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Private Equity Firm, Two Execs Pay \$25M in Medicaid FCA Settlement

By Nina Youngstrom

A private equity firm and two former executives of South Bay Mental Health Center Inc. in Massachusetts agreed to pay \$25 million for allegedly causing the submission of false claims to Medicaid in connection with services provided to patients by clinicians who were unlicensed and unsupervised, the Office of the Massachusetts Attorney General (AG) said Oct. 14.^[1]

It's the largest settlement amount ever paid by a private equity company to settle fraud allegations for a health care portfolio company, the AG said. There were allegedly staffing and supervision deficiencies at all 17 South Bay clinics in the commonwealth, according to the AG's state False Claims Act (FCA) complaint, which also described testimony from South Bay's former compliance officer, who said the compliance committee existed "in name only."^[2]

The settlement^[3] is a powerful reminder of the risks that may flow from private equity investments in health care entities and their owners joining the board, said Darrell Contreras, chief compliance officer of Millennium Health. "If you think about the world in which they operate, it is high finance and investments. They may not have a good background in health care compliance," he said. "It becomes the job of the chief compliance officer to educate the board on compliance and the government's expectations for board oversight."

AG, Relator Went Ahead Without DOJ

According to the complaint, South Bay ran mental health centers throughout the commonwealth. It was founded in 1986 by Dr. Peter Scanlon, who was CEO until April 2012. At that point, he sold it to Community Intervention Services (C.I.S.) and served as its chief clinical officer until December 2014. A majority interest of C.I.S. was owned by H.I.G. Growth Partners LLC and H.I.G. Capital LLC, a private equity firm. Kevin Sheehan was CEO of C.I.S. from April 2012 through November 2016.

The whistleblower, Christine Martino-Fleming, a licensed mental health counselor formerly employed by South Bay and C.I.S., filed the FCA lawsuit in 2015 against South Bay and the private equity defendants under the federal FCA and Massachusetts False Claims Act. Although the Department of Justice declined to intervene, three years later, the AG filed a complaint in intervention. In 2018, South Bay and C.I.S. settled the case for \$4 million. In 2019, the AG and the whistleblower filed an amendment complaint, and now H.I.G. will pay \$19.95 million and Scanlon and Sheehan will pay \$5.05 million, the AG said.

"This settlement resolves allegations that HIG, Scanlon, and Sheehan knew that SBMHC [South Bay Mental Health Center] was providing unlicensed, unqualified, and unsupervised services in violation of regulatory requirements and caused fraudulent claims to continue to be submitted to MassHealth by failing to adopt recommendations" to bring South Bay into compliance, the AG said. MassHealth is the state's Medicaid program.

According to the complaint, professionals diagnosing and treating MassHealth members are required to have a

degree or license as a psychiatrist, psychologist, social worker, psychiatric nurse, psychiatric clinical nurse specialist, counselor, or occupational therapist. Counselors must have a master's degree in counseling and two years of full-time supervised clinical experience in a multidisciplinary mental health setting after getting a master's degree. Massachusetts Behavioral Health Partnership requires supervision of all master's-level counselors by a licensed independent clinical social worker, a licensed psychologist, an advanced practice registered nurse board-certified in psychiatric nursing, or a licensed psychiatrist.

The complaint alleged that many therapists employed by South Bay had master's degrees but weren't licensed as social workers or mental health counselors and "a vast majority of unlicensed staff therapists at South Bay clinics had no qualified supervisor during the applicable time period." Mental health clinics also were required to have a clinic director who is licensed or certified in one of the core disciplines, but that allegedly wasn't the case at many South Bay clinics. "In fact, many clinic directors were themselves unlicensed," the complaint alleged.

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