Elder Justice Past, Present, and Future
2022: U.S. Department of Justice Elder Justice Initiative

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Senior Counsel for Elder Justice
U.S. Department of Justice
September 20, 2022
My comments are my own and do not necessarily reflect the Department of Justice’s views.
AGENDA

- DOJ Elder Justice Initiative Programmatic Work
- Federal Nursing Home Case Theories and Recent Matters
  - Civil and Criminal Cases
  - Use of Data
  - Bankruptcy Issues
- Staffing Issues
- DOJ Collaboration with Medicaid Fraud Control Units
- DOJ Elder Justice Public Outreach, Resources, and Training
- Q & A
ELDER JUSTICE INITIATIVE PROGRAMMATIC WORK

• Elder Justice Decision-Making Capacity Symposium
• SAFE: Safe Accessible Forensic Interviewing for Elders
• National Institute on the Prosecution of Elder Abuse
• Guardianship
• National Elder Fraud Hotline
ELDER JUSTICE DECISION-MAKING CAPACITY SYMPOSIUM

The Role of Decision-Making Capacity in Elder Justice Cases that Reach Civil and Criminal Courts

Tuesday, April 19 to Thursday, April 21, 2022

elderjustice.gov/symposium
SAFE: SAFE ACCESSIBLE FORENSIC INTERVIEWING FOR ELDERS
Virtual Prosecutors' Training on Elder Abuse

Tools and Strategies for Prosecuting Elder Abuse Cases:
Virtual Training Series for Prosecutors
## Judicial Guardianship Evaluation Worksheet

### CONFIDENTIAL

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<td><strong>Respondent:</strong></td>
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<td><strong>Contested by:</strong></td>
<td>□ Respondent □ Multiple petitions □ Other</td>
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### 1. RESPONDENT

#### A. Background

- **Highest education:**
- **Marital/partnership status:**
- **Occupational history:**
- **English literacy:** □ speak □ read □ write
- **Preferred language:** □ interpreter required □ other language
- **Other language:**
- **Literacy:** □ speak □ read □ write

#### B. Cognition

- **Areas of concern:** □ memory □ concentration □ wandering □ aggression □ confusion □ episodes of delirium □ other:
- **Diagnosis of dementia:** □ mild □ moderate □ severe □ Rx:
- **Other:** □ no known deficit
- **Retained abilities:**

#### C. Mental Health

- **Areas of concern:** □ depression □ anxiety □ hallucinations □ delusions □ impulsive behavior □ substance abuse □ hoarding □ other:
- **Diagnosis:**
- **Rx:** □ no known deficit

#### D. Medical Conditions and Physical Functioning

- **Relevant medical diagnoses:** □ acute □ chronic □ reversible
- **Areas of concern:** □ inadequate self-management □ mobility □ frequent falls □ pain □ physical disability □ incontinence □ other:
- **Legally blind:**
- **Hearing impaired:**
- **Adaptive equipment:** □ no known deficit

#### E. Basic Activities of Daily Living

- **Areas of concern:** □ eating/feeding □ bathing □ dressing □ toileting □ grooming □ no known deficit
- **Retained abilities:**

#### F. Instrumental Activities of Daily Living

- **Areas of concern:** □ meals preparation □ adequate nutrition □ housekeeping □ personal finances □ shopping □ medications □ arranging transportation □ telephone use □ other:
- **Retained abilities:**

#### G. Judgment, Reasoning, and Executive Functioning

- **Areas of concern:** □ identify abuse/neglect □ protect self from harm □ recognize potential dangers □ respond to emergencies □ other:
- □ understanding of care needs □ susceptibility to exploitation/abuse □ influence □ prior episodes of mistreatment □ other:
- □ no known deficit

#### H. Social Connectedness

- **Areas of concern:** □ limited contact with family/friends/community □ recent relocation □ recent loss of significant relationship □ other:
- □ lack of significant long-term relationships/attachments

#### I. Values & Preferences

- **Accepts/desires guardianship:** □ yes □ no
- **Current most valued relationships/associations/activities:**
- **Consistency of preferences with past patterns:**
- □ importance of religious/cultural/spiritual influences □ preference on family care □ pets □ other:
- □ no known deficit

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**Keck School of Medicine of USC**

Department of Family Medicine
NATIONAL ELDER FRAUD HOTLINE

1-833-FRAUD-11
1-833-372-8311
NURSING HOME CASE THEORIES

• Significant Problems in our Nation’s Nursing Homes
• Quality data analysis: Identifying poorly performing nursing homes
• Nursing home federal civil failure of care case – the Vanguard case example
• Nursing home federal criminal failure of care case – the Houser case example
SIGNIFICANT PROBLEMS PERSIST IN OUR NATION’S NURSING HOMES – HISTORIC EXAMPLES IN THE NEWS

'Hellish Nightmare:' Hollywood Hills Nursing Home Tragedy Continues In Court

By CAITIE SWITALSKI • MAR 1, 2018

This was where residents, who didn’t have air conditioning, weren’t evacuated until three days after Hurricane Irma.

CHARLES TRAINOR JR. MIAMI HERALD / WLRN
SIGNIFICANT PROBLEMS PERSIST IN OUR NATION’S NURSING HOMES

Family Sues After Former Model, 93, Is Allegedly Eaten Alive by Mites at Georgia Nursing Home

PURYEAR VISITED THE ELDERLY WOMAN ALMOST EVERY DAY AND
SIGNIFICANT PROBLEMS PERSIST IN OUR NATION’S NURSING HOMES

Nursing homes sedate residents with dementia by misusing antipsychotic drugs, report finds

By Jessica Ravitz, CNN

Updated 5:55 PM ET, Mon February 5, 2018
SIGNIFICANT PROBLEMS PERSIST IN OUR NATION’S NURSING HOMES

SICK, DYING AND RAPED IN AMERICA'S NURSING HOMES

"You prepare for a phone call your mother has passed. You don’t prepare for a phone call that your mother has been RAPED."
FEDERAL PROSECUTION OPTIONS

- Civil
- Criminal
PROBLEMS LEADING TO FEDERAL CIVIL & CRIMINAL CASES: FACILITY PROBLEMS

• Inadequate staff
• Inadequate supplies like food, diapers, gloves, and linens
• Terrible physical plant conditions, filthy, lack of air conditioning, lack of hot water, leaking roofs
• Overuse of antipsychotic medications
• Failure to supervise violent patients
• Choices driven by profit, not by care/clinical considerations
PROBLEMS LEADING TO FEDERAL CIVIL & CRIMINAL CASES: CHAIN PROBLEMS

- Financial considerations elevated over clinical.
- Bonus structure that rewards practices leading to bad care (i.e., cutting staff, increasing census beyond capacity)
- Inadequate funds for training, supplies, care.
- Failure to investigate resident or family complaints.
- Inadequate or no use of internal quality data to track resident health status.
PROBLEMS LEADING TO FEDERAL CIVIL & CRIMINAL CASES: BAD RESIDENT OUTCOMES

• Malnourished, dehydrated
• Pressure sores, scabies, or maggots
• Lying for hours/days in feces/urine
• Residents filthy, infected
• Wrong, too little or too much medication
• Falls, fractures, other injuries, deaths
IDENTIFYING NURSING HOME CASES WHERE RESIDENTS ARE SUFFERING

- Data Mining
- Qui Tam Suits
- State Surveys
- CMS referral
- MFCU referral
- Anonymous complaint
- Family complaint
- Personal injury cases
- Media attention to closures
AVAILABLE DATA TO MINE

- CMS Enforcement and Abuse Data
- LTCCC Data
- Pro Publica
QUALITY DATA ANALYSES

• Sources of cases: data mining, qui tams, CMS referrals, MFCU referrals, USAO notification

• Three Key Data Sources Used:
  • Health inspection
    • Based on surveys and complaints
    • Weighted for scope and severity
    • Rating based on relative performance in state (bottom 20%=1 star; middle 70% get 2-4 stars; top 10% get five stars)
  • Staffing
    • Calculated each quarter from payroll records and risk-adjusted
    • Includes total nurse (RN, LPN, and aide) and RN staffing
    • Stars assigned based on thresholds
  • MDS quality measures
    • Self-reported by facilities via MDS
    • 9 long-stay measures; 6 short-stay measures
    • Stars assigned based on point system across measures
FEDERAL PROSECUTION THEORIES: CIVIL

- False Claims Act, 31 U.S.C. 3729

- Equitable Claims
  - Unjust enrichment
  - Payment by Mistake of Fact
FALSE CLAIMS ACT

Under the False Claims Act (FCA), any person who:

- knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; or
- knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- conspires to commit either of the above;

is liable for treble damages and monetary penalties per false claim.

31 U.S.C. § 3729
FEDS SHUT DOWN IMPERIAL GARDENS IN 2013

Patients given wrong dose time and again

By Walter F. Roche Jr.
The Tennessean

Hours before death in early January, a patient at a Madison nursing home was grimacing in pain with eyes shut. The family, in tears, pleaded with health care workers to administer the painkillers ordered by the doctor.

But workers at the Imperial Gardens Health and Rehabilitation Center told them that the drug, Roxanol, was not available, even though the family members said they had earlier personally delivered some of the medication to the facility.

Finally, about an hour before death, a single dose was administered.

The plight of that unnamed patient is but one of dozens of cases detailed in a blistering 143-page inspection report for the 165-bed facility at 306 W. Due West Road released Tuesday by state officials.

Release of the report comes as the state has barred new admissions to the home and made preparations to transfer the remaining residents to other facilities.

» INSPECTION, 7A
‘Get me out of here,’
former patient said

» INSPECTION FROM 1A

ities. The Centers for Medicare and Medicaid Services has cut off funding for any new patients and will cover current patients for only 30 days.

“Decertification will begin at midnight, as mandated by CMS,” said Bob Jordan, spokesman for Brentwood-based Vanguard Healthcare, which owns the facility and several other nursing homes.

He said that while company officials continue to work to resolve the deficiencies cited by the state, Margaret Maddox died in January after 18 months at Imperial Gardens.
VANGUARD FOOTPRINT
Filed suit in 2016 in the M.D. Tenn. alleging:

- Grossly substandard quality of care/ worthless services at 5 facilities in a 13 facility nursing home chain in the South
- Use of forged/ photocopied physician and nurse signatures on Medicaid pre-admission forms at 5 facilities

Sued:

- Vanguard Parent company, many Vanguard subsidiaries, 1 individual: the former Director of Operations
- Did not sue owner at 1st; only added him later under an unjust enrichment theory (but not FCA theory)
LAW UNDERLYING VANGUARD SUIT:

WORTHLESS SERVICES
LEGAL STANDARDS
Federal regulations mandate that:

- “Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well being, in accordance with the comprehensive assessment [of the resident] and plan of care” 42 C.F.R. § 483.25
These federal regulations provide care requirements related to:

- Pressure sores
- Nutrition
- Hydration
- ADLs
- Medication administration
- UTIs
SNFs cannot knowingly bill the government for goods and services where “the service is so substandard as to be tantamount to no service at all.” United States v. Cathedral Rock Corp., No. 03-1090, 2007 WL 4270784, at *6 (E.D. Mo. Nov. 30, 2007).

“A worthless services claim asserts that the knowing request for federal reimbursement for a procedure with no medical value violates the Act irrespective of any certification.” United States ex rel. Mikes v. Strauss, 274 F.3d 687, 703 (2d Cir. 2001).

“Some regulations or statutes may be so integral to the government's payment decision as to make any divide between conditions of participation and conditions of payment a ‘distinction without a difference.’” United States ex rel Connor v Salina, 543 F.3d at 1211 (10th Cir).

See also US ex rel. Associates in Eye Care, 2014 WL 414231 (E.D. Ky. Feb. 4, 2014) (denied a motion to dismiss FCA and common law claims by an eye doctor for services to nursing home patients; “plaintiff need only show that the patients lacked the quality of care required by the statutory standard”)

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**WELL-ESTABLISHED WORTHLESS SERVICES CASELAW**
LITIGATION MODE

• Early stay of case requested by defense for mediation

• March 2017: Court ruled that FCA suit was excepted from the automatic stay: Suit fell within the “police and regulatory” exception to the automatic stay as an FCA suit. *US v. Vanguard Healthcare, LLC*, 565 B.R. 627 (M.D. Tenn. 2017).

• Motion to Dismiss filed and briefed

• US filed amended complaint adding CEO under equitable theories

• Discovery proceeded
US’ POSITION: CARE DID NOT HAVE TO BE SO BAD THAT IT HAD ZERO VALUE

The FCA allows for liability “when a provider seeks reimbursement for seriously deficient care, even if that care is not completely worthless.” US ex rel. Scharber v. Golden Gate Nat’l Senior Care, LLC, 135 F. Supp. 3d 944, 964 (D. Minn. 2015)


But see US ex rel. Absher v. Momence Meadows Nursing Ctr., Inc., 764 F.3d 699 (7th Cir. 2014) (non-intervened qui tam)

Defendants made implied false certification of compliance with the NHRA’s regulatory requirements
US’ POSITION: HAD PLED MATERIALITY

• Vanguard argued that the complaint pointed to CMS/ state surveys that identified certain problems, but govt continued payment meant “no materiality:
• US position: CMS/ TN’s closure of Imperial Gardens alone showed materiality
US HAD PLED MATERIALITY

But even if you lack a facility closure…

- The “mere awareness [by state regulators] of allegations concerning noncompliance” did not constitute “actual knowledge.” *US ex rel. Escobar v. Universal Health Servs., Inc.*, 842 F.3d 103, 112 (1st Cir. 2016)

- No evidence that CMS or Medicaid had actual knowledge, since isolated bits of knowledge don’t equal knowledge of a consistent pattern.


Good post- *Escobar* caselaw about how FCA violations can be material when the collateral consequences of fund cut-offs would be huge.

- *US ex rel. Rahimi v. Rite Aid Corp.*, 2019 WL 1426333 (E.D. Mich. Mar. 20, 2019) (refusing to infer lack of materiality from government’s continued payment of Rite Aid, where government may have continued payments to avoid adverse impact on millions of Medicaid beneficiaries who relied on Rite Aid to get their prescriptions filled).
BANKRUPCY COURT EVIDENTIARY HEARING

Bankruptcy court wanted a 1.5 day evidentiary hearing to evaluate if the proposed bankruptcy reorganization plan could be approved given the United States’ large claim

Was not a “claims estimation” -- did not count as Res Judicata/Collateral Estoppel per the parties’ and court’s agreed terms for the hearing

- Allotted 1.5 days of proof
- Each party had 4 hours
- Each party had limited number of witnesses
- Rushed, short 6 week discovery period including depositions and rushed proof, but at the end the bankruptcy judge found that Vanguard had to set aside at least $5 million for the FCA suit
DISTRICT COURT’S HEARING ON THE MOTION TO DISMISS

- 1 hour hearing on motion to dismiss
- Case settles
FINAL SETTLEMENT

Over $18 million in allowed claims

- $5.1 million paid 100% by reorganizing companies over 5 years, with balloon payout at end
- $7 million allowed claim for 1 liquidating SNF debtor with pro rata distribution (less than 100% payout)
- $6.5 million allowed claim for 2nd liquidating debtor with pro rata distribution
- $250k paid by 2 individuals not in bankruptcy

*Chainwide CIA* – which is critical in these cases
CRIMINAL ANGLE
FEDERAL PROSECUTION THEORIES: CRIMINAL

- Scheme to defraud healthcare benefit program (18 USC § 1347)
- False material statements in connection w/ payment for healthcare benefits (18 USC § 1035)
- Conspiracy (18 USC §§ 371, 1349)

- Mail/Wire Fraud (18 USC §§ 1341, 1343)
- Tax violations (26 USC §§ 7202, 7203)
- False Statements (18 USC § 1001)
- False Claims (18 USC § 287)
FEDERAL PROSECUTION THEORIES: CRIMINAL

US v. Houser (N.D. Ga.) No. 4:10-cr-00012
- § 1349 conspiracy to commit § 1347 scheme to defraud
- 26 U.S.C. §§ 7202, 7203 tax violations

US v. Bell (W.D. Pa.) No. 02:4-cr-00212
- § 1347 scheme to defraud
- § 1035 substantive counts – false medical records regarding patient care

US v. Wachter (E.D. Mo.) No. 4:05-cr-00667
- § 371 conspiracy to violate §§ 1035/1347
- § 1035 substantive counts – representations of services not performed
HEARTLESS nursing home owner pocketed millions in government funds while his helpless patients went hungry and lived in unimaginable filth.

At the three Georgia homes operated by Harvard-educated lawyer George House, 64, broken heating and air conditioning units gave rise to rampant mold and mildew growth. Ceiling tiles became so waterlogged, they fell down on the poor bedridden souls. And garbage left rotting outside attracted swarms of flies and a horde of rats that easily entered the homes through ill-fitting screens and doors.

Meanwhile, House's attorney and ex-wife Rhonda, 46, who runs a real estate agency, spent the better part of $40 million in Medicare and Medicaid money on vacations, new homes and pricey furniture.

HOUSER SHELLED OUT $4.2 MILLION FOR land to develop hotels and, incredibly, spent $13 million on a house for his ex-wife. He even paid himself $3 million from the nursing home payroll in a no-show job.

He was far less generous to residents and workers at the homes – Mount Berry and Moran Lake in Rome, Ga., and Wildwood in nearby Brunswick – who lived in squalor: Broken washing machines were unsanctioned, and tires for buses, nursing needs and pharmacy prescriptions were cut.

"It almost defies the imagination to believe that someone would use millions of dollars in Medicare and Medicaid money to buy real estate in hotels and a house while his elderly and defenseless nursing home residents went hungry and lived in filth," said Sally Williams Yates, U.S. Attorney for the Atlanta area.

House's greed also affected his employees, many of them dedicated caregivers who would wash and purchase food for the elders. Without their knowledge, House stopped making health insurance payments, leaving some with huge medical bills.

The nursing homes, which opened in 2004, were shut down in 2007 after numerous complaints were received by the Georgia Department of Human Resources.

House and his wife were indicted on April 14, 2010. She pleaded guilty last December to a charge that she knew her husband was committing health care fraud. He was convicted on Medicare and Medicaid fraud charges on April 2 and faces 20 years in jail at his sentencing on June 29.

The conviction is little comfort to Loretta Terhune, whose 80-year-old father Morris Ellison entered one of House's nursing homes in 2005 for post-operative recovery. Loretta said her dad was active with a busy social life that included a couple of girlfriends.

But within eight months, Morris was dead. An autopsy showed he was malnourished, dehydrated and had an untreated broken hip after falling numerous times at the home.

Loretta sued House for wrongful death before his criminal trial began. It took a jury less than three hours to award her $43.5 million.

In an interview after the jury returned, coldhearted House was asked what he thought about the award. He just laughed.
WORTHLESS SERVICES THEORY

• An entity may not bill the government for nonexistent, worthless, or grossly substandard services.

• Health care providers may not knowingly bill Medicare/Medicaid for worthless care.
WHEN DOES FAILURE OF CARE = WORTHLESS SERVICES?

- Evidence of especially egregious care
- Systemic or widespread problems
- Evidence of harm to residents
- Pattern and practice
SUBSTANDARD CONDITIONS

“The complaints; every day was like hell trying to figure out what to do”
Deposition of George Houser

- Lack of Food & Dietary Supplies
- Lack of Diapers, Gloves & Linens
- Laundry Issues
- Trash
- Kitchen equipment
- HVAC
- Leaking Roofs
- Computer & PC Supplies
- Emergency Supplies
- Nursing Supplies
- Lab Work
- Biohazard Materials
- Sharing meds
- Housekeeping Supplies
# SERVICES/UTILITIES: CONSTANT WARNINGS & DISCONTINUED

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<td>Bread &amp; Milk</td>
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LACK OF FOOD

- Mt Berry: $1.83 Cost Per Patient Per Day

- NATIONAL AVERAGE: $5.60 Per Day
  (75% Of Nursing Homes In Country Were Above This Amount)
NOVEMBER 22, 2006

GEORGE,

WE ARE IN SERIOUS NEED OF MONEY!!!!!!!!!!!!!!!!!!!

WE WILL NOT HAVE ENOUGH INSULIN SYRINGES, ALCOHOL SWABS, ETC TO GET THROUGH TILL NEXT

WE CAN NOT COPY ANYTHING---THEY WILL NOT COME TO FIX THE COPIER!!!!!!

ALL INK CARTRIDGES AND TONERS ARE OUT OF INK.

WE CAN NOT FAX ANYTHING BECAUSE WE ARE OUT OF INK!!!!!!!!!!!!!!!!!

WE NEED MONEY !!!!!!!! TODAY!!!!!!!!!!!!

WE CANT GIVE INSULIN AFTER THIS AFTERNOON TO INCLUDE TONIGHT OR TOMMORROW AND IT IS THANKSGIVING TOMMORROW.

LOIS
NOVEMBER 28, 2006

GEORGE AND RHONDA,

WE HAVE NO WAY TO DO AMMONIA LEVELS AT ALL. WE HAVE HAD A RESIDENT WITH AN AMMONIA LEVEL WHICH DID NOT GET DONE.

HE HAS ENDED UP IN THE HOSPITAL WITH THESE PROBLEMS!!!!!!!!!!

THIS CAN BE AN IMMEDIATE JEOPARDY WHICH WILL STOP PAYMENTS AND ADMISSIONS !!!!!!!!!!!!!!!! IT IS A BAD OUTCOME FOR A SERVICE WE DID NOT PROVIDE!!!!!!!!!!!!!!!!

WE WERE INFORMED AND I FAXED ONTO YOU THAT THE IF THE LAB IS NOT TAKEN CARE OF BEFORE DECEMBER 1, 2006 THEY WILL NOT BE BACK!!!!!!!!!!!!!!!!!

THESE LEVELS ARE CRUTIAL TO MANAGE RESIDENTS WITH RENAL DISEASE.

LET ME KNOW A.S.A.P.

LOIS
WE HAVE CEILING TILES AND ROOF LEAKS ON RESIDENTS’ BEDS AND CLOTHES. I NEED SOMEONE TO EITHER TAKE CARE OF IT OR BRING MONEY FOR JAMIE TO DO SOMETHING!!!
“I was like a Kid in a Candy Store”

George D. Houser
August 31, 2010 in Floyd County Superior Court
PAYROLL ISSUES

- Employee Checks Bounced Constantly
- “Race” to the Bank
- Rome Banks Quit Honoring Checks
- Cartersville Banks Quit Honoring Checks
- No One Will Honor Checks
- Money Van (Fee)
- Used Employees’ Insurance Premiums
RESIDENT TRUST FUND

- Stealing Residents’ Money
- Used as a Personal Checking Account
- Used to Make Payroll
- Used to Pay Bills
SENTENCING

- 20 years of federal prison
- 3 years supervised release
- $6,742,807.88 in restitution to Medicaid and Medicare
- $872,515 in restitution to IRS

- Houser’s 45 Minute Speech
  - “A sad day for the Houser family…”

- The district judge described the conditions at the nursing homes as “cruel, atrocious, barbaric, inhumane and uncivilized.”
RECENT NURSING HOME AND FRAUD CASES
Justice Department Sues American Health Foundation and Its Affiliates for Providing Grossly Substandard Nursing Home Services

The Justice Department has filed a complaint under the False Claims Act against American Health Foundation (AHF), its affiliate AHF Management Corporation, and three affiliated nursing homes — Cheltenham Nursing & Rehabilitation Center (Cheltenham), The Sanctuary at Wilmington Place (Wilmington Place) and Samaritan Care Center and Villa (Samaritan) — for providing grossly substandard skilled nursing services between 2016 and 2018. AHF is a nonprofit corporation that is headquartered in Dublin, Ohio, and owns and controls nursing homes in Ohio, Pennsylvania and Iowa. Cheltenham is a 255-bed nursing home located in Philadelphia; Wilmington Place is a 63-bed nursing home located in Dayton, Ohio; and Samaritan is a 56-bed nursing home located in Medina, Ohio.
Owner of Health Care and Rehabilitation Facilities Indicted in $38 Million Payroll Tax Scheme

A federal district court in Newark, New Jersey, unsealed an indictment today charging the owner of a network of health care and rehabilitation facilities with willfully failing to withhold and pay over employment taxes on behalf of his employees, tax evasion, and failing to file benefit plan reports.

According to the indictment, Joseph Schwartz, an insurance broker, failed to collect, truthfully account for, and pay over millions of dollars in payroll taxes owed to the IRS on behalf of his employees as required by law. Schwartz owned and operated the New Jersey-based Skyline Management Group LLC and several related companies (Skyline), which in turn owned and managed 95 health care and rehabilitation facilities operating in at least 11 states. Schwartz allegedly controlled the finances of Skyline and the related companies.

In approximately late 2016, Schwartz and an associate allegedly created several businesses to provide staffing and management services for approximately 15,000 employees of the Skyline-owned health care and rehabilitation facilities. Although the staffing companies were nominally owned by other individuals, Schwartz allegedly controlled their finances and operation. From mid-2017 through June 2018, Schwartz allegedly caused the staffing companies to not pay approximately $38,982,016 in payroll taxes and unemployment taxes due the IRS. To evade unemployment taxes owed by the staffing companies, Schwartz allegedly used nominees to hide his control of the companies. He allegedly also provided, and directed others to provide, insufficient funds to pay the taxes owed.
FOR IMMEDIATE RELEASE

SavaSeniorCare LLC Agrees to Pay $11.2 Million to Resolve False Claims Act Allegations

Allegations Include Medically Unnecessary Rehabilitation Therapy Services and Grossly Substandard Skilled Nursing Services

SavaSeniorCare LLC and related entities (Sava), based in Georgia, have agreed to pay $11.2 million, plus additional amounts if certain financial contingencies occur, to resolve allegations that Sava violated the False Claims Act by causing its skilled nursing facilities (SNFs) to bill the Medicare program for rehabilitation therapy services that were not reasonable, necessary or skilled, and to resolve allegations that Sava billed the Medicare and Medicaid programs for grossly substandard skilled nursing services. Sava currently owns and operates SNFs across the country.

“Nursing home operators will be held accountable when they engage in fraudulent schemes and put their own financial gain ahead of the needs of their vulnerable residents,” said Acting Assistant Attorney General Brian M. Boynton of the Justice Department’s Civil Division. “To ensure the integrity of our public health care programs, the department will pursue operators who bill Medicare and Medicaid for unnecessary or grossly substandard services and who fail to provide adequate care.”
FOR IMMEDIATE RELEASE

U.S. Attorney Scott Brady and Pennsylvania Attorney General Josh Shapiro Announce Indictment in Nursing Home Investigation

PITTSBURGH – The former administrator of a Mount Lebanon skilled nursing home has been indicted by a federal grand jury in Pittsburgh on charges of conspiracy to defraud the United States, health care fraud and obstruction of a federal audit, United States Attorney Scott W. Brady and Pennsylvania Attorney General Josh Shapiro announced today.

The three-count Indictment, returned on February 24, 2021, named Susan Gilbert, age 60, of Lawrence, Pennsylvania, as the sole defendant.

"These criminal charges represent the first step in holding accountable those who put profit over the health and safety of seniors," said U.S. Attorney Brady. "From 2018-2020, Gilbert and co-conspirators deprived seniors of patient care using inflated nursing hours, falsified timecards and other schemes that they concealed with two sets of records. We will continue to pursue every lead until justice has been achieved for seniors and their families in western Pennsylvania."

"These crimes put facility residents at risk by only providing a dangerously low amount of nursing staff just before COVID began to surge across the country," said AG Shapiro. "By filing these false reports, the facility met minimum staffing levels only on paper — while Pennsylvanians who depended on them to care for their well-being didn’t have enough people to turn to. Our ongoing investigation will hold nursing and long-term care facilities criminally accountable wherever we find evidence someone neglected a resident."
FOR IMMEDIATE RELEASE

Southampton Woman Pleads Guilty to Elder Fraud Scheme

Earlier today, in federal court in Central Islip, Mara Ficarra pleaded guilty to conspiracy to commit mail, wire and bank fraud. The proceeding was held before United States District Judge Joanna Seybert. When sentenced, Ficarra faces up to five years in prison, as well as forfeiture and restitution of more than $1.5 million.


“Ficarra enriched herself by preying upon vulnerable elderly members of our community in an elaborate solicitation to immortalize the victims’ through inclusion of their biographies in reference publications she controlled, when in fact it was a scheme designed to steal their hard-earned savings. With today’s guilty plea, Ficarra has ensured that her own legacy is that of a convicted fraudster,” stated United States Attorney Peace. “This Office is committed to protecting the elderly from financial fraud and ending elder abuse in all its pernicious forms.” Mr. Peace thanked the Southampton Town Police Department for its assistance with the investigation.
Federal Jury Convicts Two New York Men for Operating Mass Mailing Fraud Scheme Targeting Elderly and Vulnerable Victims

A federal jury in Central Islip, New York, convicted Long Island residents Sean Novis, 51, and Gary Denkberg, 58, of conspiracy to commit mail fraud, mail fraud, wire fraud, fraudulent use of fictitious names and aiding and abetting other mail fraud schemes.

In August 2020, Novis and Denkberg were charged with operating mass mailing fraud schemes that tricked thousands of victims, many of whom were elderly, into providing the defendants with money by falsely promising prizes. Evidence presented at trial showed that, from January 2003 to September 2016, Novis and Denkberg mailed millions of prize notices that falsely represented that the victims had been specifically chosen to receive a large cash prize and would receive the prize if they paid a fee. Victims who paid the requested fee, however, did not receive the promised cash prize. Although the notices appeared to be personalized correspondence, they were merely mass-produced, boilerplate documents that were bulk mailed to recipients whose names and addresses were on mailing lists.

“The Department of Justice’s Consumer Protection Branch is committed to pursuing criminals who defraud the elderly,” said Principal Deputy Assistant Attorney General Brian M. Boynton, head of the Justice Department’s Civil Division. “I thank the Postal Inspection Service for conducting a thorough and successful investigation.”
FOR IMMEDIATE RELEASE

New York Man Pleads Guilty in Multi-Million Dollar Fraudulent Prize Notice Scheme

Five Defendants Now Have Pledged Guilty to Fraud Conspiracy

A fifth defendant pleaded guilty today in the Eastern District of New York to participating in a fraudulent, multi-million dollar mass-mailing scheme that tricked consumers into paying fees for falsely promised cash prizes.

According to court documents, from November 2013 through November 2018, Carmine Maietta, 75, of Westbury, New York, engaged in a direct-mail scheme that sent fraudulent prize notification mailings to thousands of consumers. The mailings induced consumers to pay a fee, purportedly in return for a large cash prize. None of the consumers who sent a fee ever received such a prize. Maietta pleaded guilty to conspiracy to commit mail fraud.

“Mass mailing fraud schemes often trick elderly victims into sending money based on false promises of large cash prizes,” said Acting Assistant Attorney General Brian M. Boynton of the Justice Department’s Civil Division. “The Department of Justice is committed to pursuing and prosecuting the perpetrators of these schemes.”
STAFFING ISSUES
RESIDENTS SUFFER WHEN NURSING HOMES HAVE INSUFFICIENT STAFF

Three problems in nursing home quality and clinical outcomes - particularly during COVID:

1. Staffing
2. Staffing
3. Staffing

Insufficient staff = not enough staff and staff that is not adequately trained
RESIDENTS AND WORKERS SUFFER WHEN NURSING HOMES HAVE INSUFFICIENT STAFF – A FEDERAL CASE PERSPECTIVE

- When staffing is so low that it leads to grossly substandard care and poor clinical outcomes – enforcement can be a result
Currently SNFs are not subject to a federal mandatory minimum number of nurse staff, under OBRA ‘87, SNFs are required to have “sufficient nursing staff” to provide nursing and related services to attain and maintain the highest practicable physical, mental, and psychosocial well-being of each resident.”
RESIDENTS AND WORKERS SUFFER WHEN NURSING HOMES HAVE INSUFFICIENT STAFF – A FEDERAL CASE PERSPECTIVE

JUSTICE NEWS

Department of Justice
Office of Public Affairs

FOR IMMEDIATE RELEASE

Thursday, November 16, 2017

Mississippi Skilled Nursing Facility, Related Companies, and Executives Agree to Pay $1.25 Million to Settle False Claims Act Allegations of Grossly Substandard Care to Facility Residents

The Department of Justice announced today that Hyperion Foundation, a Georgia not-for-profit entity (Hyperion), Julie Mittleider, a resident of Georgia and Hyperion’s former President, AltaCare Corporation, a Georgia corporation engaged in nursing home management (AltaCare), Douglas Mittleider, AltaCare’s Chief Executive Officer, and related companies, Long Term Care Services Inc. and Sentry Healthcare Acquirors Inc., have agreed to pay the United States a total of $1.25 million to resolve allegations of false claims to Medicare and the Mississippi Medicaid program for providing grossly substandard care to residents at the Oxford Health and Rehabilitation nursing home in Lumberton, Mississippi, from late 2005 through mid-2012, when it was operated by AltaCare, under a contract with Hyperion.
RESIDENTS AND WORKERS SUFFER WHEN NURSING HOMES HAVE INSUFFICIENT STAFF – A FEDERAL CASE PERSPECTIVE

FOR IMMEDIATE RELEASE

Friday, October 10, 2014

Extendicare Health Services Inc. Agrees to Pay $38 Million to Settle False Claims Act Allegations Relating to the Provision of Substandard Nursing Care and Medically Unnecessary Rehabilitation Therapy

Company Also Required to Enter Five Year Chain-wide Corporate Integrity Agreement

Extendicare Health Services Inc. (Extendicare) and its subsidiary Progressive Step Corporation (ProStep) have agreed to pay $38 million to the United States and eight states to resolve allegations that Extendicare billed Medicare and Medicaid for materially substandard nursing services that were so deficient that they were effectively worthless and billed Medicare for medically unreasonable and unnecessary rehabilitation therapy services, the Justice Department and the U.S. Department of Health and Human Services Office of Inspector General (HHS-OIG) jointly announced today. This resolution is the largest failure of care settlement with a chain-wide skilled nursing facility in the department’s history.
COVID-19 EXACERBATED THE STAFFING PROBLEM AND THE QUALITY PROBLEM

“The impact of COVID-19 on nursing home residents and staff has renewed attention to the long-standing weaknesses that impede the provision of high-quality nursing home care” - National Academies, The National Imperative to Improve Nursing Home Quality: Honoring Our Commitment to Residents, Families, and Staff, April 2022

“In the past two years, more than 200,000 residents and staff in nursing homes have died from COVID-19—nearly a quarter of all COVID-19 deaths in the United States.” - Biden-Harris Fact Sheet, February 2022
COVID-19 EXACERBATED THE STAFFING PROBLEM AND THE QUALITY PROBLEM

Nursing home patients moved after over a dozen workers skip shifts amid pandemic

By KAILYN BROWN
APRIL 8, 2020 | 9:57 AM UPDATED 1:17 PM

Nearly 100 residents are being removed from a skilled nursing facility in Riverside County after more than a dozen employees missed two consecutive days of work, according to county officials.
DOJ – MFCU COLLABORATION
In 2014, Extendicare Health Services (a Delaware-based skilled nursing corporation) entered into a $28 million settlement agreement with seven states and the federal government for billing Medicare and Medicaid for materially substandard nursing services.

Allegations included:

- Insufficient skilled nursing staff
- Failure to provide adequate catheter care
- Failure to follow appropriate protocols to prevent pressure ulcers or falls
In addition to paying $28 million in civil damages to compensate the various federal health care programs for harm suffered as a result of its conduct, the settlement also required that Extendicare enter into a five-year chain-wide Corporate Integrity Agreement with HHS.

A NAMFCU team, led by the Ohio MFCU, participated in this investigation and conducted the settlement negotiations with Extendicare on behalf of the participating states.
Autumn Healthcare of Zanesville, Inc. and Steve Hitchens were convicted on January 9, 2017.

The corporation was convicted of:
- 1 count of (F1) Engaging in a Pattern of Corrupt Activity;
- 1 count of (F4) Medicaid Fraud;
- 2 counts of (F3) Telecommunications Fraud;
- 2 counts of (F3) Tampering with Evidence;
- 9 counts of (F5) Forgery;
- 1 count of (F4) Theft.

Hitchens, the owner, was convicted of:
- 1 count of (F3) Tampering with Evidence;
- 1 count of (F3) Tampering with Records;
- 1 count of (F5) Forgery.
AUTUMN HEALTHCARE CONTINUED

- This investigation started with hidden video surveillance cameras placed in residents’ rooms, followed by a detailed comparison of the care evidenced on the video with the care memorialized in the residents’ medical records.

- The investigation found that Autumn Health Care of Zanesville, through its owner and many of its managers, habitually altered official documents to falsely make it appear that it was regularly providing adequate care for its residents.
• Although the records reflected a high level of care, the investigation found that several patients missed treatments and were given therapy that they didn't need in order for the company to make more money.

• The corporation was ordered to pay restitution totaling $167,640.10, and Hitchens was sentenced to three years community control and 100 hours of community service.
RESOURCES TO SUPPORT DOJ-MFCU COLLABORATION

Develop a Referral Protocol

Protocol would Identify:
• Referral Rubric
• Report Back Mechanism
• Quarterly Meetings
ELDER JUSTICE PUBLIC OUTREACH, RESOURCES, AND TRAINING

• Elder Justice Website
• Get Involved Get Safe
• Public Service Announcements
• IC3

• EAGLE
• SAFTA
• MDT TAC

• Elder Justice Initiative Webinar Series
Find Elder Abuse Resources In Your State
GET INVOLVED GET SAFE COMMUNITY OUTREACH FLYERS

EJI Community Outreach Flyers
GET INVOLVED, GET SAFE

Prevent Elder Abuse
Prevent Elder Abuse A Caregiver’s Guide
Prevent Financial Fraud and Scams

Prevent Elder Abuse
Prevent Abuse of Older Veterans
Prevent Financial Abuse

Financial Abuse
FBI PUBLIC SERVICE ANNOUNCEMENTS

William H. Webster
And I was the target of an elder fraud scheme.

Former Dir. Webster Warns About Elder Fraud
INTERNET CRIME COMPLAINT CENTER (IC3) PUBLIC OUTREACH

IC3 PUBLIC SERVICE ANNOUNCEMENT FOR OLDER AMERICANS

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Watch on YouTube
EAGLE: ELDER ABUSE GUIDE FOR LAW ENFORCEMENT

The tools you need to protect your older adult community.

First Responder Checklist

Evidence Collection Checklist

Community Resources
Helpful local information for the older adult, their families, and caregivers.

EAGLE Training from National White Collar Crime Center (NW3C)
SAFTA (SENIOR ABUSE FINANCIAL TRACKING AND ACCOUNTING)
Our mission is to provide tools, resource materials, and individualized consultations to facilitate the expansion of elder abuse case review multidisciplinary teams (MDTs) across the nation.
THE ELDER JUSTICE INITIATIVE WEBINAR SERIES

• Innovations in Guardianship: Maximizing Autonomy and Ensuring Accountability (September 30, 2021)
• Implementing the APS-Initiated Elder Abuse Restraining Order (AIRO) (October 21, 2021)
• Identifying and Prosecuting Power of Attorney Abuse (November 18, 2021)
• Trauma-Informed Counseling for Older Adults (January 27, 2022)
QUESTIONS?