IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	No. 19-cv-4066
	)	
vs.	)	COMPLAINT
	)	
SERGEANT BLUFF HEALTHCARE, LLC; RED OAK HEALTHCARE, LLC; LOGAN HEALTHCARE, LLC; ELK POINT HEALTHCARE #1, LLC; and FLANDREAU HEALTHCARE 2, LLC.,	)	
	)	
Defendants.	)	

Plaintiff, United States of America, by and through the undersigned counsel, states as follows:

SUMMARY

This is an action brought by the United States to recover multiple damages under the False Claim Act, 31 U.S.C. § § 3729-3733 ("FCA").

From January 2012 through December 2015 (the "relevant period"), Sergeant Bluff Healthcare, LLC; Red Oak Healthcare, LLC; Logan Healthcare, LLC; Elk Point Healthcare #1, LLC; and Flandreau Healthcare 2, LLC presented or caused to be presented false certifications or false or fraudulent claims to Medicare in order to obtain millions of dollars in reimbursement. These claims to Medicare were false or fraudulent in that they requested payment for home health services that were not medically necessary and did not meet the Medicare rules for compensable home health services.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action under 28 U.S.C. § § 1331 and 1345 because this action is brought by the Government as Plaintiff pursuant to the FCA.

2. This Court has personal jurisdiction over the Defendants pursuant to 31 U.S.C. § 3732(a) because the Defendants transact business within the Northern District of Iowa.

3. Venue is proper in this District under 31 U.S.C. § 3732(a) and 28 U.S.C. 1391(b) and (c).

PARTIES

4. The Plaintiff in this action is the United States of America, suing on its own behalf and on behalf of the United States Department of Health and Human Services ("HHS") and HHS' component agency, the Centers for Medicare and Medicaid Services ("CMS"). HHS, through CMS, administers the Medicare program ("Medicare"), which was created in 1965 as part of the Social Security Act, 42 U.S.C. § 1395, *et. seq.,* to provide federally funded health insurance, including for home health care, for person(s) age 65 or older, person(s) under age 65 with certain disabilities, and persons of all ages with end stage renal disease.

5. Defendants Sergeant Bluff Healthcare, LLC; Red Oak Healthcare, LLC; Logan Healthcare, LLC are Iowa corporations with their principal place of businesses respectively are 112 Gaul Drive, Sergeant Bluff, Iowa, 51054; 1600 Summit Street, Red Oak, Iowa, 51566; and 314 South Elm Street, Logan, Iowa,

51546; Elk Point Healthcare #1, LLC; and Flandreau Healthcare 2, LLC are South Dakota corporations with their principal place of businesses respectively at 600 E. Lincoln Street, Elk Point, South Dakota, 57025; and 611 East 2nd Ave., Flandreau, South Dakota, 57028.

LEGAL BACKGROUND

The False Claims Act

6. The FCA prohibits knowingly presenting, or causing to be presented, to the federal government a false or fraudulent claim for payment or approval. 31 U.S.C. § 3729(a)(1) (1986) and 31 U.S.C. § 3729(a)(1)(A). In addition, the FCA prohibits knowingly making, using, or causing to be made or used, a false record or statement material to a false or fraudulent claim. 31 U.S.C. § 3729(a)(1)(B). The FCA further prohibits knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money back to the federal government. 31 U.S.C. §§ 3729(a)(1)(G).

7. The term "knowingly" under the FCA means that a person, with respect to information, (i) has actual knowledge of the information, (ii) acts in deliberate ignorance of the truth or falsity of the information, or (iii) acts in reckless disregard of the truth or falsity of the information. 31 U.S.C. § 3729(b). No proof of specific intent to defraud is required to show that a person acted knowingly under the FCA. *Id.*

8. Violations of the FCA subject a defendant to civil penalties of not less than $5,500 and not more than $11,000 per false claim, as adjusted for inflation,

plus three times the amount of damages that the Government sustains as a result of the Defendant's actions. 31 U.S.C. § 3729(a).

MEDICARE PAYMENT FOR HOME HEALTH SERVICES

9. Under Medicare, the United States pays for certain home health services rendered to Medicare beneficiaries who meet specific coverage requirements. 42 U.S.C. §§ 1395d(a)(3), 1395k(a)(2)(A). Services covered under this benefit include part time or intermittent skilled nursing care, speech/language pathology, physical or occupational therapy, part time or intermittent skilled home health aide services, and medical social services. 42 U.S.C. § 1395x(m).

Medicare will pay for home health services only if a physician certifies that:

(1) The patient needs skilled nursing care, speech/language pathology, or physical or occupational therapy;

(2) The patient is confined to the home ("homebound"); and

(3) A plan of care has been established by and is periodically reviewed by a physician.

(4) A face to face patient encounter occurred no more than 90 days prior to or 30 days after the start of home health.

42 C.F.R. § 424.22; 42 C.F.R. §§ 409.41, 409.42. The physician must re-certify that these conditions exist, and re-certify a plan of care for the patient, at least once every sixty days if the home health agency wishes to submit further claims to Medicare for additional episodes of care. *Id.*

10. To be covered by Medicare, a home health agency's skilled nursing services must be reasonable and necessary to the treatment of the patient's condition and they must be intermittent. Manual, Chapter 7, Section 40.1. Skilled

therapy services must require the skills of a qualified therapist and must be reasonable and necessary for the treatment of a patient's illness or injury. Manual, Chapter 7, Section 40.2; 42 U.S.C. § 1395y(a)(1)(A).

FACTUAL ALLEGATIONS

11. Defendants provided home health services to Medicare beneficiaries throughout the Midwest.

12. Defendants hired third party therapy providers to provide therapy services to Defendants' patients. The third party providers billed Defendants for having performed the services and Defendants received payment from Medicare for the services provided.

13. Defendants knowingly submitted or caused to be submitted false or fraudulent claims related to the therapy services in that the claims submitted to Medicare for therapy visits were for services that did not qualify as a covered service under Medicare rules. Specifically, a significant portion of Defendants' claims sought payment for unskilled care, for patients who did not have a medical need for skilled care, and for therapy services that were not justified by patients' medical conditions.

14. Defendants knew that a significant number of claims they submitted that related to therapy services were false or fraudulent in part because of the extreme amount of therapy services provided on average per patient and in part because of comparative billings reports the defendants received. The comparative

billing reports provided notice to Defendants that, compared to peers, they were submitting claims for an inordinate number of therapy visits.

15. Defendants did not take adequate steps to address the comparative billing reports but instead continued submitting claims for therapy visits at inordinately high rates.

COUNT I: FALSE CLAIMS ACT

16. The United states restates and incorporates by reference paragraphs 1 through 15 as if fully set forth herein.

17. Defendants knowingly presented, or caused to be presented, false and fraudulent claims for payment or approval to the United States, including claims for home health therapy services provided to patients who did not meet Medicare's eligibility rules for the home health benefit and for services that did not qualify as covered services under Medicare rules.

18. By virtue of the false and fraudulent claims, the United States suffered damages.

19. Defendants are liable to the United States for up to trebled damages under the False Claims Act plus civil penalties under that Act.

PRAYER FOR RELIEF

WHEREFORE, the United States requests that judgment be entered in its favor and against Defendants as follows:

ENTITY	AMOUNT
Sergeant Bluff Healthcare, LLC	$1,245,149.01
Red Oak Healthcare, LLC	$ 228,333.42
Logan Healthcare, LLC	$ 775,373.15
Elk Point Healthcare #1, LLC	$ 788,484.69
Flandreau Healthcare 2, LLC	$ 115,942.46
TOTAL AMOUNT	$3,133,282.95

The United States further requests all such relief as the Court deems just and proper under the circumstances.

Respectfully Submitted,

PETER E. DEEGAN, JR.
United States Attorney

By: */s/ Jacob A. Schunk*

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