

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
AND THE COMMONWEALTH	:	
OF PENNSYLVANIA	:	
	:	
Plaintiffs,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	
DOMINIC P. ROTELLA,	:	
WILLIAM TRESKA,	:	
LORRAINE OLIVERAS and	:	
NICHOLE MEDICAL AND	:	
EQUIPMENT SUPPLY, INC.,	:	
	:	
Defendants.	:	

COMPLAINT AND JURY DEMAND

The United States of America, through its counsel Patrick L. Meehan, United States Attorney for the Eastern District of Pennsylvania, and Paul G. Shapiro, Assistant U.S. Attorney for that District, on behalf of its agency the Department of Health and Human Services, (hereafter "HHS") and the Commonwealth of Pennsylvania, through its counsel, Attorney General of the Commonwealth of Pennsylvania Gerald J. Pappert, by Elizabeth M. Dilloway Cleek, Senior Deputy Attorney General, for their Complaint aver as follows:

Introduction

1. In this action, plaintiff United States of America seeks treble damages and civil penalties under the False Claims Act, 31 U.S.C. §§ 3729-3733, as amended, and to recover damages under the common law theories of fraud and unjust enrichment.

2. In this action, plaintiff Commonwealth of Pennsylvania, acting on behalf of its agency, the Department of Public Welfare ("DPW"), seeks to recover damages under common law theories of fraud and unjust enrichment.

3. The defendants in this action, Dominic Rotella, William Tresca, Loraine Oliveras, and Nichole Medical Equipment & Supply, Inc. ("Nichole Medical") knowingly submitted false and fraudulent claims to the Medicaid Program under provider type 05, Durable Medical Equipment, from at least 1996 through 2000. More specifically, defendants created and/or participated in a scheme to defraud the Medicaid Program by certifying the delivery of, and by obtaining payment for, adult incontinence supplies that were never in fact delivered.

Jurisdiction and Venue

4. This Court has jurisdiction over the subject matter of the United States' claims under 31 U.S.C. §§ 3730, 3732 and 28 U.S.C. § 1345. This Court has jurisdiction over the subject matter of the Commonwealth of Pennsylvania's claims under 31 U.S.C. § 3732(b), which provides the district courts with jurisdiction over state law claims by state governments that arise from the same transaction or occurrence as an action brought under 31 U.S.C. § 3730, and under 28 U.S.C. § 1367. This Court has jurisdiction over the defendants pursuant to the 31 U.S.C. § 3732(b) which provides for nationwide service of process.

5. Venue is proper in the Eastern District of Pennsylvania under 28 U.S.C. § 1391(b) inasmuch as the conduct giving rise to these claims occurred within this District.

The Plaintiffs' Medicaid Program

6. Plaintiffs are the United States of America, acting on behalf of its agency, the Department of Health and Human Services ("HHS") and the Commonwealth of Pennsylvania, acting on behalf of DPW.

7. The Medicaid Program is a joint state and federal assistance program designed to provide payment of certain medical expenses for low-income patients. Funding for Medicaid is shared between the federal government and the participating states. The minimum federal contribution is 50%.

8. The Commonwealth of Pennsylvania participates in the Medicaid Program. Pennsylvania contributes about 45% and the federal government contributes about 55% to fund Medicaid payments for goods and services. The Medicaid Program is administered in the Commonwealth of Pennsylvania by DPW.

9. Pennsylvania residents enrolled in the Medicaid Program receive benefits in one of two ways. First, they may be enrolled in a managed care plan. Under this arrangement, the Commonwealth pays a set periodic fee to the patient's managed care plan, and the plan is responsible for providing all the goods and services for which the patient is eligible during that period. The periodic fee is based, in part, on the plan's financial experience with Pennsylvania Medicaid patients in prior years. Thus, if Medicaid reimbursement to a managed care plan is inadequate, that plan's per patient set fee will be increased. Managed care plans are required by law to provide certain minimum goods and services to eligible Pennsylvania Medicaid enrollees.

10. Instead of participating in a managed care plan, some Pennsylvania Medicaid beneficiaries were eligible to receive benefits on a fee-for-service basis. Under this arrangement,

eligible providers of goods and services obtain reimbursement for eligible goods and services directly from the Commonwealth. In fee-for-service reimbursement, providers are paid for their goods and services according to a fee schedule issued by the DPW.

The Defendants

11. At all times material to this complaint, defendant Nichole Medical was a Pennsylvania corporation with its principal place of business at 2200 Michner Street, Philadelphia, Pennsylvania, within this district. On or about June 13, 1986, Nichole Medical entered into a Provider Agreement with DPW as a condition of its eligibility to obtain payment under the Pennsylvania Medicaid Program. Nichole Medical has been an authorized Medicaid provider at all times since then.

12. At all times material to this complaint, defendant Dominic P. Rotella was employed by Nichole Medical as its President. Rotella was also at all material times the owner of Nichole Medical. In his capacity as President, Rotella signed the Provider Agreement for Nichole Medical on or about June 13, 1986. In the Provider Agreement signed by Rotella, Nichole Medical agreed, *inter alia*, to comply with all federal and Pennsylvania laws governing participation in the Medicaid Program. Nichole Medical, through Rotella, further agreed "to be knowledgeable of and to comply with" all applicable rules, regulations, rates and fee schedules promulgated under the laws governing the Medicaid Program.

13. In the Provider Agreement signed by Rotella, Nichole Medical further agreed that its submission of any Medicaid claim for payment "shall constitute certification . . . that . . . the services or items for which payment is claimed were actually provided by the Provider to the person identified as the recipient"

14. Between at least November 1996 and at least March 2000, defendant William Tresca was employed by Nichole Medical as its Sales Manager and Office Manager. As Sales Manager, Tresca was responsible for contacting and interacting with Personal Care Homes on behalf of Nichole Medical. At times, defendant Tresca was responsible for preparing delivery tickets for incontinence supplies for Medicaid patients. Tresca was also at times responsible for ordering incontinence supplies for Nichole Medical.

15. Between at least February 1998 and March 2000, defendant Lorraine Oliveras was employed by Nichole Medical as a billing clerk. In that capacity she was directly responsible for billing for incontinence supplies for Medicaid patients. She was also at times responsible for preparing delivery tickets for incontinence supplies for Medicaid patients.

The Defendants' Fraudulent Scheme

16. The Medicaid Program provides reimbursement for certain durable medical equipment, including adult incontinence supplies. Those Pennsylvania Medicaid enrollees who reside in Personal Care Homes are eligible, under either the fee-for-service or managed care arrangements, to receive adult incontinence supplies as medically necessary to their individual condition. Medical necessity is established through prescriptions signed by physicians ordering incontinence supplies on behalf of individual patients. Under the rules and regulations of the Medicaid Program, providers such as Nichole Medical could not be paid for incontinence supplies delivered to a particular patient unless there was a valid prescription for those supplies for that patient. Incontinence supplies are eligible for payment under the Medicaid Program only if they are delivered to an eligible individual patient who has a medical need for those supplies.

17. Incontinence supplies eligible for reimbursement under the Medicaid Program include: (i) pads to be placed on patients' beds to protect the beds and (ii) briefs to be worn by patients. Pads come in one size while briefs comes in small, medium, large and extra-large. Medicaid reimburses on a per item and not on a per case basis.

18. Defendants Nichole Medical, Dominic P. Rotella, William Tresca, and Lorraine Oliveras engaged in a scheme to enhance Nichole Medical's profits, to their mutual advantage, by defrauding the Medicaid Program. Specifically, defendants engaged in a scheme in which Medicaid was billed, and paid for, incontinence supplies that were never actually delivered.

19. As part of the plan Nichole Medical, through *inter alia* defendant Tresca, would obtain prescriptions in the names of individual patients. These prescriptions would be signed by physicians, or by other persons purporting to be physicians, and placed in individual files maintained by Nichole Medical in the names of each of the individual patients.

20. As a further part of the plan, on a monthly basis, defendant Nichole Medical, through *inter alia* defendants Tresca and Oliveras, would take orders from Personal Care Homes for incontinence supplies for that Home's patients. Defendant Oliveras would record each Personal Care Home's order in a file she maintained in the name of that home.

21. Based on the order from each Personal Care Home, on a monthly basis Nichole Medical, through *inter alia* defendants Tresca and Oliveras, would prepare "Delivery Tickets" for each Personal Care Home. The front of each Delivery Ticket would specify the numbers of cases of small, medium, large and extra-large briefs and the number of cases of underpads to be delivered to that home for that month.

22. The Delivery Tickets prepared by Nichole Medical would be provided to other

employees of Nichole Medical who were responsible for making deliveries. The delivery people would provide incontinence supplies as indicated on the Delivery Tickets and would return the Delivery Tickets to Nichole Medical.

23. Once the Delivery Tickets had been returned, Nichole Medical employees, including defendants Tresca and Oliveras, would prepare and submit bills to the patients' insurance companies, including Medicaid fee-for-service and Medicaid managed care plans. As required by Medicaid rules and regulations, the bills for Medicaid patients were prepared and submitted for each individual patient in that patient's own name. Hard copy Medicaid claims submitted by Nichole Medical were submitted with Dominic Rotella's name appearing in the physician/supplier certification block. Electronic claims were submitted pursuant to a Supplemental Provider Agreement for Electronic Claim Invoicing signed by Rotella.

24. It was a further part of the defendants' plan that, despite the fact that they well knew the amount of supplies that had actually been delivered, defendants through *inter alia* defendants Tresca and Oliveras would prepare bills for Medicaid patients that falsely represented that incontinence supplies had been provided for that patient when some of those supplies had not, in fact, been provided. In preparing and submitting bills that indicated that supplies had been provided when they well knew that they had not, defendants submitted false claims.

25. Among other ways, the claims submitted by Nichole Medical were false in that they represented that incontinence pads had been delivered for the benefit of a particular patient when, in fact, no pads had been delivered for that patient. Defendants Nichole Medical, Rotella, Tresca and Oliveras knew that such claims were false or acted in deliberate ignorance or reckless disregard of the truth or falsity of their Medicaid claims.

26. Among other ways, the claims submitted by Nichole Medical were false in that they represented that more incontinence briefs had been delivered for the benefit of a particular patient than were, in fact, delivered for that patient. Defendants Nichole Medical, Rotella, Tresca and Oliveras knew that such claims were false or acted in deliberate ignorance or reckless disregard of the truth or falsity of their Medicaid claims.

27. Defendants knew that many Personal Care Homes did not want or need one case of incontinence pads per month for each of the residents whose prescriptions so provided. Defendants also knew, however, that the Personal Care Homes did want and need more than one case of briefs per month for their residents whose prescriptions only allowed one case per month and/or for residents who did not have insurance to cover such supplies.

28. Defendants further knew that they could not bill Medicaid for providing more than one case of briefs per month for a patient whose prescription only provided for one case per month.

29. Therefore, as a part of their scheme to submit false and fraudulent claims, defendants would submit Medicaid claims for one case of pads and one case of briefs for patients well knowing that they had not actually delivered one case of pads and one case of briefs to the patient indicated in the claim. Defendants Nichole Medical, Rotella, Tresca and Oliveras knew that such Medicaid claims were false or acted in deliberate ignorance or reckless disregard of the truth or falsity of those claims.

30. Each of those claims submitted by defendants was unlawful, subjecting defendants to liability for the submission thereof. The United States and the Commonwealth of Pennsylvania were damaged as a result of those submissions.

31. Defendants Nichole Medical, Rotella, Tresca and Oliveras benefitted from their scheme to defraud the Medicaid Program through the submission of false claims.

COUNT ONE

31 U.S.C. § 3729 CIVIL ACTION FOR FALSE CLAIMS - MEDICAID

32. Paragraphs 1 through 31 are incorporated herein by reference.

33. At various times between about January 1996 and at least February 2000 and, on information and belief thereafter, defendants Nichole Medical, Rotella, Tresca and Oliveras, singly and in concert, knowingly presented, or caused to be presented, to an officer or employee of the United States Government a false or fraudulent claim for payment or approval.

34. At various times between about January 1996 and at least February 2000 and, on information and belief thereafter, defendants Nichole Medical, Rotella, Tresca and Oliveras, singly and in concert, knowingly made, used, or caused to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government.

35. At various times between about January 1996 and at least February 2000 and, on information and belief thereafter, defendants Nichole Medical, Rotella, Tresca and Oliveras conspired to defraud the Government by getting false or fraudulent claims allowed or paid.

36. Each request for reimbursement from Medicaid submitted on behalf of defendant Nichole Medical by defendants for incontinence pads that had not in fact been delivered constitutes a false claim in violation of the False Claims Act, 31 U.S.C. § 3729 et seq.

37. Each request for reimbursement from Medicaid submitted on behalf of defendant Nichole Medical by defendants for incontinence briefs that had not in fact been delivered constitutes a false claim in violation of the False Claims Act, 31 U.S.C. § 3729 et seq.

38. Each request for reimbursement from Medicaid submitted on behalf of defendant Nichole Medical by defendants that misstated the type of incontinence items being delivered constitutes a false claim in violation of the False Claims Act, 31 U.S.C. § 3729 et seq.

WHEREFORE, the United States of America demands judgment against defendants Nichole Medical, Rotella, Tresca and Oliveras as follows with regard to claims dated on or after March 4, 1998:

- (1) Treble the amount of damages sustained by the United States, in an amount to be established;
- (2) Assessment of a civil penalty of \$10,000.00 for each false or fraudulent claim that they made or caused to be made;
- (3) Assessment of a civil penalty of \$10,000.00 for each false record or false statement they made, used, or caused to be made or used, to get a false or fraudulent claim paid or approved;
- (4) Assessment of a civil penalty of \$10,000.00 for the conspiracy to defraud the United States;
- (5) All other necessary and proper relief, including costs of this action.

COUNT TWO

31 U.S.C. § 3729 CIVIL ACTION FOR FALSE CLAIMS - MEDICARE

39. Paragraphs 1 through 38 are incorporated herein by reference.

40. Plaintiff United States, through its agency HHS, administers the Supplementary Medical Insurance Program, Title XVIII of the Social Security Act under 42 U.S.C. §§ 1395j-

1395w-4 ("Medicare Program"). HHS has delegated the administration of the Medicare Program to its component agency, Centers for Medicare and Medicaid Services (formerly the Health Care Financing Administration).

41. The Medicare Program is a federally subsidized health insurance system for disabled persons or persons who are aged 65 or older. Eligible persons aged 65 and older may enroll in the Medicare Program to obtain benefits in return for payments of monthly premiums established by HHS.

42. As a condition of obtaining payment under the Medicaid Program for those Medicaid patients also enrolled in the Medicare Program, at least since March 1998, Nichole Medical submitted its claims for incontinence supplies to the Medicare Program and, if denied by Medicare, then submitting those denied claims to the Medicaid Program for payment.

43. At various times between at least March 1998 and at least February 2000 and, on information and belief thereafter, defendants Nichole Medical, Rotella, Tresca, and Oliveras, singly and in concert, knowingly presented, or caused to be presented, to an officer or employee of the United States Government a false or fraudulent claim for payment or approval.

44. At various times between at least March 1998 and at least February 2000 and, on information and belief thereafter, defendants Nichole Medical, Rotella, Tresca, and Oliveras, singly and in concert, knowingly made, used, or caused to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government.

45. At various times between at least March 1998 and at least February 2000 and, on information and belief thereafter, defendants Nichole Medical, Rotella, Tresca and Oliveras conspired to defraud the Government by getting false or fraudulent claims allowed or paid.

46. Each claim submitted to Medicare on behalf of defendant Nichole Medical by defendants for incontinence pads that had not in fact been delivered constitutes a false claim in violation of the False Claims Act, 31 U.S.C. § 3729 et seq.

47. Each claim submitted to Medicare on behalf of defendant Nichole Medical by defendants for incontinence briefs that had not in fact been delivered constitutes a false claim in violation of the False Claims Act, 31 U.S.C. § 3729 et seq.

48. Each claim submitted to Medicare submitted on behalf of defendant Nichole Medical by defendants that misstated the type of incontinence items being delivered constitutes a false claim in violation of the False Claims Act, 31 U.S.C. § 3729 et seq.

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- (3) Assessment of a civil penalty of \$10,000.00 for each false record or false statement they made, used, or caused to be made or used, to get a false or fraudulent claim paid or approved;
- (4) Assessment of a civil penalty of \$10,000.00 for the conspiracy to defraud the United States;
- (5) All other necessary and proper relief, including costs of this action.

COUNT THREE

COMMON LAW FRAUD

49. Paragraphs 1 through 48 are incorporated herein by reference.

50. As part of a continuing course of conduct, Defendants Nichole Medical, Rotella, Tresca and Oliveras submitted or caused to be submitted claims to the Medicaid Program which contained misrepresentations of material fact.

51. Defendants Nichole Medical, Rotella, Tresca and Oliveras made these misrepresentations with knowledge of their falsity or with reckless disregard for their truth.

52. Defendants Nichole Medical, Rotella, Tresca, and Oliveras made these misrepresentations intending that the Medicaid Program rely on them in making payments for incontinence supplies.

53. The Medicaid Program, acting in reliance on defendants Nichole Medical, Rotella, Tresca and Oliveras' misrepresentations, paid Nichole Medical on the fraudulent claims.

54. As a result of the misrepresentations the United States and the Commonwealth of Pennsylvania have been damaged.

WHEREFORE, plaintiffs, United States of America and Commonwealth of Pennsylvania, request damages, costs, attorneys' fees and such further relief as may be just.

COUNT FOUR

UNJUST ENRICHMENT/RESTITUTION

55. Paragraphs 1 through 54 are incorporated herein by reference.

56. Because of defendants Nichole Medical, Rotella, Tresca and Oliveras false statements, the Medicaid Program paid monies to which defendant Nichole Medical was not entitled.

57. Defendant Nichole Medical and, as Nichole Medical's owner, defendant Rotella have therefore been unjustly enriched and the United States and the Commonwealth of Pennsylvania have been damaged.

WHEREFORE, plaintiffs United States of America and Commonwealth of Pennsylvania request entry of an order of restitution directing defendants Nichole Medical and Rotella to make the Medicaid Program whole for the benefits wrongly conferred upon them and each of them, including an order for restitution of losses caused by delay in repayment.

COUNT FIVE

BREACH OF CONTRACT

58. Paragraphs 1 through 57 are incorporated herein by reference.

59. Each false claim submitted by Nichole Medical to the Medicaid Program was in breach of Nichole Medical's Provider Agreement, which agreement was signed by Rotella.

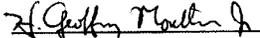
60. Under its Provider Agreement, Nichole Medical had a continuing obligation to refund to the Commonwealth any money that it collected to which it was not entitled. Nichole Medical knew that it was collecting money to which it was not entitled in connection with its billing for incontinence supplies. However, through the date of this complaint, Nichole Medical has failed to refund to the Commonwealth any of the money that it wrongfully obtained through submitting false claims to Medicaid.

60. Defendant Nichole Medical and, as Nichole Medical's owner, defendant Rotella have therefore breached the Provider Agreement and the Commonwealth of Pennsylvania has been damaged.

WHEREFORE, plaintiff Commonwealth of Pennsylvania requests damages, costs, attorneys' fees and such further relief as may be just from defendants Nichole Medical and Rotella.

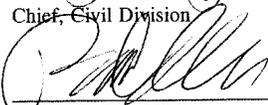
Respectfully Submitted,

First Assistant U.S. Attorney


for PATRICK L. MEEHAN
United States Attorney

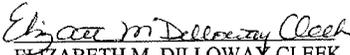

VIRGINIA A. GIBSON
Assistant U.S. Attorney
Chief, Civil Division

Dated: March 3, 2004


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Attorney General of the Commonwealth
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Dated: March 3, 2004

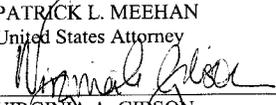

ELIZABETH M. DILLOWAY CLEEK
Senior Deputy Attorney General

JURY DEMAND

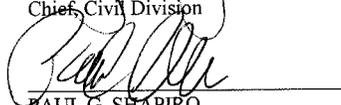
The United States and the Commonwealth of Pennsylvania hereby demand a trial by jury
as to all issues so triable.

Respectfully Submitted,

PATRICK L. MEEHAN
United States Attorney

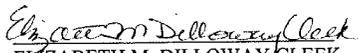

VIRGINIA A. GIBSON
Chief, Civil Division

Dated: March 3 , 2007


PAUL G. SHAPIRO
Assistant United States Attorney

GERALD J. PAPPERT
Attorney General of the Commonwealth of
Pennsylvania

Dated: March 3 , 2007


ELIZABETH M. DILLOWAY CLEEK
Senior Deputy Attorney General