ Collectors instructed to ask at beginning of call if National Account, and if so, then apologize for mistake.
 - Collectors also instructed to write letters of apology when National Accounts mistakenly contacted.

National Accounts, cont.:

The “Inducement Team”

- ◉ Key account managers (“KAM”) supervised year-end collection attempts made for show to disguise kickback.
- ◉ KAM assigned to National Account would be on call along with collector.
- ◉ Collector would ask for average monthly payment or “run rate,” plus payment toward past-due balance.
- ◉ KAM insisted upon only one month’s payment, usually with discount.

“Inducement Team” at Work

- Ruscher: We would like you to pay the run rate (average month’s billings), plus something toward your past-due balance.
- KAM: No, no payment on the past-due balance is required. Let’s take a discount off the run rate—I’m sure our billing department made a mistake somewhere.



National Accounts, cont.:

Five Star Quality Care

- Not allowed to discuss past-due balance with Five Star, because Omnicare was attempting to negotiate a new contract.
- Although FIVE STAR OWED Omnicare at least \$450,000 in outstanding accounts receivable, OMNICARE PAID Five Star \$4,000 to settle the billing dispute.

P-Holds and Regional Holds

- ◉ Smaller yet significant SNFs: regional chains and SNFs about to acquire other SNFs, if committed to Omnicare.
- ◉ Account placed on “P-Hold” or Regional Hold by individual pharmacy, usually indefinitely.
- ◉ All collections efforts then cease. Only individual pharmacy is in contact with SNF, and no past-due balances are collected.

P-Holds: Inducement to Keep Business

- ◉ Ruscher: Do not discuss past-due balance and new contract simultaneously – could be construed as inducement. First address payment arrangement, then new contract.
- ◉ Richow: If negotiating new contract, do not discuss past-due balances at all while attempting to renew contract. (Let the past-due balance slide in order to keep business.)

P-Holds, cont.:

Rosenblum's Territory

- ◉ Rosenblum kept P-Holds on accounts for fear of losing business.
- ◉ Rosenblum made side deals with facilities—unwritten, unenforceable settlement agreements—unbeknownst to Collections Department.
- ◉ Rosenblum threatened collectors.
- ◉ Rosenblum's customers owed \$55 million in September 2008—over 70% of amounts past-due from all NY pharmacies.

Individually-Owned SNFs

- Plea that need Medicare Part A proceeds to keep residents comfortable, but to no avail.
- Generally subject to vigorous collection efforts, including litigation, unless Medicaid/Part D revenue was too great.
 - Required Litigation & Termination Approval form.
 - Date and amount of last payment, total outstanding debt, business generated from Medicaid and Medicare patients, and how much Omnicare would lose if terminated.
 - If loss would be too great, litigation request was denied.

Omnicare's Attempt to Conceal “Preferential Treatment”

- In 2008, Pat Keefe (COO and Executive VP) notified Regional VPs, General Managers, and Regional CFOs that, going forward, no Pharmacy Collections Holds were permitted.
- In 2009, the codes for P-Holds and Regional Holds were changed to remove the word “hold.”
 - No practices were ever changed—only codes, to hide ongoing kickbacks.
 - Past-due amounts have only increased since 2008, from \$400 million to \$700 million.

Omnicare Knew Debt Forgiveness = Inducement

- In 2010, Jeff Carpp (VP, Asset Management) admitted that, given a facility's ability to pay, "[Omnicare] could be considered inducing them to buy from [Omnicare] because they are not paying [Omnicare]."



Consequences of Omnicare's Scheme

SNF Cost Reports

- Pharmaceutical expenses must be listed in full when billed—no matter method of reimbursement. (42 C.F.R. § 413.24(b)(2), (e))
- If not paid within 12 months, must list credit on next cost report or amend previously submitted cost report. (42 C.F.R. § 413.100(c)(2)(i))
 - SNFs likely are listing pharmaceutical costs for Medicare Part A patients as expenses and not applying credits or amending cost reports when Omnicare's bills remain unpaid.
 - False certification of compliance with AKS in cost report is actionable under FCA. (*United States v. Rogan*, 459 F. Supp. 2d 692, 717 (N.D. Ill. 2006), *aff'd* 517 F.3d 449 (7th Cir. 2008).)

Omnicare's Accounting

- Pharmaceuticals and services invoiced are listed on books as Accounts Receivable.
- Invoices that remain unpaid remain on Omnicare's books as Accounts Receivable or as bad debt expenses and are almost never written off, contrary to GAAP.
- Debts remain on books to conceal forgiveness of debt.

False Claims Act (“FCA”)

31 U.S.C. § 3729(a)

- Any person who

- knowingly presents, or causes to be presented to the US Government a false or fraudulent claim for payment or approval;
- knowingly makes, uses, or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the US Government;
- conspires to defraud the US Government by getting a false or fraudulent claim paid; or
- knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money to the US Government

is liable to the US Government for a civil penalty of not less than \$5,500 and not more than \$11,000 for each claim, plus three times the amount of damages sustained by the US Government because of the false or fraudulent claim.

Anti-Kickback Statute (“AKS”)

42 U.S.C. § 1320a-7(b)

- Prohibits knowing and willful offer or payment of remuneration in cash or in kind, directly or indirectly, to induce a person to purchase a good or service reimbursed by federal healthcare program.
- “Remuneration” includes anything of value offered or paid in return for purchasing, ordering, arranging for, or recommending purchase or order of any item reimbursable by federal healthcare program.

AKS, cont.

- Those who violate AKS are subject to exclusion from federal healthcare programs and civil monetary penalties of up to \$50,000 per violation and up to three times the amount of remuneration paid.

Purpose of Anti-Kickback Statute

- Purpose of AKS is to prohibit such remuneration in order to secure proper medical treatment and referrals and to limit unnecessary treatment, services, or goods that are based not on needs of patient but on improper incentives given to others, thereby limiting patient's right to choose proper medical care and services.
- Paying kickbacks taints entire prescription, regardless of propriety of its use.

Omnicare's Debt Forgiveness Violates AKS

- Omnicare offered, and National Accounts, P-Holds, Regional Holds, and other SNFs accepted, remuneration in the form of millions of dollars in debt forgiveness—amounts that favored SNFs were contractually obligated to pay but never did.
- Remuneration was offered and accepted in exchange for National Accounts, P-Holds, Regional Holds, and other SNFs' continued business with Omnicare with regard to Medicaid and Medicare Part D patients.

Violation of AKS Is Actionable Under FCA

- Claims for payment for goods and services induced by kickbacks are actionable under the FCA.
 - *See United States ex rel. Conner v. Salina Reg'l Health Ctr.*, 534 F.3d 1211, 1223 n.8 (10th Cir. 2008); *United States ex rel. McNutt v. Haleyville Med. Supplies*, 423 F.3d 1256, 1259-60 (11th Cir. 2005); *United States ex rel. Schmidt v. Zimmer, Inc.*, 386 F.3d 235, 243 (3d Cir. 2004).

Omnicare's Corporate Integrity Agreement ("CIA")

- Pursuant to a 2006 settlement, Omnicare entered into CIA with Office of Inspector General for Department of Health and Human Services.
- As a condition to participate in federal- and state-funded healthcare programs, Omnicare must certify in its implementation report and annual reports that it is complying with all terms and conditions of CIA.
- Omnicare violated FCA by falsely certifying compliance with CIA while it was offering kickbacks to favored SNFs to keep Medicaid and Medicare Part D business.

Damages



Kickbacks

- As of September 2008, SNFs owed Omnicare **\$400 million** over 180 days past-due.
 - This number represents in large part illegal kickbacks—pharmaceutical costs reimbursed by Medicare Part A, but which Omnicare has allowed the SNFs to keep.
 - As of November 2009, SNFs owed Omnicare **\$700 million** over 180 days past-due.



Calculating Damages

- **Estimates of total number of dually-eligible beneficiaries in favored SNFs made using data from Online Survey, Certification, and Reporting (“OSCAR”) database, maintained by Centers for Medicare and Medicaid Services.**
 - Est. 348,457 dually-eligible patients in 5,309 favored facilities.
- **Average prescription drug spending for dually-eligible beneficiaries gathered from U.S. Department of Health and Human Services report.**
 - Avg. \$3,525/year spent per dually-eligible patient.

Measure of Damages: Fraudulent Inducement

- The business gained and/or kept from the illegal kickbacks—pharmaceutical costs reimbursed by Medicaid and Medicare Part D directly to Omnicare—is estimated at **\$1.2 to \$3.6 billion.**
- Trebled, damages range from **\$3.6 to \$10.8 billion.**

Omnicare Is Forgiving Debt.

- Separate designation in Omnicare's billing system of National Accounts, P-Holds, and Regional Holds.
- Collectors' efforts thwarted:
 - Could not collect from National Accounts, P-Holds, and Regional Holds.
 - Had to justify suing even individually-owned SNFs.
- Collectors required to apologize for making collection calls—for doing their jobs.
- Executive bonus structure rewards sales, not collections.

The End

Appendix

Account Codes

2007

- NAT: National Accounts
- PHD/PHOLD: Accounts being worked by the Pharmacy
- REG: Regional Accounts
- REH/REGHOLD: Regional Accounts that the Pharmacy is working

	A	B	C	D	E
1	CODES FOR PHARMACIES ON OASIS AND DX				rev 03 09 07
2	Pharmacy	Oasis Code	DX Code	Description	ARM Code
3	Collection Account	COL	COL	Requires regular collection activity	Varies (FYI, 011, 012, 115, 118, etc.)
4	Payment Plan	100	BP	Accounts where payments have been established	113
5	Bankruptcy	995	BKR	Bankruptcy has been filed	700
6	Write Off	999	PWO	Accounts submitted for W/O	WOR
7	Legal	796	LGL	All accounts referred to Attorney for litigation	500
8	3rd Party Collections	901	AGY-O	Accounts placed with 3rd party for collections	AGY
9	Credit Balance Due	CRE	CRE	Accounts with a credit balance due	CRE
10	National Account	NAT	NAT	National Accounts	NAT
11	Pharmacy	PHD	PHOLD	Accounts being worked by the Pharmacy	200
12	Promise to Pay	PTP	PTP	Payment has been promised	PTP
13	Settlement	SET	SETT	Accounts where settlements have been reached	SET
14	Regional Account	REG	REG	Regional Accounts	REG
15	Dispute	111	DISP	Dispute letter received from Facility	111
16	Regional Account / Pharmacy	REH	REGHOLD	Regional Accounts that the Pharmacy is working	REH
17	Group of Homes	GRP	GRP	Account belonging to a Group of homes	GRP
18	Promissory Note	NOT	NOTE	Facility Balance post Promissory Note	NOT
19	Cash on Delivery	COD	COD	Facility Cash on Delivery Account	COD
20					
21					

OMNI-TX00027636



Account Codes

2006

- COL: (corporate recovers)
- PHARM: (at pharmacy level)
- NAT: (National Account)

-----Original Message-----

From: Bindas, Patty [mailto:██████████@██████████]
Sent: Monday, November 27, 2006 8:11 AM
To: Summers, Vicki; Belville, Janna; S██████████, Becky; Kubiak, Judy; Rocklin, Michele; Requistas, Raul; Weldon, Janie; Silver, Michelle; Moore, Marguerite
Cc: Ruscher, Susan; Burd, Patricia
Subject: FW:

Please see November's spreadsheets with a list of accounts for the pharmacies, I will need for you to once again label the accounts with the following acronyms: **COL (corporate recovers-Patty Bindas)**, **PHARM (at pharmacy level; include arrangements)**, **NAT (National Account)**. If there are any questions or concerns, please do not hesitate to call me. I will need this back ASAP.

Thanks,
Patty Bindas
Corporate Credit & Collections
Omnicare, Inc.

OMNI-TX00042011



Pharmacy Management

“Do NOT immediately suspend services.”

National Account

Grant Park (Shoreline Healthcare Mgmt.)

From: Woodside, Jeff
To: Parsons, Steve; Grauer, John; Glaze, Mark; Eremento, Christine; Hartman, Kimberly
CC: Baumann, Darren; Chominski, David; Terzaghi, Elma; Parsons, Kevin; Carpp, Jeff; Richow, Richard; Keefe, Pat
Sent: 10/23/2008 7:49:35 PM
Subject: RE: Grant Park

URGENT. PLEASE READ IMMEDIATELY.

This facility is a part of a 59 facility group for which we provide pharmacy services throughout the country. In addition, we are in an RFP process competing with PharMerica to retain this 59 and potentially secure an additional 59. Do NOT immediately suspend services. I understand your concerns and agree that termination is what may ultimately occur but we will do so in an orderly manner.

\$175K is significant but we must consider this decision relative to the much more significant revenue stream and A/R on the pharmacy side. I have copied additional folks to weigh in as they may choose and I have sent an urgent request to Shoreline to provide assistance in getting a payment plan agreed to. Please stand by.

Thanks.

Jeff

From: Parsons, Steve
Sent: Thursday, October 23, 2008 3:32 PM
To: Grauer, John; Glaze, Mark; Eremento, Christine; Hartman, Kimberly
Cc: Woodside, Jeff; Baumann, Darren; Chominski, David; Terzaghi, Elma; Parsons, Kevin
Subject: RE: Grant Park

Immediately suspend services. Today. No deliveries. We need to plot to retrieve our equipment. Keep the equipment billing until we physically pick it up.

OMNI-TX00105110

“\$175K is significant but we must consider this decision relative to the much more significant revenue stream and AR”



National Accounts – Do Not Work

“You cannot work
any NAT accounts
unless specifically
requested to do so.”

From: Mcelroy, Kimberly
Sent: Wednesday, October 28, 2009 8:12 AM
To: Shields, Cathleen
Subject: RE: Cash to Goal Analysis 10.09

You cannot work any NAT accounts unless specifically requested to do so. Even though there are no notes in the system, do not assume no one is working them. The KAM's and Sr. VP's are working on these accounts and will not place notes in the system because they do not actually use the system when they discuss the accounts with the corporate offices.

Regarding REG accounts, we discuss those on our conference calls and it should be clear who is responsible for the relationship; in your area it is primarily Hank or Sam.

Kimberly McElroy
National Facility Credit & Collections Manager
Omnicare, Inc.
100 E RiverCenter Blvd
Covington, KY 41011
Ph. 859-392-3498



From: Richow, Richard
Sent: Wednesday, August 22, 2007 9:18 AM
To: Ruscher, Susan
Subject: FW: Sovereign July 0707
Importance: High

Who is calling on the Sovereign accounts (Florida)

National Account – Do Not Call

Sovereign Health Care

Key Account
Manager
("KAM")

-----Original Message-----

From: Timmons, Gina
Sent: Wednesday, August 22, 2007 9:13 AM
To: Richow, Richard
Cc: Carelli, MaryLou
Subject: FW: Sovereign July 0707
Importance: High

Richard – I need a favor

Please remind your corp collection team NOT to call a national account customer for collections issues without notifying the KAM in advance. If your team discusses issue with KAM, many times we can set up proper meeting landscape and remove the emotion of an unexpected call. Sovereign is one of our customers who does pay every month, and we have had many billing issues in FL on our side over the past 12 months. Short pays are being addressed by pharmacies who still need to do some write offs, credits and so forth.

Please have the Sovereign corp collections agent contact Marylou directly so that we can review your materials and help you collect the money more efficiently. We will do our best for you.

Gina

“Please remind your corp collection team NOT to call a national account customer for collections issues”



As of August 2008, Genesis HealthCare facilities owed over \$1.7 million past-due over 180 days.

National Account – Stop Calling

Genesis HealthCare

From: Richow, Richard
Sent: Monday, March 26, 2007 10:26 AM
To: Ruscher, Susan
Subject: FW: OmniCare Invoices

Susan -
Please see below and make sure we are not calling any GHC accounts...

This information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material, the disclosure of which is governed by applicable law. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and destroy the materials contained in this message.

-----Original Message-----

From: Timmons, Gina
Sent: Monday, March 26, 2007 8:44 AM
To: Richow, Richard
Subject: FW: OmniCare Invoices

Hi Richard –
I need your help.

Please ask all of the corp and regional collections people to stop calling Genesis Healthcare.
Pat and Jeff Stamps are actively working to clear old balances from 2006 that were short paid. We have a commitment from their CEO to pay back nearly \$700K in short pays and we are now working on the resolution plan and application.

Generally speaking, nobody from the field should ever be calling a national account about balances – please advise collectors to contact the KAM directly before calling a national customer.

I will take care of Joe and John at Genesis.
Gina

OMNI-TX00013548

KAM

“Please ask all of the corp and regional collections people to stop calling Genesis Healthcare.”



From: Austin, Wendy
To: Sheets, Julie
CC: Burd, Patricia; Ruscher, Susan
Sent: 10/24/2006 3:42:17 PM
Subject: RE: McKinley Health Care Center, 6128
Attachments: AR 033106 Care Centers settlement.xls; FW Care Centers AR 3-06.htm; image001.gif

Julie

Yes it is and a very sensitive account they have worked with our corporate office very closely in the past and I have been told hands off. They have recently settled the account and several others with Care Centers. I will forward you a copy of the e-mail etc. Again, I am not aware of you working our accounts and afraid we might be duplicating our efforts.

Wendy Austin, MBA
Regional Collections Manager
Great Lakes Region-Omnicare
419-661-2200 ext. 3204

-----Original Message-----

From: Sheets, Julie
Sent: Tuesday, October 24, 2006 11:37 AM
To: Austin, Wendy
Cc: Burd, Patricia
Subject: McKinley Health Care Center, 6128

Wendy,

I spoke with Stacy @ McKinley Health Care and she informed me that their corporate office is in Chicago, under Care Centers Inc. Stacey also informed me that Care Centers Inc has 75 other facilities. Before I go any further, can you verify that McKinley is a national account?

Thank You,

Julie Sheets

Corporate Regional Account Specialist, II
Omnicare Corporate Credit / Collections
1600 RiverCenter II
100 East River Center Blvd.
Covington, KY. 41011
Phone: 859-392-7486
Fax: 859-392-3692
Email: julie.sheets@omnicare.com

OMNI-TX00049398

National Account – Hands Off

McKinley Health Care
Center (Care Centers of
America)

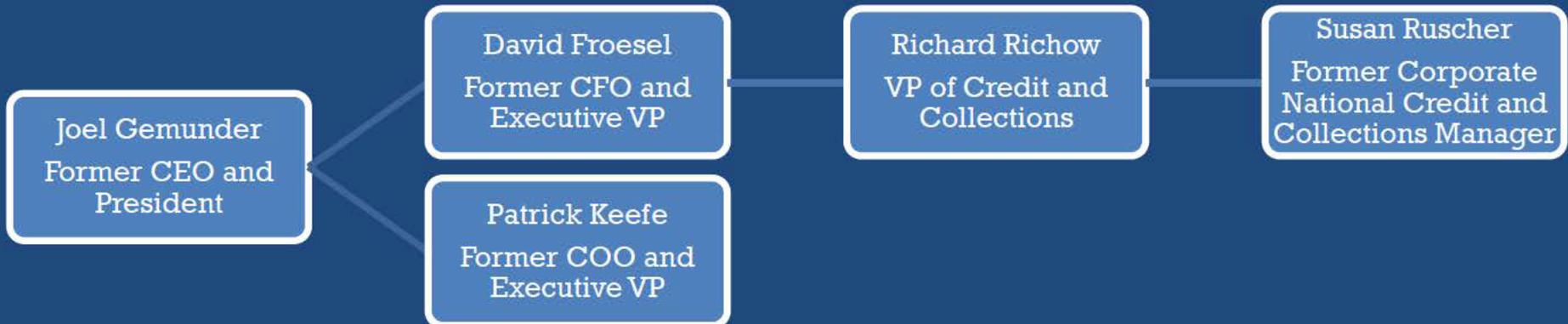
“I have been
told hands off.”

As of August 2008,
Care Centers of
America facilities
owed nearly \$5
million past-due
over 180 days.



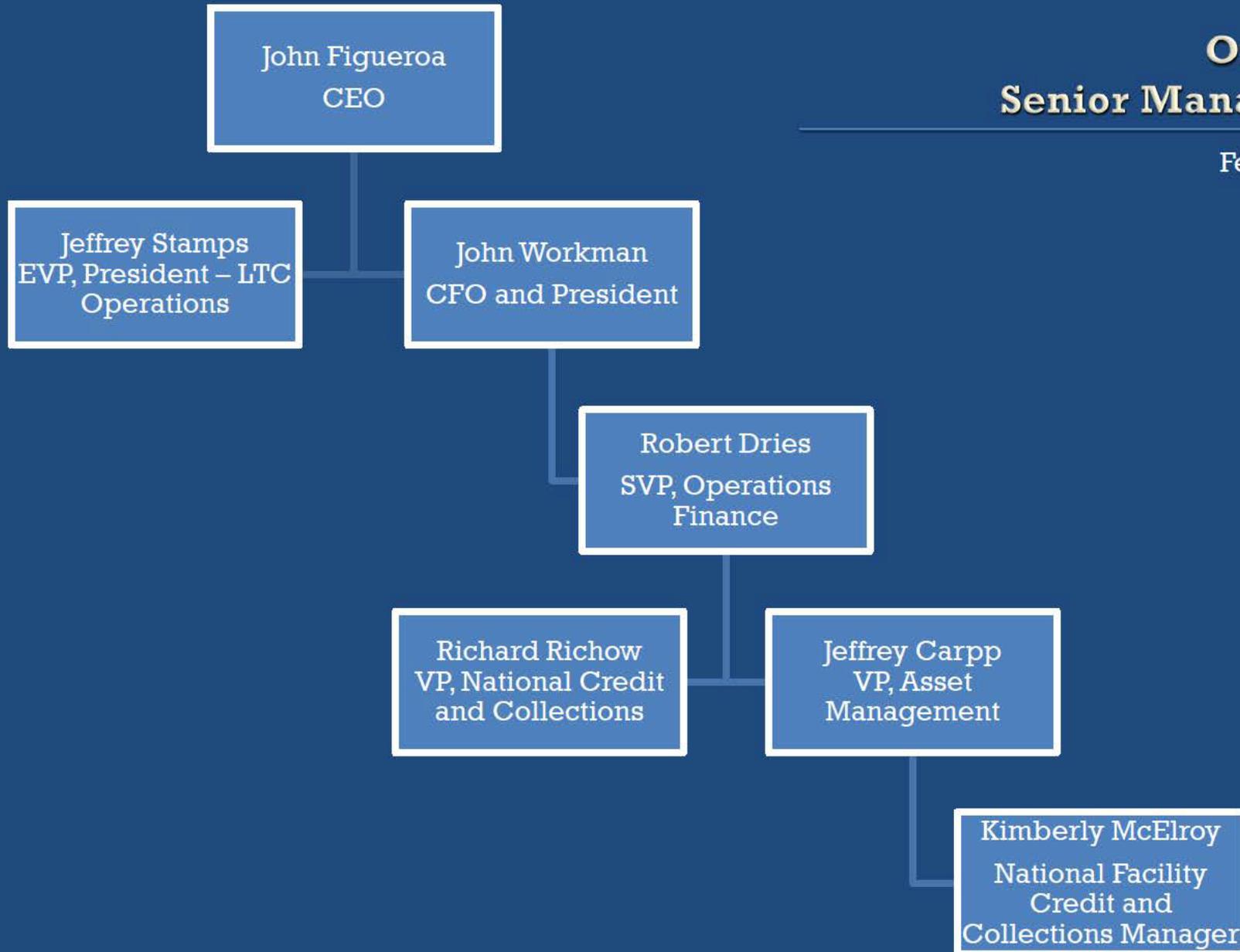
Omnicare Senior Management

August 2008



Omnicare Senior Management

February 2011



National Account

Family Senior Care

“The Family Senior Care facilities we service are now over 2 million dollars.”

From: Eubanks, Angela
Sent: Friday, September 05, 2008 8:57 PM
To: Robbins, Brenda
Cc: Weston, Jack; West, Dave; Vess, Ed
Subject: 08-2008 - Delinquent -National Accounts-SPADX.XLS

Is there anything that anyone can do to help with the National Accounts? If we did not have delinquent national accounts at Pharmacy Consultants, our delinquent \$\$ would be less that 300,000.00. The Family Senior Care facilities we service are now over 2 million dollars.

Thanks

Angela B. Eubanks "Angie"

Director of Clinical Intervention Center (CIC)-Spartanburg / Central Billing Center-Manager-Spartanburg

Phone: 864-574-5220 ext 224

Fax: 864-574-7631

Angela.Eubanks@omnicare.com

OMNI-TX00114227



National Account

Parkview Manor (Shoreline Healthcare
Mgmt.)

From: Davis, Felicia
Sent: Wednesday, June 10, 2009 9:03 AM
To: Phillips, Pamela
Subject: Shoreline facility - Parkview Manor, CIHDX F7007

Pam,

Private pay collector, Angelo Yecco, has asked if we can bill this facility for a patient's medicine. This patient applied for Medicaid but has been denied due to being above assets with property that is owned. The brother of the patient is expected to pay her bills from the assets of the property but has not. She is indigent otherwise. The business office manager, Benita, has asked to be able to take responsibility of the patient's pharmacy bills so we will continue to service. Otherwise this patient will be without meds. Please verify if Shoreline (or their contracts) will allow the facilities to assume responsibility for the patient's bills. This patient has an average run rate of \$460 (only recently increased). The facility has an open balance of \$557,470.37. Thank you for your assistance.

Best Regards,

Felicia Davis
Facility Collections Analyst
Omnicare, Inc.
100 E. RiverCenter Blvd.
Covington, KY 41011
Phn: 859-392-9035
Fax: 859-392-3692
Email: felicia.davis@omnicare.com

“The facility has an
open balance of
\$557,470.37.”

OMNI-TX00009642



“They owe \$323,683.47
90 days plus”

National Account

Rosewood

From: Simonton, Stanley
To: Ruscher, Susan
CC: Burd, Patricia
Sent: 5/8/2007 3:46:11 PM
Subject: FW: Rosewood facility
Attachments: ROSEWOOD0407.doc

“Who is handling
Rosewood? It seems
everyone is worried
about small
accounts when we
should be worrying
on large accounts.”

This is listed as a National Account. They owe \$323,683.47 90 Days plus

Stan

-----Original Message-----

From: Soberalski, Fran
Sent: Tuesday, May 08, 2007 10:43 AM
To: Simonton, Stanley; Alonzo, Bob
Cc: Sonnier, Carolyn; Hartley, Pam; Herrera, Joann
Subject: Rosewood facility

Who is handling Rosewood? It seems everyone is worried about small accounts when we should be worrying on large accounts. This account is going to end up just like Avalon place.

What is wrong with this picture? No payments for 2 years? If you remember Carolyn when I have tried calling regarding their bill they ask, why am I calling? Someone at corporate is handling their account.

Fran Soberalski A/R Manager

Omnicare San Antonio

OMNI-TX00026754



EXTENDICARE

3000 Staeles Avenue East, Markham, Ontario L3R 9W2
Tel: (905) 470-4000 Fax: (905) 470-5588

NEWS RELEASE

FOR IMMEDIATE RELEASE

November 6, 2008

Extendicare REIT Announces 2008 Third Quarter Results

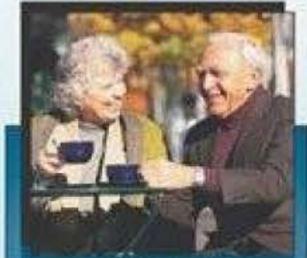
MARKHAM, ONTARIO – Extendicare Real Estate Investment Trust (“Extendicare REIT” or the “REIT”) (TSX: EXE.UN) today reported 2008 third quarter results with the following highlights:

- EBITDA for Q3 2008 of \$51.6 million versus \$50.2 million in Q3 2007 and \$45.4 million in Q2 2008.
- Continued improvement in average Medicare Part A and HMO/CI rates, up 6.9% and 11.6%, respectively, from Q3 2007 mainly due to inflationary increases and higher average acuity levels among Medicare patients served.
- Increase in same-facility skilled mix census to 23.7% from 22.6% in Q3 2007 attributable to a continued increase in the number of HMO/insurance clients.
- Effective October 1, 2008, received 3.4% market basket increase in Medicare Part A rates.
- Distributions of \$0.0925 per unit per month declared for each of November and December.

As of August 2008, Extendicare homes owed more than \$1 million to Omnicare past-due over 180 days, yet Extendicare announced increased earnings in November 2008.



Anterbury
Gardens



ASSISTED
LIVING FOR
INDEPENDENT
SENIORS

an
EXTENDICARE
Facility



National Accounts – Do Not Call

If you call, then apologize.

From: Burd, Patricia
To: Wilke, Karen; Baker, Diane; Bindas, Patty; Brumleve, Cathy; Burd, Patricia; Duffy, MaryJo; Hobbs, Richard; Kelley, Patrick; Ledford, Wes; Metz, Kelly; Peterson, Robert; Phillips, Billy; Risby, Kindra; Sheets, Julie; Simonton, Stanley
CC: Ruscher, Susan; Billman, Joann
Sent: 11/15/2006 6:51:11 PM
Subject: National Accounts

Good afternoon all,

Since facilities are being added continuously to National Accounts and it is very difficult to keep them straight, please on every call, ask the following question before you begin your initial talk-off:

“Are you affiliated with a major group or national chain? If so, which one?”

If you find out they are with a National Chain, **do not under any circumstance**, continue with collection efforts – apologize for the error and end the call.

Please print this out and put it by your computer so you remember to ask this question on any and all accounts you call on.

Thank you so much.
Have a great day!!

Patti Burd
Facility Collections Lead
Omnicare Corporate Credit / Collections
100 East River Center Blvd.
Covington, KY. 41011
Telephone: 859-392-3680
Fax: 859-392-3692
E-mail: Patricia.Burd@omnicare.com

OMNI-TX00019894

“If you find out they are with a National Chain . . . apologize for the error and end the call.”



“Inducement Team” at Work

FiveStar Quality Care

-----Original Message-----

From: Ruscher, Susan

Sent: Wednesday, March 19, 2008 2:52 PM

To: Richow, Richard

Cc: Murray, Candice

Subject: Five Star

“[H]e agreed to pay the run rate plus.”

Richard,

Candy and I had a conference call with Five Star on Friday. Fran Murphy from Five Star was on, along with Lori Travis. Before Fran got on, Lori asked us to keep it very friendly and customer service oriented. Lori said that she just wanted to make sure that things were going well and I advised that I wanted to discuss the a/r. She advised me that if I did I needed to keep my tone down and not to upset Fran. I told her that we only received part of the run rate and he agreed to pay the run rate plus. Fran then joined the call and he and Lori chatted for a while about various things, I suggested that we needed to discuss the accounts and payments. I advised Fran that we had not received the run rate plus as agreed.

He said that he did mail additional payments, but they had just been mailed and we would be receiving them. I explained

that they would fall into the next month due to the date they would be received and they added up to less than the run rate.

Lori advised him not to worry that we always make billing errors and she was sure that credits would be due and it was fine

not to pay the total run rate. I said that he needed to pay it and she told him not to worry it was fine and proceeded to say,

Susan, you know we always make errors. I said I would look for the payments to come in and we would talk next week. We ended the call.

Five Star owes us a lot of money and I need to be able to discuss payment arrangements on the phone and talk about the account and getting the past due paid. If anyone tries to discuss payment options at all, they want a new collector on it.

How do you wish us to proceed.

“[KAM] advised him not to worry that we always make billing errors ... it was fine not to pay the total run rate.”

OMNI-TX00092477



Sample Spreadsheet

Vital

FACILITY NAME	TOTAL DUE	180 DAYS PLUS	COLLECTIONS PORTFOLIO
PINE VALLEY	1,020,381.52	781,136.59	PHOLD
L'DOR ADULT HOME	157.70	146.24	PHOLD
LETCHWORTH	7,741.93	3,284.01	PHOLD
SOMERS MANOR	341,507.41	94,954.46	PHOLD
TEST FACILITY	0.08	0.00	PHOLD
GREEN HILLS	17,116.12	11,618.85	PHOLD
KATERI RESIDENCE	587,324.43	507,704.09	PHOLD
ST. TERESA'S NURSING HOME	513,038.58	433,793.23	PHOLD
ST. JOSEPH'S PLACE @ BON SECOURS COMM.HOSPITAL	143.60	143.60	PHOLD
PARK MANOR REHAB & HEALTH CTR	74,638.32	7,409.63	PHOLD
KATERI SUBACUTE	787,701.49	623,112.35	PHOLD
CLUE 1	348.40	104.18	PHOLD
BETHEL NURSING HOME	140,681.49	80,153.38	PHOLD
BETHEL CROTON	899,635.13	669,615.53	PHOLD
JEANNE JUGAN NURSING HOME	5,298.47	3,370.46	PHOLD



National Account

Five Star Quality Care

3/15/07: “[T]hey haven’t paid us since 4/14/06.”

-----Original Message-----

From: Baron, Shannon

Sent: Thursday, March 15, 2007 3:02 PM

To: Jankowski, James; Ruscher, Susan

Cc: Richow, Richard; Evans, Ron; Meyer, Malcolm

Subject: RE: Contract for MillCroft (five star)

From the local level we have not made any collection contacts on the National Accounts.

If you want we can contact them, they haven’t paid us since 4/14/06.

Shannon

OMNI-TX00042849



National Account

FiveStar Quality Care

From: Ruscher, Susan
To: Richow, Richard
CC: Carpp, Jeff
Sent: 5/29/2008 8:03:36 PM
Subject: FW: Call-Five Star

“Pat and Dave are working on a new contract with Five Star”

Richard,

Fyi.....

Lori Travis called me and said that Pat and Dave are working on a new contract with Five Star and they are putting the Sunrise invoices in the contract and so I should not discuss them at all. I advised Lori that they should be within terms to draft a new contract. She said that there terms are 60 days and they have never paid in 60 days and it is up to Pat and Dave. She said that I should not discuss the old a/r.

“I should not discuss the old a/r.”

I need to collect the a/r, that is the reason for the call. Please advise.

Susan Ruscher
Omnicare Inc.
National Facilities Credit/Collection Manager
1600 River Center II
100 East River Center Blvd
Covington, KY 41011

Ph# (859) 392-3343
Cell# [REDACTED]
Fax# (859) 392-3692

OMNI-TX00098898



“Please do not call upon the facilities in your region to discuss resolution of their accounts as this is being handled on a higher level.”

National Account – Do Not Call

FiveStar Quality Care

From: Mcelroy, Kimberly
Sent: Tuesday, August 26, 2008 1:51 PM
To: Holland, Anita
Cc: Carpp, Jeff; Richow, Richard
Subject: Five Star Accounts

Anita- The Five Star relationship is being handled solely by Jeff Carpp, VP of Asset Management. Please do not call upon the facilities in your region to discuss resolution of their accounts as this is being handled on a higher level.

If you have any questions, please feel free to contact me.

Thank You

Kimberly McElroy
National Facility Credit & Collections Manager
Omnicare, Inc.
100 E RiverCenter Blvd
Covington, KY 41011
Ph. 859-392-3498

'Partnering for Resolution'

OMNI-TX00108404



\$570,000
- \$120,000
\$450,000
owed to Omnicare

National Account

FiveStar Quality Care Settlement Agreement
Dated 12/31/08

WHEREAS, Five Star Facilities have outstanding accounts receivable with respect to Pharmacy Products and Services provided by Omnicare Pharmacies in the aggregate amount of approximately \$570,000.00 for the period through December 31, 2007 (the "Accounts Receivable");

WHEREAS, Five Star has alleged overcharges to Five Star Facilities in the aggregate amount of approximately \$120,000.00 with respect to Pharmacy Products and Services provided by Pharmacy for the period through December 31, 2007 (the "Alleged Overcharges");

OMNI-TX00003072

5. Settlement Payment. The payments that the parties are obligated to make pursuant to Sections 4 and 5 shall be made through the payment by Omnicare to Five Star of \$4,000.00 (the "Settlement Payment"). The Settlement Payment shall be paid by check or wire transfer within thirty (30) days following the date of full execution of this Agreement.

OMNI-TX00003074

\$4,000 paid to Five Star



From: Burd, Patricia
To: Yowler, Jennifer; Arnstein, Craig; Battaglia, Tim; Bifano, Stephanie; Bonomini, Randy; Butler, Carmen; Carlton, Chris; Coates, Erika; Daugherty, Michelle; Drapp, Marc; Garrett, Jeff; Gates, Steven; Guin, Chris; Lambers, Dan; LeBrun, Andrea; McCammond, Fern; Meyer, Greg; Mitchell, Scott; Morgenthaler, Lisa; Niekamp, Todd; Okamoto, Martha; Pockington, Andrew; Rivera, Cheryl; Schultz, Corey; Shellabarger, Scott; Sheraden, Jim; Toohey, Mike; Vix, Gary; Wamsley, Neal; Wertheimer, Amy
CC: Ruscher, Susan
Sent: 4/24/2007 8:08:42 PM
Subject:
Attachments: phold accounts 4-24-07.xls

Good afternoon,

Attached is a list of facility accounts that have a balance over 180+ days old but the pharmacies have instructed our Corporate Facility Collectors not to work them; the pharmacies state they currently are working the accounts, these are coded by our Corporate Collectors as "PHOLD". You'll notice there is a tab for all DX accounts and another tab for all Oasis accounts. Our procedure, here at Corporate, is to work all accounts that have a 180+ day balance outstanding, except for National Accounts. There are circumstances in which the pharmacies are currently working on arrangements with some of these facilities, which is fine, but if the 180+ delinquent A/R is not decreased month to month, then the account must be turned over to Corporate Facility Collections to move forward in the collection process. As you can see below, there is a large amount of money that is over 180 days delinquent that Corporate Facility Collections is not permitted to collect:

In DX, we currently have \$56,083,148.25 with a "PHOLD" status
In Oasis, we currently have \$16,563,465.00 with a "PHOLD" status
TOTAL = \$72,646,613.25 with PHOLD statuses

I need for you to forward this on to all of your pharmacies instructing them to put what payment arrangements they currently have with each facility to reduce the 180 A/R. The updated sheets need to be sent back to me by the end of this week (April 27th). I will be sending these to you monthly and comparing each months' accounts to make sure the 180 A/R is, in fact, being decreased.

If you should have any questions, please feel free to contact me.
Thank you in advance for your cooperation.
Have a great day!

Patti Burd
National Facilities Credit / Collection Lead
Omnicare Corporate Credit / Collections
100 East River Center Blvd.
Covington, KY. 41011
Telephone: 859-392-3680
Fax: 859-392-3692
E-mail: Patricia.Burd@omnicare.com

OMNI-TX00027768

P-Holds – Do Not Work

Over \$72 million owed over 180 days
past due as of April 2007.

Attached is a list of facility accounts that have a balance over 180+ days old but the pharmacies have instructed our Corporate Facility Collectors not to work them . . . these are coded . . . as "PHOLD".



P-Holds – Do Not Move Forward

From: Bindas, Patty
To: Ruscher, Susan
CC: Richow, Richard
Sent: 12/7/2006 7:08:47 PM
Subject: FW:
Attachments: Independant Health Care - DX 1.xls

I was advised by the pharmacy not to move forward with four accounts due there sensitive nature. I have attached the spreadsheet, so you can take a look at the receivables.

Thanks,
Patty Bindas
Corporate Credit & Collections
Omnicare, Inc.
1600 RiverCenter II
100 East RiverCenter Blvd.
Covington, Kentucky 41011
859/392-3418 phone
859/392-3692 fax
patty.bindas@omnicare.com

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From: Becky Seeman [mailto:becky.seeman@omnicare.com]
Sent: Wednesday, December 06, 2006 11:42 AM
To: Bindas, Patty
Subject: FW:

The 4 with pharmacy are just very touchy accounts so we will handle anything from here.

Thanks

OMNI-TX00042011

“I was advised by the pharmacy not to move forward with four accounts”

Pharmacy representative



As of August 2008, Avamere facilities owed over \$1.5 million past-due over 180 days.

Regional Hold – Do Not Call

Avamere Homes

From: Shelley Williams [mailto:shelley.williams@omnicare.com]
Sent: Friday, March 02, 2007 2:29 PM
To: Niemeyer, Shelby
Cc: Card, Sheree; Anderson, Susie; Egan, Brian; Ng, Main; Vix, Gary; Solaro, Anthony
Subject: Avamere Homes

Shelby-

It is imperative that we do not collect on the AVAMERE HOMES.... These accounts are being handled at the Pharmacy level. Payment arrangements have been made with this group of homes. Please do not call them....

Shelley Williams

Evergreen Pharmaceuticals,

An Omnicare Company

Collections Manager

Direct Phone: 425-814-1806

Fax: 425-820-9407

“Please do not call them”

OMNI-TX00015977



Regional Hold

Millennium Management owed over \$10 million as of February 2009.

“They owe well over \$10M.”

Florida
Regional VP

From: Bailey jr, Dale
To: West, Dave
Cc: Cruse, Amanda
Sent: Mon Feb 23 12:20:15 2009
Subject: Millennium Management
Dave,

Amanda Cruse and I have been looking at the Millennium Management regional group. They owe well over \$10M. We were under the impression that somebody is working the relationship. I just wanted you to confirm this.

Thanks,
Chip Bailey
Facility Collections Analyst
Omnicare, Inc.

OMNI-TX00108496



Pharmacy Billing
Manager

Omnicare
Regional Analyst
(Corporate
Collector) under
Ruscher

“We are trying not to
rock the boat too much . .
. we don’t want to lose
the accounts.”

From: Mcleod, Nicole
Sent: Tuesday, October 02, 2007 1:50 PM
To: Brumleve, Cathy
Subject: RE: Premier Rehab - LA Pharmed IV

Cathy,

I have been working with this account trying to get them back current. They are paying current because that is what our general manager wants them to do at this point. This account was going through Medicare audit so their payments were being held and that is why we were not getting paid. It is my understanding that once the money is released they will pay us the old balances. I can never get an answer as to when this will happen. We are trying not to rock the boat too much on this account as long as they are keeping current because we also service another facility that is associated with this one and we don’t want to lose the accounts. I will keep you updated on any new developments.

Thanks
Nicole

SR000002



Omnicare Regional Analyst (Corporate Collector) under Ruscher

Pharmacy General Manager (Nicole's supervisor)

“I understand you . . . do not want to scare them off by demanding payments on the outstanding Invoices.”

From: Brumleve, Cathy
Sent: Monday, October 22, 2007 4:11 PM
To: Waters, Tim
Subject: RE: Premier Rehab - LA Pharmed IV

Hi Tim,

Yes & no. Clearing all aged AR on the books is priority to senior management before year end.

Since the facility is caught up to their September invoice will they start making payments towards the oldest invoices?

Is it possible for them to pay the current invoice as well as a "partial" payment on the oldest invoice working forward to clear the aged invoices? Otherwise I don't see where they will ever get caught up only paying current invoices.

I understand you are trying to work with the facility & do not want to scare them off by demanding payments on the outstanding Invoices.

If at any time you would like corporate to help, we have several options to help them bring their accounts current yet not overwhelm them.

I currently have the account on a "PHOLD" which means the pharmacy is working with the facility on a payment plan.

Thank you for the update on the account.

Cathy

SR000001



Inducement

From: Ruscher, Susan
To: Hart, Kerry
CC: Richow, Richard; Wilke, Karen; Billman, Joann
Sent: 8/20/2007 2:39:05 PM
Subject: RE: Marathon
Attachments: Copy of Marathon 8-9-07.xls

Kerry,

Please keep in mind that you cannot discuss the past due balance and a new contract at the same time. They must contact me for payment arrangements on the old balance, which Ed had agreed to do a note on. Once we have established how they are going to pay us back, then you can draft a new contract. I want to make sure that what is discussed cannot be construed as inducement. Also, please confirm that the 60 day notice sent on 6/22/07 is being withdrawn. Marathons current balance is **1,698,478.70**, if I do not have a signed note by 8/28/07, I will have no alternative but to litigate as the balance is significant. Please advise.

Thanks,

Susan Ruscher
Omnicare Inc.
National Facilities Credit/Collection Manager
1600 River Center II
100 East River Center Blvd
Covington, KY 41011

Ph# (859) 392-3343
Fax# (859) 392-3692

“[Y]ou cannot discuss the past due balance and a new contract at the same time.”

“Once we have established how they are going to pay us back, then you can draft a new contract. I want to make sure that what is discussed cannot be construed as inducement.”

OMNI-TX00036959



Inducement

Do not collect past-due balance if renewing contract.

“[P]er Richard Richow trying to renew contract with them so do not call.”

From: Niemeyer, Shelby
To: [REDACTED]
CC: LeBrun, Andrea; Ruscher, Susan; Mendola, Lisa; Peterson, Robert
Sent: 9/12/2007 6:10:17 PM
Subject: Accounts turned over to Hank
Attachments: Medworld and Shore spreadsheets.xls

Hank,

I have attached a spreadsheet for Medworld and Shore I have changed what little I had to work to PHOLD for you to work with the rest of your accounts. FYI Catholic Charities is highlighted in Blue that is coded PHOLD but per Richard Richow trying to renew contract with them so do not call. Just make a note.

Happy Collecting J

Shelby Niemeyer
Omnicare Corporate
Facilities Credit / Collections
100 East River Center Blvd.
Covington, KY. 41011

OMNI-TX00030394



Inducement

Renewing Contract – Do Not Collect.

	AK	AL	AM	AN	AO
1	COLLECTIONS DATE	COLLECTIONS PORTFOLIO	CHAIN	CORP_ID	FACILITY NAME
2		PHOLD	3816		TCC SHORT TERM REHAB
3		PHOLD	3816		TERENCE CC SUBACUTE
4		PHOLD	945		MARY MANNING WALSH HOME
5		PHOLD	3816		TERENCE CC ANCILLARY
6		PHOLD	3816		TERENCE CC OPD
7		PHOLD	3816		TCC SPECIALTY
8		PHOLD	3816		TCC DISCREET
9		PHOLD	3816		TERENCE CARDINAL COOKE SNF
10		LEGAL	2808		CABRINI HOSPICE
					OMNI-TX00030424

	AP	AQ	AR
1	NOTES		
2	09/12/07 PER RICHARD RICHOW DO NOT WORK RENEWING CONTRACT		
3	09/12/07 PER RICHARD RICHOW DO NOT WORK RENEWING CONTRACT		
4	09/12/07 PER RICHARD RICHOW DO NOT WORK RENEWING CONTRACT		
5	09/12/07 PER RICHARD RICHOW DO NOT WORK RENEWING CONTRACT		
6	09/12/07 PER RICHARD RICHOW DO NOT WORK RENEWING CONTRACT		
7	09/12/07 PER RICHARD RICHOW DO NOT WORK RENEWING CONTRACT		
8	09/12/07 PER RICHARD RICHOW DO NOT WORK RENEWING CONTRACT		
9	09/12/07 PER RICHARD RICHOW DO NOT WORK RENEWING CONTRACT		
10	08/21/07 snt cia aprvl to paul meyeroff today		
			OMNI-TX00030425

“09/12/07 Per Richard Richow Do Not Work[.] Renewing Contract”



From: Erin Wilson [mailto: [REDACTED]]
Sent: Thursday, September 11, 2008 3:37 PM
To: Raabe, Barbara
Cc: [REDACTED] Kathleen Flack
Subject: FW: Med World accounts that Pharmacy works

Barbara,

Below is an email that Michael Rosenblum had forward to Richard regarding facilities the pharmacy does not want us to work, we have not heard anything since. In the past we have worked with the pharmacy on these accounts but the communication back to us has been slowing down drastically. Since the requirement of the signed document we have not been able to gain any information.

OMNI-TX00108088

From: Lindstrom, Michele
To: Richow, Richard
Cc: Rosenblum, Michael
Sent: Thu Sep 11 08:25:11 2008
Subject:
Richard,

Attached is a list of out group homes that you requested. In New York State, Medicaid in a Group Home could take as long as 1-2 years to get. The home, because it is a group home, it is a group of people and the agency receives no funding for medications. Most of these people receive \$80.00 a month for living incidentals. If we stop servicing several of these individuals, we risk losing the entire agency. This holds true to Adult Homes as well. Example: Green Hills will go to our competitor, ChemRx. Green Hills accounts for \$150,000 in revenue.

Michael Rosenblum

*Michele Lindstrom
Billing Manager
Med World Pharmacy
Phone: 845-371-8618
Fax: 845-356-2288*

“If we stop servicing several of these individuals, we risk losing the entire agency. . . . Green Hills will go to our competitor, ChemRx.”

OMNI-TX00108089



Michael Rosenblum

Accounts on HOLD for fear of losing revenue.

“He wont [sic] let me touch it. This is the account he just emailed back and said NO!”

From: Niemeyer, Shelby
To: Ruscher, Susan
CC: Peterson, Robert
Sent: 8/29/2007 2:45:00 PM
Subject: Queens Center CHSDX

Susan, Is there anyway to get Richard involved in this account maybe have him call Michael Rosenblum to see whats going on? He wont let me touch it. This is the account he just emailed back and said NO! The last payment was 06/08/07

Customer code : 349 QUEENS CENTER Facility#: 349

Patient# :

INVOICE#	DATE	AMOUNT	DUE	0-30	31-60	61-90	91+
1. PH12120	02/28/06	-1655.84	-1655.84				-1655.84
2. PH35301	09/30/06	31246.04	31246.04				31246.04
3. PH38755	10/31/06	58521.29	58521.29				58521.29
4. PH42364	11/30/06	75714.08	75714.08				75714.08

OMNI-TX00017693



From: Ruscher, Susan
To: Bonomini, Randy
CC: Richow, Richard; Billman, Joann
Sent: 5/21/2007 1:55:27 PM
Subject: RE: Bridgewater Capitated Agreement

OMNI-TX00034457

Michael Rosenblum

Randy,

I do not know anything about this. All Promissory Notes must be written here at Corp. If there is an agreement I need to be made aware of it immediately. I will need back up documentation for the reason the write off as well as the amount to be placed in the note and the terms. Do you want to contact Michael Rosenblum or should I? Please advise.

“I do not know anything about this.”

From: Richow, Richard
Sent: Thursday, April 12, 2007 6:32 PM
To: Bonomini, Randy
Subject: RE: Bridgewater Capitated Agreement

This was negotiated by MR and he does not have a settlement agreement or anything in writing at this time.

“This was negotiated by MR and he does not have a settlement agreement or anything in writing at this time.”

This information transmitted is intended only for the person or entity to which it is addressed and governed by applicable law. Any review, retransmission, dissemination or other use of, or taking the intended recipient is prohibited. If you received this in error, please contact the sender and

-----Original Message-----

From: Bonomini, Randy
Sent: Thursday, April 12, 2007 8:40 AM
To: Richow, Richard
Subject: Bridgewater Capitated Agreement

Hi Richard,

Royal Care Malta NY recently finalized a capitated agreement with Bridgewater NH for delinquent AR per Michael Rosenblum. Is there anything in the agreement that requires them to pay the full amount due if they default on the agreed monthly payment plan? My understanding is Omnicare has agreed to write-off approx. \$175,000 of 2005 and older AR? Please advice.

Thanks,
Randy Bonomini
Regional Controller

OMNI-TX00034458



“[Y]ou do not want me to send you any flowers because the last person I sent flowers to got very, very sick.”

Michael Rosenblum

Threats to Collectors

From: Ruscher, Susan
To: Richow, Richard
CC: Niemeyer, Shelby
Sent: 5/4/2007 6:49:25 PM
Subject: mike Rosenblum

Richard,

Shelby and I were on a scheduled conference call with MedWorld. Lisa Mendola, Andrea LeBrun were on the call first and we discussed why we need answers for A/R over 180, then Michael Rosenblum joined the call. He immediately started rambling facility names stating that they were his and he was handling them and he had visits scheduled. Shelby asked where he was on the list and he said he started in the middle. He then said you name a facility and I will tell you the status. Michael said you do not want me to send you any flowers because the last person I sent flowers to got very, very sick. As Shelby was reading the facilities off, he would simply say he was working it and had a visit scheduled. I would advise him the amount over 280 days and he said well they don't have any money. Michael said something about losing the fucking beds. I explained that if they are paying a current invoice plus ½ and invoice it didn't put a dent in the a/r because the older invoices were higher. Potentially we could get a note, charge interest and at least they would be responsible for the note and we would be secured and they would have to pay current monthly. Shelby said we have to discuss all the accounts on PHOLD and Andrea said they didn't know what a PHOLD was, I said that those were accounts that the Pharmacy said they were working and Shelby asked them that if a payment doesn't come in on a pay plan do they call. She said that they didn't know they were suppose to. I said that I have to have an answer for all the accounts on PHOLD for Richard and Dave and Pat, Michael said what about Northeast Center? You tell them, Richard, Pat and Dave, them Mother Fuckers to get off there Mother Fucking asses and do something. He said to go tell Richard to get off his ass and call him. He then said this call is over, Andrea hang up and then he disconnected.

Shelby & Susan

Susan Ruscher
Omnicare Inc.
National Facilities Credit/Collection Manager

OMNI-TX00035286

“Michael said something about losing the f---ing beds.”



Individual Facility

Mountain View Healthcare



Omnicare

1600 RiverCenter II
100 East RiverCenter Boulevard
Covington, Kentucky 41011
859.392.3300
859.392.3333 fax

Only \$56,722
owed – in default.

July 20, 2006

OMNI-TX00052807

Ms. Michele Carney
Mountain View Healthcare
46 Main Road
Montgomery, MA 01085

The Corporate office for McClelland Home Health Pharmacy reviewed the account for the above stated facility. The balance stands at \$56,722.32 and is considerably past due.

Per this clause, we are informing you that the account is in default of the contract terms. In addition, information regarding default may be used on credit inquiries or reference requests received from other vendors. McClelland Home Health Pharmacy may also elect to consider further action to obtain payment for goods and services rendered if this situation is not resolved. Further action may include but is not limited to placement with a third party agency or an attorney.

“[W]e are informing you that the account is in default”



From: Sheets, Julie
To: Austin, Wendy
CC: Ruscher, Susan; Burd, Patricia
Sent: 10/26/2006 1:06:34 PM
Subject: Eastern Star, 21283
Attachments: image001.gif

“We cannot accept the 40-50% on the dollar.”

Wendy,

Susan spoke with Victoria (Royal Manor) regarding Eastern Star. We can not accept the 40-50% on the dollar. She is going to turn it over to her lawyer, and he is suppose to call us next week, when he gets back in town.

Eastern Star is a non profit organization. There are only 60 beds at this time, and they are slowly dissolving. Royal Manor is managing Eastern Star. There is the possibility that Eastern Star is headed for bankruptcy. We will wait, for now, to see what the lawyer says. In the mean time we need to know if there is any finance charges included in their balance. Can you get me that information?

Also, Susan wants me to ask you what you think about placing them on COD.

Julie Sheets

Corporate Regional Account Specialist, II
Omnicare Corporate Credit / Collections
1600 RiverCenter II
100 East River Center Blvd.
Covington, KY. 41011
Phone: 859-392-7486
Fax: 859-392-3692
Email: julie.sheets@omnicare.com

OMNI-TX00048374



Omnicare's Litigation & Termination Approval Form

Omnicare Inc.

Litigation & Termination Approval / Management Review

Law Firm Requested by Pharmacy: _____

Pharmacy Name: _____ Date: _____

Corporate (Legal) Name: _____ Facility or d/b/a Name: _____

Group Name (if Multiple Homes): _____

Service Date(s): _____ Number of beds: _____ Terms: _____

Last Payment Date/Amount: \$ _____ Total Annual Revenue: \$ _____ Gross Margin: 100% \$ _____

Aging information as of: \$ _____ Annual Medicaid Revenue: \$ _____ Medicaid Gross Margin: % \$ _____

Total Amount Owning: \$ _____ Annual Medicare Revenue: \$ _____ Margin: _____

Amount Beyond Terms: \$ _____ Annual Private Pay Revenue: \$ _____ Private Pay Gross Margin: % _____

Are Interest Charges included in Total Owning? Yes ___ No ___ Annual Third Party Revenue: \$ _____ Third Party Gross Margin: % \$ _____

Invalid Termination? Yes ___ No ___ If Invalid, # of months left in Term: _____ Lost Profit Amount: \$ _____

Total Amount of Suit: \$ _____ Recovery Estimate: % \$ _____

Reason(s): _____

Submitted by: _____

Attach additional notes/documentation if necessary

Director/Manager/ President of the Pharmacy _____ Date _____

Jeff Curpp _____ Date _____
VP of Asset Management

RCFO _____ Date _____

David W. Frosael _____ Date _____
Chief Financial Officer/SVP

RVP _____ Date _____

Pat E. Keefe _____ Date _____
EVP Operations

Inducement Analysis

Total Annual Revenue: \$ _____

Annual Medicaid Revenue: \$ _____

Annual Medicare Revenue: \$ _____

Gross Margin: 100% \$ _____

Medicaid Gross Margin: % \$ _____

Medicare Gross Margin: % \$ _____

Lost Profit Amount \$ _____





Omnicare, Inc.

MEMORANDUM

Date: August 12, 2008

To: Regional Vice Presidents
General Managers
Regional CFOs

From: Pat E. Keefe
Dave W. Froesel
Jeff Stamps

Subject: Pharmacy Collection Holds

[T]here will be No Pharmacy Collections Holds on any Facility or Private Pay accounts going forward.

This memo is to reiterate our new policy on Pharmacy Collection Holds. As mentioned in our conference calls in May and June 2008, there will be No Pharmacy Collections Holds on any Facility or Private Pay accounts going forward.

OMNI-TX00022033



Attempted Cover-Up

Account Codes – Can't Reflect Preferential Treatment

2009

From: Mincher, Lisa
Sent: Monday, January 05, 2009 2:48 PM
To: Raabe, Barbara
Cc: Mcelroy, Kimberly
Subject: RE: PHARM

They say it will take a couple of days for Dublin to distribute the program. They wrote in a way that I can call it from the scheduler. So as soon as it is out everywhere, I'll run the update. Right after that, I'll remove PHOLD as a selection.

Lisa Mincher
Enterprise Systems Architect, Analyst
Rescot Systems Group
Office: 724-654-4824
Cell: [REDACTED]

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From: Raabe, Barbara [mailto:barbara.raabe@omnicare.com]
Sent: Monday, January 05, 2009 2:41 PM
To: Mincher, Lisa
Cc: Mcelroy, Kimberly
Subject: PHARM

Lisa:

I discussed your concerns with Kim McElroy. She agrees that the new code PHARM should be Dunning Letter Yes. The chief concern was to get the accounts switched over to reflect no preferential treatment as soon as possible so if letting it go with the release will take care of that, we should be good. If I missed something, please let me know.

Thanks!

Barbara Raabe
National Outsourcing Private Pay Collection Manager
Omnicare, Inc.

OMNI-TX00108900

“I’ll remove PHOLD as a selection.”

“The chief concern was to get the accounts switched over to reflect no preferential treatment”



Debt Forgiveness Is Inducement

Coral Desert (P-Hold)

As of August 2008, Coral Desert owed Omnicare \$302,802.51 past-due over 180 days.

“OCR could be considered inducing them to buy from OCR because they are not paying OCR given their financial capabilities.”

From: Carpp, Jeff
Sent: Wednesday, February 24, 2010 4:03 PM
To: Wood, Mike
Cc: Brumlieve, Cathy; Moncur, Dean
Subject: Coral Desert

Mike,

I have reviewed the financials and below is my quick summary:

- Liquidity is ok at 1.13:1. I would like to have it higher but we can live with this
- Leverage is 3.11:1 which is very good for a privately held company
- They have been profitable for 2 of the last 3 years. The loss for FYE 2009 was only \$(6.3)k
- They have very good cash flow and there isn't any reason why they shouldn't be paying OCR current.

My concern is they have the financial ability and where with all to keep OCR current. Given their pay history and current past due, we need to roll this into a note and get them paying current. OCR could be considered inducing them to buy from OCR because they are not paying OCR given their financial capabilities.

Jeffrey L. Carpp
Vice President, Asset Management
Omnicare, Inc.
(859) 392-9065



Code of Federal Regulations

(e) *Accounting basis.* The cost data submitted must be based on the accrual basis of accounting which is recognized as the most accurate basis for determining costs. However, governmental institutions that operate on a cash basis of accounting may submit cost data on the cash basis subject to appropriate treatment of capital expenditures.

42 C.F.R. § 413.24(e) (2007).

(2) *Accrual basis of accounting.* As used in this part, the term *accrual basis of accounting* means that revenue is reported in the period in which it is earned, regardless of when it is collected; and an expense is reported in the period in which it is incurred, regardless of when it is paid. (See §413.100 regarding limitations on allowable accrued costs in situations in which the related liabilities are not liquidated timely.)

42 C.F.R. § 413.24(b)(2) (2007).

If liquidation does not meet these requirements, the cost is disallowed, generally in the year of accrual, except as

specified in paragraph (c)(2)(ii) of this section.

(i) *A short-term liability.* (A) Except as provided in paragraph (c)(2)(i)(B) of this section, a short-term liability, including the current portion of a long-term liability (for example, mortgage interest payments due to be paid in the current year), must be liquidated within 1 year after the end of the cost reporting period in which the liability is incurred.

(B) If, within the 1-year time limit, the provider furnishes to the intermediary sufficient written justification (based upon documented evidence) for nonpayment of the liability, the intermediary may grant an extension for good cause. The extension may not exceed 3 years beyond the end of the cost reporting year in which the liability was incurred.

42 C.F.R. § 413.100(c)(2)(i) (2007).



459 F.Supp.2d 692
United States District Court,
N.D. Illinois,
Eastern Division.

UNITED STATES of America, Plaintiff,
v.
Peter ROGAN, Defendant.

No. 02 C 3310. Sept. 29, 2006.

False Certification of Compliance with AKS in Cost Report Is Actionable Under FCA

United States v. Rogan

8 Falsely certifying compliance with the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), and Stark Statute, 42 U.S.C. § 1395nn, in a Medicare cost report is actionable under the FCA. *See United States ex rel. Thompson v. Columbia/HCA Healthcare Corp.*, 125 F.3d 899, 902 (5th Cir.1997) (“Columbia/HCA”); *United States ex rel. Schmidt v. Zimmer, Inc.*, 386 F.3d 235, 245 (3d Cir.2004)(“Zimmer”); *United States ex rel. Bidani v. Lewis*, 264 F.Supp.2d 612 (N.D.Ill.2003);



2006 Omnicare Corporate Integrity Agreement

Certifications

C. Certifications. The Implementation Report and Annual Reports shall include a certification by the Compliance Officer that:

1. to the best of his or her knowledge, except as otherwise described in the applicable report, Omnicare is in compliance with all of the requirements of this CIA;

Section V.C

2. *Reportable Events.*

a. Definition of Reportable Event. For purposes of this CIA, a “Reportable Event” means anything that involves:

- i. a substantial Overpayment; or
- ii. a matter that a reasonable person would consider a probable violation of criminal, civil, or administrative laws applicable to any Federal health care program for which penalties or exclusion may be authorized.

A Reportable Event may be the result of an isolated event or a series of occurrences.

b. Reporting of Reportable Events. If Omnicare determines (after a reasonable opportunity to conduct an appropriate review or investigation of the allegations) through any means that there is a Reportable Event, Omnicare shall notify OIG, in writing, within 30 days after making the determination that the Reportable Event exists.

Section III.H.2



2006 Omnicare Corporate Integrity Agreement

Disclosure Program

F. Disclosure Program.

Prior to the Effective Date of this CIA, Omnicare established a Disclosure Program that included a mechanism (e.g., a toll-free compliance telephone line) to enable individuals to disclose, to the Compliance Officer or some other person who is not in the disclosing individual's chain of command, any identified issues or questions associated with Omnicare's policies, conduct, practices, or procedures with respect to a Federal health care program believed by the individual to be a potential violation of criminal, civil, or administrative law. Omnicare shall continue to appropriately publicize the existence of the disclosure mechanism (e.g., via periodic e-mails to employees or by posting the information in prominent common areas).

Omnicare Corporate Integrity Agreement

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The Disclosure Program shall continue to emphasize a nonretribution, nonretaliation policy, and shall continue to include a reporting mechanism for anonymous communications for which appropriate confidentiality shall be maintained. Upon receipt of a disclosure, the Compliance Officer (or designee) shall gather all relevant information from the disclosing individual. The Compliance Officer (or designee) shall make a preliminary, good faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained all of the information necessary to determine whether a further review should be conducted. For any disclosure that is sufficiently specific so that it reasonably: (1) permits a determination of the appropriateness of the alleged improper practice; and (2) provides an opportunity for taking corrective action, Omnicare shall conduct an internal review of the allegations set forth in the disclosure and ensure that proper follow-up is conducted.

The Compliance Officer (or designee) shall maintain a disclosure log, which shall include a record and summary of each disclosure received (whether anonymous or not), the status of the respective internal reviews, and any corrective action taken in response to the internal reviews. The disclosure log shall be made available to OIG upon request.

The Disclosure Program shall continue to emphasize a nonretribution, nonretaliation policy, and shall continue to include a reporting mechanism for anonymous communications for which appropriate confidentiality shall be maintained.

Section III.F

