

## JUSTICE NEWS

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### **Minnesota-Based Hospice Provider to Pay \$18 Million for Alleged False Claims to Medicare for Patients Who Were Not Terminally Ill**

Evercare Hospice and Palliative Care will pay \$18 million to resolve False Claims Act allegations that it claimed Medicare reimbursement for hospice care for patients who were not eligible for such care because they were not terminally ill, the Justice Department announced today. Evercare, now known as Optum Palliative and Hospice Care, is a Minnesota-based provider of hospice care in Arizona, Colorado and other states across the United States.

Hospice care is special end-of-life care for terminally ill patients intended to comfort the dying. When a terminally ill Medicare patient elects hospice, Medicare no longer covers traditional medical care designed to improve or heal the patient. Only Medicare patients who have a life expectancy of six months or less are considered terminally ill and eligible for the Medicare hospice benefit.

“Today’s settlement reflects the Justice Department’s continuing efforts to combat health care fraud and protect the nation’s elderly and most vulnerable citizens,” said Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of the Justice Department’s Civil Division. “Our seniors rely on the hospice program to provide them with quality care, dignity and respect when they are terminally ill and need end-of-life care. It is, therefore, critically important that we hold accountable those hospice providers that bill for medically unnecessary services in order to get higher reimbursements from the Medicare program. Such abuses threaten a vulnerable population and jeopardize this important benefit for others under the program. The Justice Department will continue to protect taxpayer dollars and ensure that this critical benefit is available for Medicare patients who truly need it.”

This settlement resolves a lawsuit brought by the government alleging that Evercare knowingly submitted or caused to be submitted false claims to Medicare for hospice care from Jan. 1, 2007, through Dec. 31, 2013, for Medicare patients who were not eligible for the Medicare hospice benefit because Evercare’s medical records did not support that they were terminally ill. The government’s complaint alleged that Evercare’s business practices were designed to maximize the number of patients for whom it could bill Medicare without regard to whether the patients were eligible for and needed hospice. These business practices allegedly included discouraging doctors from recommending that ineligible patients be discharged from hospice and failing to ensure that nurses accurately and completely documented patients’ conditions in the medical records.

The allegations resolved by this settlement arose from whistleblower lawsuits initially filed by former employees of Evercare under the *qui tam* provisions of the False Claims Act, which allow private parties to bring suit on behalf of the government and to share in any recovery. The Act allows the United States to intervene in the lawsuits, which it did in this case. The share to be awarded in this case has not yet been determined.

“The decision to put someone into hospice care is an emotionally wrenching one for the patient and the patient’s family,” said U.S. Attorney John Walsh for the District of Colorado. “When hospice companies exploit and overbill Medicare by having people in hospice when they do not belong there, it jeopardizes this important benefit for others. We will not tolerate such conduct. The District of Colorado and the Department of Justice’s Civil Fraud Section deserve substantial credit for achieving this result in this Evercare Hospice case.”

“Hospice care is only medically necessary and reimbursable by Medicare for terminally ill patients with a life expectancy of six months or less,” said Special Agent in Charge Steven Hanson of the Department of Health and Human Services’ Office of Inspector General (HHS-OIG). “We will continue to vigorously investigate health care companies that put their own profits above the medical needs of patients to ensure that companies bill Medicare only for reimbursable health care services.”

This settlement illustrates the government’s emphasis on combating health care fraud and marks another achievement for the Health Care Fraud Prevention and Enforcement Action Team (HEAT) initiative, which was announced in May 2009 by the Attorney General and the Secretary of Health and Human Services. The partnership between the two departments has focused efforts to reduce and prevent Medicare and Medicaid financial fraud through enhanced cooperation. One of the most powerful tools in this effort is the False Claims Act. Since January 2009, the Justice Department has recovered a total of more than \$30 billion through False Claims Act cases, with more than \$18.3 billion of that amount recovered in cases involving fraud against federal health care programs.

This settlement is the result of a coordinated effort by the Civil Division’s Commercial Litigation Branch, the U.S. Attorney’s Office for the District of Colorado and HHS-OIG.

The lawsuits resolved by this settlement, which were consolidated in the District of Colorado, are captioned *United States ex rel. Fowler and Towl v. Evercare Hospice, Inc., et al.*, No. 11-cv-00642 (D. Colo.) and *United States ex rel. Rice v. Evercare Hospice, Inc.*, No. 14-cv-01647 (D. Colo.). The claims resolved by the settlement are allegations only, and there has been no determination of liability.