IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	
Plaintiff,	
v.	CIVIL ACTION NO. 98- CV-139
CHESTER CARE CENTER BISHOP NURSING HOME MANCHESTER HOUSE NURSING & CONVALESCENT CENTER THE BISHOP NURSING HOME, INC. and COMMONWEALTH REAL ESTATE INVESTORS	
Defendants.	

COMPLAINT

INTRODUCTION

The United States, through the United States Attorney for the Eastern District of Pennsylvania, brings this civil action under the False Claims Act, 31 U.S.C. § 3729, et seq., and alleges that Chester Care Center, Bishop Nursing Home, Manchester House Nursing & Convalescent Center, The Bishop Nursing Home, Inc. and Commonwealth Real Estate Investors, schemed to bill and collect from the United States of America for services associated with the care rendered to the elderly residents of Chester Care Center and Bishop Nursing Home when, in fact, that care was not adequate.

Congress, in the Omnibus Budget Reconciliation Act of 1987 ("OBRA '87"), enacted the Nursing Home Reform Act, 42 U.S.C.A.

§1396r et seq., (hereinafter "the Act") which took effect on October 1, 1990. A nursing facility is defined in the Act as "an institution...which--

(1) is primarily engaged in providing to residents--

(A) skilled nursing care and related services for residents who require medical or nursing care,
(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or
(C) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, and is not primarily for the care and treatment of mental diseases; .....

42 U.S.C.A. § 1396r(a).

The Act mandates that nursing facilities comply with federal requirements relating to the provision of services. 42 U.S.C.A. § 1396r(b). Specifically, in terms of the quality of life for residents of nursing facilities, the Act states that: "A nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident." 42 U.S.C.A. § 1396r(b)(1)(A).

Additionally, the Act mandates that a nursing facility "provide services and activities to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident in accordance with a written plan of care which-

(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;..."

42 U.S.C.A. § 1396r(b)(2)(A).

A duty is placed on the nursing facility to fulfill the residents' care plans by providing, or arranging for the provision of, inter alia, nursing and related services and medically-related social services that attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, pharmaceutical services and dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident. 42 U.S.C.A. § 1396r(4)(A)(i-iv).

The Social Security Act mandates that skilled nursing facilities that participate in the Medicare Program and nursing facilities that participate in the Medical Assistance Program, also known as Medicaid, meet certain specific requirements in order to qualify for such participation. These requirements are set forth at 42 C.F.R. § 483.1 et seq. and "serve as the basis for survey activities for the purpose of determining whether a facility meets the requirements for participation in Medicare and Medicaid." 42 C.F.R. § 483.1.

Federal regulations, when addressing quality of care concerns, mandate that "[e]ach 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 and plan of care." 42 C.F.R. § 483.25. The regulations specifically address the area of nutrition:

> (i) **Nutrition.** Based on a resident's comprehensive assessment, the facility must ensure that a resident--
>
> (1) Maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible; and
>
> (2) Receives a therapeutic diet when there is a nutritional problem. 42 C.F.R. § 483.25(i).

Additionally, the Federal regulations specifically address those individuals who are tube-fed:

> (g) **Naso-gastric tubes.** Based on the comprehensive assessment of a resident, the facility must ensure that--
>
> (1) A resident who has been able to eat enough alone or with assistance is not fed by naso-gastric tube unless the resident's clinical condition demonstrates that use of a naso-gastric tube was unavoidable; and
>
> (2) A resident who is fed by a naso-gastric or gastrostomy tube receives the appropriate treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-

pharyngeal ulcers and to restore, if possible, normal eating skills. 42 C.F.R. § 483.25(g).

The federal regulations also provide that pressure sores be adequately treated as follows:

> (c) Pressure sores. Based on the comprehensive assessment of a resident, the facility must ensure that--
>
> (1) A resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and
>
> (2) A resident having pressures sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

42 C.F.R. § 483.25(c).

Defendants Chester Care Center, Bishop Nursing Home and Manchester House Nursing & Convalescent Center are licensed long-term care (nursing) facilities under federal and state law and are certified to participate in the Medicare and Medical Assistance Programs. The Medicare Program is a health insurance program for individuals 65 years and older, certain disabled individuals under age 65 and people of any age who have permanent kidney failure. The Medicare statute is codified at 42 U.S.C.A. § 1395 (Title XVIII of the Social Security Act).

The Medical Assistance Program is a joint federal-state program funded under Title XIX of the Social Security Act. The

Department of Public Welfare administers the Medical Assistance Program in Pennsylvania. As a prerequisite to enrollment as a provider in the Medical Assistance Program, all of the long-term care facilities that are the subject of this Complaint entered into provider agreements and agreed to the following provisions:

> 1. That the submission by, or on behalf of, the Facility of any claim, either by hard copy or electronic means, shall be certification that the services or items from which payment is claimed actually were provided to the person identified as a medical assistance resident by the person or entity identified as the Facility on the dates indicated.
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> *******
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> 5. That the Facility's participation in the Medical Assistance Program is subject to the laws and regulations effective as to the period of participation, including all of those that may be effective after the date of the agreement and that the Facility has the responsibility to know the law with respect to participation in the Medical Assistance Program.

At all times relevant to this action, Chester Care Center, Bishop Nursing Home and Manchester House Nursing & Convalescent Center were "providers" with valid provider agreements with the Pennsylvania Department of Public Welfare.

The Nursing Home Reform Act also mandates that the State shall be responsible for certifying, in accordance with surveys conducted by the state, the compliance of nursing facilities (other than facilities of the State)... The Secretary [Department of Health and Human Services] shall be responsible for certifying..., the compliance of State nursing facilities with the requirements of such subsections. 42 U.S.C.A. §1396r(g)(1)(A).

The Pennsylvania Department of Health is responsible for performing the survey function of long-term care facilities in Pennsylvania. By state regulation, facilities are required to meet the daily nutritional needs of patients. 28 Pa. Code § 211.6(a). Additionally, if consultant dietary services are used, the consultant's visits must be at appropriate times and of sufficient duration and frequency to provide continuing liaison with medical and nursing staff and provide advice to the administrator and participate in the development and revision of dietary policies and procedures. 28 Pa. Code § 211.6(m).

Long-term care facilities are also required to provide nursing services that meet the needs of residents. The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care. 42 C.F.R. §483.30. See also 28 Pa. Code § 211.12(a). There must

be adequate staff to provide nursing care to all residents in accordance with resident care plans. 42 C.F.R. §483.30(a)(1). It is incumbent upon the director of nursing services to assure that "preventive measures, treatments, medications, diet and other health services prescribed are properly carried out..." 28 Pa. Code § 211.12(e)(9).

Moreover, a nursing facility is required to retain a medical director who is responsible for the "coordination of the medical care in the facility to ensure the adequacy and appropriateness of the medical services provided to patients." 28 Pa. Code § 211.2(k).

Finally, a nursing home administrator is charged with the general administration of the facility whether or not his or her functions are shared with one or more other individuals. 63 P.S. § 1102(2). According to regulations promulgated by the Nursing Home Administrators Board, a nursing home administrator is responsible for: (a) evaluating the quality of resident care and efficiency of services, (b) maintaining compliance with governmental regulations, and (c) developing policies which govern the continuing care and related medical and other services provided by the facility which reflect the facility's philosophy to provide a high level of resident care in a healthy, safe and comfortable environment. 49 Pa. Code §§ 39.91(1)(i),(ii),(vi).

The Government's complaint charges that the defendants caused the submission of false or fraudulent claims to the United

States for payment for care that was not adequately rendered to frail and vulnerable elderly residing at Chester Care Center and Bishop Nursing Home. The Health Care Financing Administration imposed civil money penalties against Manchester House Nursing & Convalescent Center, Bishop Nursing Home and Chester Care Center based upon survey deficiencies discovered during 1996 and 1997.

FACTUAL BASIS FOR COMPLAINT

RESIDENT 1

Resident 1, a resident of Chester Care Center, was a diabetic who suffered from multiple, severe conditions. Resident 1's vital signs were taken daily from December 15, 1995 to December 19, 1995. A blood glucose of 20 mg/dl was reported on 12/18, a seriously low level capable of causing coma. The nursing note indicated that the action taken would be to "report to next shift to call MD with result." No further vital signs nor clinical assessments were recorded despite a potentially coma-causing blood glucose level. There were no adequate assessments performed by the staff and Resident 1 ultimately became unresponsive on January 2, 1996. Resident 1 died of sepsis and diabetic hyperosmolar coma at Crozer-Chester Medical Center.

RESIDENT 2

Resident 2, a resident of Chester Care Center who was unable to speak, was admitted to Crozer-Chester Medical Center on January 3, 1996 with a diagnosis of full thickness burns over 43%

of her body surface area involving the upper and lower limbs and portion of the right buttock and pelvic area. Resident 2 had been placed in a tub of hot water for a bath by a certified nurse aide. The water temperature, when measured after the incident, was 138 degrees Fahrenheit. Chester Care Center had knowledge of the malfunctioning boiler and been cited by the state Department of Health in prior surveys for improper water temperatures and had submitted a plan of correction to address this issue. On January 6, 1996, Resident 2 died of shock and sepsis due to thermal burns of the body.

RESIDENT 3

Resident 3, a resident of Bishop Nursing Home, suffered from progressive weight loss without adequate dietary interventions to reverse his progressive deterioration. Resident 3 weighed 149 pounds in early 1995 which declined to 128 pounds by October 1995. By May 1996, his weight was 125 pounds and at a hospital admission in August 1996, he weighed 113 pounds. From February 1994 to May 1996, Resident 3's serum albumin level declined from 3.6 gm/dl to 2.5 gm/dl. Resident 3 had been hospitalized in February 1996 for 3 days and was hospitalized in May 1996 for 13 days for malnutrition. Resident 3's weight declined further to 105 pounds by November 1996 and at autopsy (February 1997), he weighed 88 pounds. Resident 3 also suffered from multiple decubitus ulcers at his hip, sacrum and genital area, which were

not healing over time. There was no underlying condition that would cause Resident 3 to lose weight and develop pressure sores.

RESIDENT 4

Resident 4, a resident of Chester Care Center, suffered from a marked, persistent functional decline that was not addressed by the medical care rendered at the facility. There were disparities between the recorded vital signs at the facility and those recorded at the hospital. Resident 4's ideal body weight was 139 pounds which declined to 105 pounds in January 1996. Even though assessments written by registered dieticians clearly identified inadequate protein being recommended for this resident, the assessments were nonetheless implemented. Timely assessments of weight and protein status and revision of the nutrient prescription when it failed to achieve its stated goals were non-existent. Additionally, there was no discussion of the problem of recurrent aspiration pneumonia in a resident receiving continuous feedings through a PEG tube. No alternative options, including placement of a jejunostomy tube were ever considered. Finally, there was no intervention to alter the frequent transfers of the resident from Chester Care Center to the hospital, as her functional level declined and she repeatedly reaspirated. In fact, there was little evidence contained in her chart that Resident 4 received adequate nutritional or physical care, or comfort at Chester Care Center to mitigate the pain and

suffering from repeated hospitalizations during her fatal decline.

RESIDENT 5

Resident 5, a resident of Chester Care Center, was admitted to the facility in February 1995 weighing 170 pounds, 101% of his ideal body weight. Resident 5 was a diabetic and during his stay over the next 10 months, experienced five hospitalizations. After his first hospitalization in March 1995, Resident 5's albumin was 3.2 gm/dl, and his weight was 171 pounds. Resident 5 was still independent in eating and was continent. After his second hospitalization in May 1995, Resident 5's weight was 165 pounds and he was incontinent of bowel and bladder, but otherwise was able to assist with his care and was mobile. During the subsequent four months (May 1995 to September 1995), Resident 5 developed a progressive anemia and hypoalbuminemia . Resident 5's weight declined to 158 pounds and there was no evidence in his chart of efforts to restore continence. As of October 1995, Resident 5 had developed seven wounds, including one Stage III and four Stage II pressure ulcers. Resident 5 was hospitalized for an aspiration pneumonia and hypergylcemia in December 1995. Until his final transfer to an acute care facility, Resident 5 had several episodes of hypoglycemia without readjustments in his insulin or feeding. Nursing and medical inattention to reversing the downward spiral of loss of mobility, loss of continence, and

loss of muscle mass leading to further immobility, facilitated the functional decline of Resident 5 until his demise.

Jurisdiction and Venue

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345 and 31 U.S.C. § 3729 et seq.

2. Venue is proper in the Eastern District of Pennsylvania under 28 U.S.C. §§ 1391 (b) and (c).

Parties

3. Plaintiff is the United States of America acting for itself, the Department of Health and Human Services-Office of Inspector General, the Health Care Financing Administration, the Medicare Trust Fund, the Medical Assistance Program and the beneficiaries thereof.

4. Defendant, Chester Care Center is a licensed and certified long-term care facility located at 15th Street & Shaw Terrace, Chester, Pa. 19013.

5. Defendant, Bishop Nursing Home is a licensed and certified long-term care facility located at 318 South Orange Street, Media, Pa. 19063.

6. Defendant, Manchester House Nursing & Convalescent Center is a licensed and certified long-term care facility located at 411 Manchester Avenue, Media, Pa. 19063.

7. Defendant, The Bishop Nursing Home Inc, is a for-profit corporation that is the owner and licensee of Bishop

Nursing Home and has corporate offices located at 555 East Baltimore Avenue, Media, Pa. 19063.

8. Defendant, Commonwealth Real Estate Investors is a partnership that is the owner and licensee of Chester Care Center and Manchester Nursing & Convalescent Center and partner of The Bishop Nursing Home, Inc., with corporate offices located at 111 South Avenue, Media, Pa. 19063.

COUNT I

FALSE CLAIMS ACT: 31 U.S.C. § 3729

9. The above paragraphs are realleged as though fully set forth herein.

10. The provision of adequate nutrition to residents of defendants' long-term care facilities was the responsibility of not only the nutritionists and dietary staff but included the nursing and medical staff as well.

11. The provision of adequate wound care to residents of defendants' long-term care facilities was the responsibility of the nursing and medical staff.

12. The provision of adequate care to residents with diabetes included all disciplines, including but not limited to medical, nursing, and dietary staff.

13. The provision of adequate care during the bathing of residents of defendant Chester Care Center was the responsibility of the nursing staff and management which was aware of prior boiler problems at defendant Chester Care Center.

14. Agents and/or employees of defendants were responsible for the provision of nursing, wound care and nutritional services to Residents 1, 2, 3, 4 and 5 as well as to all of the residents of defendants' long-term care facilities.

15. Defendants billed the government for care provided to Residents 1, 2, 3, 4 and 5 and for other residents of their facilities for reimbursement by the Medicare and Medical Assistance Programs.

16. Agents and/or employees of defendants, Chester Care Center, Bishop Nursing Home, The Bishop Nursing Home, Inc. and Commonwealth Real Estate Investors, submitted false, fictitious or fraudulent claims to the Pennsylvania Department of Public Welfare, Medical Assistance Program for nutritional, nursing, dietary, plant management and wound care services that were not adequately rendered to Residents 1, 2, 3, 4, and 5 for the time period June 1995 through the present.

17. Defendants, Commonwealth Real Estate Investors and The Bishop Nursing Home, Inc., as licensees for Chester Care Center and Bishop Nursing Home, were responsible for the care rendered to residents at defendants' facilities and caused the repeated submission of false, fictitious or fraudulent claims to the Pennsylvania Department of Public Welfare, Medical Assistance Program, and to the Medicare Program for nutritional, wound care and nursing services that were not adequately rendered to

Residents 1, 2, 3, 4 and 5 for the time period June 1995 through the present. 31 U.S.C. § 3729.

18. Defendants knowingly and willfully did not ascertain the truth or falsity of the claims for services submitted to the Pennsylvania Department of Public Welfare and to the Medicare Program for payment on behalf of Residents 1, 2, 3, 4 and 5, all of whom were Medical Assistance recipients and Medicare beneficiaries. 31 U.S.C. § 3729.

19. Defendants acted in reckless disregard of the care and services ordered and actually provided to Residents 1, 2, 3, 4 and 5 while residing at Chester Care Center and Bishop Nursing Home when billing the Medicare and Medical Assistance Programs. 31 U.S.C. § 3729.

20. Defendant, Manchester House Nursing & Convalescent Center was cited for deficiencies and HCFA imposed civil money penalties in March 1996 after a re-visit found similar deficiencies, including deficiencies pertaining to the treatment of pressure sores.

21. Defendant, Commonwealth Real Estate Investors, as licensee for Manchester House Nursing & Convalescent Center, was responsible for and received payment from government programs (Medicare and Medicaid) for inadequate care rendered to residents of Manchester House Nursing & Convalescent Center.

22. Upon information and belief, the United States alleges that the care provided to Residents 1, 2, 3, 4, and 5

was representative of the inadequate care rendered to residents of defendants' long-term care facilities. The care rendered was inadequate in terms of medical care, nursing care, nutrition, and diabetic care, all of which were the responsibility of the defendants' Nursing Home Administrators, the Medical Directors and the Directors of Nursing. The claims submitted by defendants for the care of these residents would thus constitute false claims actionable under the False Claims Act to the same extent as the claims for Residents 1-5.

23. The United States was damaged as a result of the conduct described above.

WHEREFORE, plaintiff United States of America demands and prays that judgment be entered in its favor and against the defendants, jointly and severally as follows:

a. an amount equal to the number of false or fraudulent claims that will be proven at trial, multiplied as provided for in 31 U.S.C. § 3729(a) and imposition of $10,000.00 per claim;

b. three times that total amount of damages sustained by the United States because of the acts complained of;

c. costs of this action;

d. such other and further relief as the Court shall deem proper.

COUNT II: UNJUST ENRICHMENT

25. The foregoing paragraphs are incorporated herein by reference as if fully set forth.

26. The conduct described in the foregoing paragraphs caused all defendants to receive, directly or indirectly, benefits from the United States.

27. Under the circumstances described in the foregoing paragraphs, as between the United States and each defendant in this Count, retention by each defendant of the benefits conferred by the United States would be unjust.

WHEREFORE, plaintiff the United States of America demands judgment in its favor and against defendants, jointly and severally, and relief as follows:

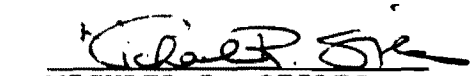
a. an amount equal to the gain to the defendants as a result of the activities complained of;

b. interest according to law;

c. costs of this action; and

d. such other and further relief as this Court may deem proper.

Respectfully submitted,



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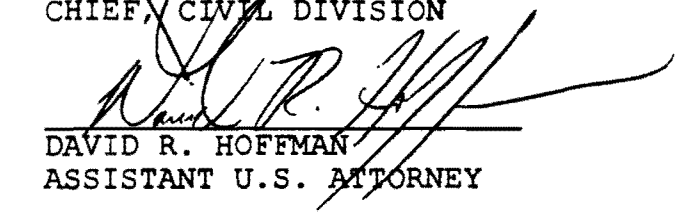

DAVID R. HOFFMAN
ASSISTANT U.S. ATTORNEY

Dated: 1/13/98