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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.

'Pressure to Grow Was Astronomical'

Kathy Bangerter, South Bay's director of utilization management and compliance officer from 2000 to 2012, testified in 2017 that Scanlon and another manager "were most responsible for ensuring that South Bay was complying with MassHealth regulations." According to the complaint, "Scanlon confirmed in deposition testimony on September 29, 2017 that he personally reviewed regulations promulgated by MassHealth during his tenure as President of South Bay."

Although South Bay had a "compliance committee" when Bangerter worked there, she testified that "it was a compliance committee 'theoretically' and 'in name only,'" the complaint alleged. "Bangerter testified that, throughout her tenure as South Bay's Compliance Officer, Scanlon never once asked her to ensure South Bay was compliant with supervision regulations."

The whistleblower was hired as a job coach in 2008 and promoted to coordinator of staff development and training. She allegedly observed between 2009 and 2014 that "a majority of the individuals who held the title of Clinical Director and Regional Director at South Bay either lacked a license, registration or certification completely; or lacked the correct type of license, registration, or certification in one of the core disciplines."

Things allegedly got worse after Sheehan and the C.I.S. and H.I.G. defendants took over South Bay because "the pressure to grow was astronomical compared to what it had been" before the sale, according to testimony from a former director of clinical services.

Attorneys for the defendants did not respond to RMC's requests for comment.

Compliance Professional: PE 'Gets a Bad Rap'

Leslie Boles, director of compliance audit at Waud Capital Partners, said "private equity gets a bad rap. People always seem to think they don't care about compliance." But that's not the case, Boles said. "At Waud it is the exact opposite. Our job is to reinforce a culture of compliance."

Boles said the main way private equity is different from the traditional health care model is its "growth structure. A company could acquire different practices faster in some quarters of the year than others," she noted. "We as compliance professionals are prepared to identify areas of risk proactively. We do a lot of education with the mergers and acquisition diligence teams to ensure we're capturing risks that may be out there and resolve them."

All of Waud's portfolio companies have their own compliance teams, which her compliance group collaborates with. "We have weekly compliance forums to go over key areas," including Department of Justice enforcement actions, Boles noted. Board members are brought in from the compliance committees for compliance panels.

“We work in an environment where we absolutely care about compliance.”

But whistleblower attorney Mary Inman, with Constantine Cannon, said private equity’s modus operandi is buying companies to generate revenue and flip them, which creates a “dynamic that can put additional pressures to play fast and loose” with regulatory requirements. She notes there have been two other recent false claims settlements with private equity firms in health care, including the Department of Justice’s 2020 settlement with the former owners of Therakos Inc. and its private equity firm, The Gores Group.^[4] “The deterrent power of whistleblowers is one of the best backstops we have,” Inman said. “There’s no substitute for well-placed insiders.” She was heartened to see executives held accountable in the South Bay case. “It sends a strong signal.”

Jeffrey Newman, an attorney for the whistleblower in the South Bay case, said private equity companies must have board members who are “medically experienced” and understand Medicare, Medicaid and TRICARE regulations, not just people who “look at finances only.”

When educating new board members who come from private equity, Contreras recommends compliance professionals focus on three areas:

1. **Compliance program effectiveness.** That includes a status report on how your compliance program measures up to guidelines published by the Department of Justice and HHS Office of Inspector General.
2. **Key performance indicators (KPIs).** A report on all KPIs should be in your quarterly report, “but bring KPIs to the board’s attention if they’re outside an established risk tolerance,” Contreras said. “The more you can keep within the tolerance, the lower the compliance risk and the less discussion required with the board.”
3. **Important information or actions needed (e.g., approving a document or chart).** This includes the compliance education component, such as “new pieces of information” (e.g., the Massachusetts private equity settlement).

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¹ Office of Attorney General Maura Healey, “Private Equity Firm and Former Mental Health Center Executives Pay \$25 Million Over Alleged False Claims Submitted for Unlicensed and Unsupervised Patient Care,” news release, October 14, 2021, <https://bit.ly/2ZyIKef>.

² United States ex rel. and Commonwealth of Massachusetts ex rel. v. South Bay Mental Health Center, Civil Action No. 15-CV-13065-PBS (D. Mass., January 4, 2019), <https://bit.ly/3bowfE4>.

³ United States v. H.I.G. Growth Partners and H.I.G. Capital, settlement agreement, September 23, 2021, <https://bit.ly/3vVMamU>.

⁴ Department of Justice, U.S. Attorney’s Office for the Eastern District of Pennsylvania, “Former Owners of Therakos, Inc. Pay \$11.5 Million to Resolve False Claims Act Allegations of Promotion of Drug-Device System for Unapproved Uses to Pediatric Patients,” news release, November 19, 2020, <https://bit.ly/3Bvfd1D>.

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