

Feds Allege Ga. Hospitals Paid Kickbacks

DOJ intervenes in whistleblower case alleging Medicaid fraud for client referrals

R. Robin McDonald, Daily Report

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The U.S. Justice Department has intervened in a whistleblower case against one of the country's largest hospital chains, alleging that three of its Georgia hospitals paid kickbacks for more than a decade to a chain of metro Atlanta prenatal clinics in return for patient referrals.

In a filing late Tuesday, the DOJ sought unspecified financial restitution for Medicaid claims made from 2000 through 2013 that were filed as a result of the alleged scheme. Federal prosecutors have also asked the court to award treble damages and other civil penalties under the federal False Claims Act.

Prosecutors filed the complaint in federal court in Columbus against Texas-based Tenet Healthcare Corp., three Tenet hospitals in Georgia—Atlanta Medical Center, North Fulton Regional Hospital and Spalding Regional Medical Center in Griffin—as well as Tenet's Hilton Head Hospital in South Carolina.

The suit also names as defendants Clearview Regional Medical Center in Monroe; Norcross-based Hispanic Medical Management Inc. (HMM), which the government says ran a string of prenatal clinics catering to undocumented, predominantly Hispanic foreign nationals; and HMM affiliates International Clinical Management Services Inc. and Cota Medical Management Group Inc.

The clinics went by the name of Clinica de la Mama and Clinica del Bebe.

Tenet issued a written statement Wednesday saying the agreements between Hispanic Medical Management (HMM) and Atlanta Medical Center, North Fulton Hospital, Spalding Regional Hospital and Hilton Head Hospital "provided substantial benefits to women in underserved Hispanic communities."

"By ensuring that pregnant women received prenatal care and appropriate treatment during birth, these programs increased the likelihood of a safe birth and a healthy baby while reducing the overall cost to state Medicaid programs," the statement said, adding that Tenet "will continue to vigorously defend against these allegations." A team of lawyers from Alston & Bird in Atlanta are

local counsel for the company. Alston attorney William Jordan referred the Daily Report to Tenet's corporate headquarters in Dallas for comment. Tenet is also being defended by Los Angeles lawyer David Schindler and the firm Latham & Watkins in Washington. Representatives for Cota and HMM could not be located for comment.

The suit stems from a whistleblower complaint filed last year by Ralph Williams, the former chief financial officer of Clearview, formerly known as Walton Regional Medical Center. Clearview is a subsidiary of Community Health Services Inc. but at the time was part of a chain of hospitals owned by Health Management Associates, Inc. Williams is represented by the Atlanta law firm Wilbanks & Bridges.

The 150-year-old federal False Claims Act encourages private citizens who are aware of fraud against the federal government to bring that information forward in the form of a civil action against those suspected of fraud. The DOJ then determines whether it will intervene in the litigation on behalf of the federal government.

In a winning suit, a private citizen—often referred to as a relator or whistleblower—may claim as much as 25 percent of the funds recovered by or for the government from a judgment or settlement.

Federal Medicare and Medicaid laws as well as the federal anti-kickback statutes bar hospitals from paying clinics, physicians or others to steer patients their way for treatment.

Williams filed the complaint because Tenet and Clearview "used sham contracts to provide cover for the payments of kickbacks to [the clinics] to buy referrals involving tens of thousands of undocumented pregnant Hispanic patients," said one of his lawyers, Marlan Wilbanks.

The hospitals, he continued, "were involved in a 'pay for play' game where they were buying referrals of undocumented pregnant women illegally in order to pad their corporate profits at the expense of the taxpayers. ... It is expressly illegal to buy referrals of government Medicaid patients. That is exactly what happened in this case."

Wilbanks said his client learned of the alleged scheme after an executive who said he had employed it at Hilton Head Hospital brought it with him when he was hired by Clearview.

Wilbanks said the former Tenet executive informed Williams: "This is what Tenet does. ... This is how we grew business in South Carolina. This is what Tenet does in Georgia. Don't worry about it. It's a way to increase deliveries."

Wilbanks said the alleged scheme was executed with the knowledge and collusion of Tenet's top executives in the Southeast and at the company's Texas headquarters.

The lawyer said that more than 30,000 births by undocumented Hispanic women that were subsequently billed to Medicaid in connection with the kickback scheme are at issue in the litigation.

Wilbanks partner Susan Gouinlock said the scheme likely cost the federal government between \$150 million and \$200 million, plus an undetermined pool of Medicare funds that are parceled out to hospitals and medical centers that have a disproportionate share of low-income or indigent patients.

"Bill Williams filed this case because he found himself at the center of a patently illegal relationship" between Clearview and Clínica de la Mama, Gouinlock said. "When he was not successful in getting [the hospital] to put a stop to it, he had no ethical choice but to inform the government of the kickback scheme he had discovered. He was the chief compliance officer and CFO at Walton Regional Hospital and could not permit [the] illegal kickback scheme to proceed on his watch."

While undocumented foreign nationals are not eligible for regular Medicaid coverage, they are eligible for certain types of emergency medical assistance under the Medicaid program. That coverage includes childbirth, prosecutors said.

The state of Georgia intervened in Williams' suit last year—the first time, according to Gouinlock and Wilbanks, that it has done so before the DOJ has elected to intervene in a federal whistleblower case.

"It was really ground-breaking for Georgia to jump in there and make their decision totally independent of the federal government," Wilbanks said. "That speaks to the strength of the case."

Wilbanks said the DOJ complaint contains new details that support his client's story "100 percent."

"Not only are the kickback schemes described in graphic detail over the last decade, individual high-level corporate representatives from Tenet and [Clearview] are discussed in the federal complaint-in-intervention to make it clear that this was truly a high-level corporate scheme that was not isolated to lower-level hospital employees."

Federal prosecutors said in their complaint that in 1999, an associate medical director at Tenet's Atlanta Medical Center contacted Tracey Cota, who operated one of the prenatal clinics that is a defendant in the case. AMC was trying to recruit more obstetric patients and was willing to pay to do so, federal prosecutors said in the intervention complaint.

As part of the deal, the clinic would be allowed to retain the cash payments, ranging from \$1,700 to \$2,000, that it billed its patients. The hospital would cover any of the clinic's additional expenses through rent subsidies or management fees totaling more than \$42,000 a month, the DOJ complaint said. Federal prosecutors said that Tenet's legal counsel "expressed concern that the proposed deal violated the anti-kickback statute because [Atlanta Medical Center] was providing physician services at no cost to [the clinic], while allowing the clinic to keep all the proceeds from the physicians' services at the clinic," according to the DOJ complaint.

"In response to the legal advice," the complaint said, the Atlanta Medical Center "attempted to structure an arrangement whereby [the hospital] would keep the cash payments from the patients, but would compensate Clínica at roughly the same amount of money as the clinic estimated it would have collected in cash for services at the clinic. The amount paid to Clínica by [Atlanta Medical Center] would be labeled a monthly management fee."