

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 18-0702B

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

COMPLAINT

COMPASSIONATE HOMECARE, INC.,

Defendant.

INTRODUCTION

1. The Commonwealth of Massachusetts, by and through its Attorney General, Maura Healey, brings this civil action against Compassionate Homecare, Inc. ("Compassionate") for civil monetary penalties, restitution, and costs. The Commonwealth alleges that, from at least January 1, 2013 – November 30, 2015, Compassionate, a Massachusetts Medicaid program ("MassHealth") provider, knowingly and willfully presented fraudulent claims for payment to MassHealth in violation of home health agency regulatory requirements.

2. Medicaid is a joint federal-state program that provides health care benefits for certain eligible individuals, including low-income children, seniors, and people with disabilities. The federal Medicaid statute sets forth the minimum requirements for state Medicaid programs to qualify for federal funding. 42 U.S.C. §§ 1396a *et seq.* The federal portion of each state's Medicaid budget, known as the Federal Medical Assistance Percentage, is based on the state's per capita income compared to the national average. *Id.* § 1396d(b). The remainder of the Medicaid budget is funded by the state.

3. Compassionate contracted with the Executive Office of Health and Human Services ("EOHHS") to provide medical services to people covered by the MassHealth program. Through

Compassionate's executed MassHealth provider contract, and under MassHealth regulations, Compassionate must comply with MassHealth regulations when billing MassHealth for medical services provided to MassHealth members.

4. At all times relevant to this action, Compassionate submitted claims to MassHealth that violated MassHealth regulations for home health care services, which require signed plans of care from the MassHealth member's physician. Through these acts, Compassionate has violated the Massachusetts False Claims Act, G.L. c. 12, § 5, *et seq.*; the Massachusetts Medicaid False Claims Act, G.L. c. 118E, §§ 40, 44; and the common law, and the Commonwealth has suffered damages in excess of \$34 million.

JURISDICTION AND VENUE

5. The Attorney General has authority to bring this action under G.L. c. 12, §§ 5, 5C, and 10 and G.L. c. 118E, § 44. The Court has jurisdiction over this action pursuant to G.L. c. 12, § 5C; G.L. c. 118E, § 44; and G.L. c. 223A, §§ 2 and 3.

6. Venue is proper in Suffolk County under G. L. c. 223, § 5; G. L. c. 12 § 5C; and G.L. c. 118E, § 45 because EOHHS is located in Boston, Massachusetts, in Suffolk County and § 45 provides that any action brought under G.L. c. 118E may be brought in Suffolk County.

THE PARTIES

7. Plaintiff Commonwealth of Massachusetts is a sovereign state and body politic duly organized by law, and is represented by the Attorney General of the Commonwealth, who brings this action in the public interest and on behalf of the Commonwealth and its citizens and taxpayers.

8. Defendant Compassionate is a for-profit Massachusetts home health care agency that does business in Massachusetts and is located at 51 Union Street, Suite 202, Worcester, Massachusetts.

STATEMENT OF FACTS

I. AS A MASSHEALTH PROVIDER, COMPASSIONATE WAS REQUIRED TO COMPLY WITH MASSHEALTH REGULATIONS REQUIRING PLANS OF CARE FOR HOME HEALTH CARE SERVICES.

9. MassHealth is the Massachusetts Medicaid program, which is administered by the EOHHS.

10. Since July 2011, Compassionate has been under contract with MassHealth as a home health care services provider. Compassionate's provider contract also requires Compassionate to comply with all state and federal laws, regulations, and rules applicable to participation in MassHealth.

11. MassHealth pays for three kinds of home health care services for eligible members: nursing, home health aide, and therapy (physical, occupational, and speech/language). Home health agencies are governed by MassHealth regulations at 130 C.M.R. § 403.401 *et seq.*

12. To bill MassHealth for any of these services, the member's physician must review and sign a plan of care certifying that home health care services are medically necessary. *See* 130 C.M.R. § 403.420(A). This requirement is a material condition of payment by MassHealth.

13. The plan of care must specify "the service type and frequency of the services to be provided to the member, and the type of professional who must provide them." 130 C.M.R. § 403.420(B). The plan of care must also contain: "(1) all pertinent diagnoses, including the member's mental status; (2) the types of services, supplies, and equipment ordered; (3) the frequency of the visits to be made; (4) the prognosis, rehabilitation potential, functional limitations, permitted activities, nutritional requirements, medications, and treatments; (5) any safety measures to prevent injury; (6) any teaching activities to be conducted by the nurse or therapist, to teach the member, family member, or caregiver how to manage the member's treatment regimen . . .; (7)

the discharge plans; and (8) any additional items the home health agency or physician chooses to include.” *Id.*

14. The plan of care must be signed “no less than every 60 days from the start of home health services,” 130 C.M.R. § 403.420(A)(1)(a), and then recertified via a new signed plan of care “at least every 60 days.” 130 C.M.R. § 403.420(C).

15. The plan of care must be signed “before the home health agency submits its claim for those services to the MassHealth agency for payment” unless the home health agency received verbal orders from a physician. 130 C.M.R. § 403.420(B). If the home health agency received verbal orders from a physician, it is required to document that verbal order in a clinical record and show a physician signature on the plan of care within “45 days after submitting a claim for that period.” 130 C.M.R. § 403.420(D).

16. Home health agencies are required to maintain these records. Pursuant to 130 C.M.R. § 403.419(C)(3)(b), home health agencies are required to maintain “an up-to-date medical record of services provided to each member.” MassHealth also “will not pay a provider for services if the provider does not have adequate documentation to substantiate the provision of services payable under MassHealth.” 130 C.M.R. § 450.205(A). These records must be kept “at least six years after the date of medical services for which claims are made or the date services were prescribed . . .” 130 C.M.R. § 450.205(G).

II. COMPASSIONATE KNOWINGLY SUBMITTED FALSE CLAIMS TO MASSHEALTH BECAUSE IT FAILED TO COMPLY WITH MASSHEALTH REGULATIONS REQUIRING PLANS OF CARE FOR HOME HEALTH CARE SERVICES.

17. The Attorney General’s Office has conducted an investigation into claims Compassionate has submitted to MassHealth for home health care services from January 1, 2013 – November 30, 2015.

18. As part of that investigation, the Attorney General's Office has determined that Compassionate systematically and knowingly submitted claims for services to MassHealth pursuant to plans of care that were not signed at all by a physician or not signed within 45 days of Compassionate's submission of claims for those services to MassHealth. The Commonwealth's estimated damages from the claims associated with plans of care in violation of regulatory requirements exceeds \$22.5 million.

19. The Attorney General's Office also determined that Compassionate did not obtain or maintain plans of care for a significant number of home health care services for which it knowingly submitted claims to MassHealth. The estimated damages to the Commonwealth from the claims associated with missing plans of care exceeds \$11.5 million.

20. In sum, Compassionate's failure to comply with its MassHealth provider contract and MassHealth regulations resulted in the knowing submission of false claims, totaling in excess of \$34 million in damages to the Commonwealth.

CAUSES OF ACTION

COUNT ONE

(False Claims in Violation of G.L. c. 12 § 5B(a)(1))

21. The Commonwealth incorporates by reference the allegations contained in paragraphs 1 – 20 of this Complaint as if fully alleged herein.

22. At all relevant times, Compassionate was under contract with MassHealth as a provider of home health care services, and Compassionate's contract with MassHealth and MassHealth regulations required Compassionate to comply with all MassHealth regulations, including all billing regulations.

23. From January 1, 2013 – November 30, 2015, Compassionate submitted false claims

for payment to MassHealth for home health care services that violated MassHealth regulations requiring signed plans of care from the MassHealth member's physician. If MassHealth had known that there was not a signed plan of care by the member's physician, it would not have paid these claims.

24. Compassionate either knew that it was submitting false claims for payment to MassHealth or recklessly disregarded its obligation to "familiarize [itself] with the legal requirements, standards and procedures of the Medicaid program." *See Commonwealth v. Mylan Labs.*, 608 F. Supp. 2d 127, 140 (D. Mass. 2008) (citing *Heckler v. Community Health Servs.*, 467 U.S. 51, 63-65 (1984)).

25. Based on its unlawful billing, Compassionate received overpayments from MassHealth of at least \$34 million.

26. By virtue of Compassionate's submission of false claims to MassHealth, the Commonwealth suffered actual damages and is entitled to recover treble damages plus a civil monetary penalty for each false claim.

COUNT TWO
(False Statements in Violation of G.L. c. 118E §§ 40, 44)

27. The Commonwealth incorporates by reference the allegations contained in paragraphs 1 – 26 of this Complaint as if fully alleged herein.

28. From January 1, 2013 – November 30, 2015, Compassionate, either with actual knowledge or in willful blindness, knowingly and willfully submitted false claims for payment to MassHealth for home health care services that violated MassHealth regulations requiring signed plans of care from the MassHealth member's physician. If MassHealth had known that there was not a signed plan of care by the member's physician, it would not have paid these claims.

29. These claims were false because they were for services that were not eligible for reimbursement because Compassionate misrepresented compliance with applicable state laws and regulations that are conditions of payment. These misrepresentations were material as that term is defined in the Massachusetts False Claims Act and interpreted by the courts.

30. By virtue of the false claims that Compassionate submitted, the Commonwealth has suffered actual damages and is entitled to recover treble damages plus the costs of investigation and litigation, in accordance with G.L. c. 118E, § 44.

COUNT THREE
(Unjust Enrichment)

31. The Commonwealth incorporates by reference the allegations contained in paragraphs 1 – 30 of this Complaint as if fully alleged herein.

32. From January 1, 2013 – November 30, 2015, Compassionate knowingly submitted false claims for payment to MassHealth for home health care services that violated MassHealth regulations requiring signed plans of care from the MassHealth member's physician.

33. Based on its unlawful billing, Compassionate received overpayments from MassHealth of at least \$34 million.

34. Compassionate knew that it was obtaining more revenue from MassHealth than it was entitled to obtain under MassHealth regulations and its MassHealth provider contract.

35. It is unfair and inequitable for Compassionate to retain revenue from MassHealth payments that it obtained in violation of MassHealth regulations and its MassHealth provider contract.

COUNT FOUR
(Breach of Contract)

36. The Commonwealth incorporates by reference the allegations contained in

paragraphs 1 – 35 of this Complaint as if fully alleged herein.

37. Compassionate breached its MassHealth provider contract from January 1, 2013 – November 30, 2015 by submitting false claims for payment to MassHealth for home health care services that violated MassHealth regulations requiring signed plans of care from the MassHealth member's physician.

38. Each claim submitted by Compassionate that was not in compliance with MassHealth rules and regulations constitutes a breach of Compassionate's provider contract.

39. By failing to comply with all applicable state and federal laws, regulations, and rules applicable to the MassHealth program, Compassionate materially breached its MassHealth provider contract.

40. As a result of Compassionate's breach of its provider contract, the Commonwealth has been significantly damaged.

JURY DEMAND

41. The Commonwealth demands trial by jury in this action of all issues so triable.

PRAVERS FOR RELIEF

WHEREFORE, the Commonwealth demands and prays that after trial on the merits, judgment be entered in its favor as follows:

- a. Count One – for the amount of the Commonwealth's damages, trebled as required by law, plus the costs of investigation and litigation, including the costs of experts, and civil penalties as required by G.L. c. 12 § 5B, together with such other relief as may be just and proper;
- b. Count Two – for the amount of the Commonwealth's damages, trebled as required by law, plus the costs of investigation and litigation, including the costs of experts, together with such other relief as may be just and proper;
- c. Count Three – for the amount of the Commonwealth's damages, as is proved at trial, interest, and costs; and
- d. Count Four – for the amount of the Commonwealth's damages, as is

proved at trial, and interest at the statutory rate of 12% pursuant to G.L. c. 231, § 6C from the date of each breach of contract, together with such other relief as may be just and proper.

Respectfully Submitted,

COMMONWEALTH OF MASSACHUSETTS

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