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Monday, October 30, 2017

## **Chemed Corp. and Vitas Hospice Services Agree to Pay \$75 Million to Resolve False Claims Act Allegations Relating to Billing for Ineligible Patients and Inflated Levels of Care**

Chemed Corporation and various wholly-owned subsidiaries, including Vitas Hospice Services LLC and Vitas Healthcare Corporation, have agreed to pay \$75 million to resolve a government lawsuit alleging that defendants violated the False Claims Act (FCA) by submitting false claims for hospice services to Medicare. Chemed, which is based in Cincinnati, Ohio, acquired Vitas in 2004. Vitas is the largest for-profit hospice chain in the United States.

“Today’s resolution represents the largest amount ever recovered under the False Claims Act from a provider of hospice services,” said Acting Assistant Attorney General Chad A. Readler of the Justice Department’s Civil Division. “Medicare’s hospice benefit provides critical services to some of the most vulnerable Medicare patients, and the Department will continue to ensure that this valuable benefit is used to assist those who need it, and not as an opportunity to line the pockets of those who seek to abuse it.”

The settlement resolves allegations that between 2002 and 2013 Vitas knowingly submitted or caused to be submitted false claims to Medicare for services to hospice patients who were not terminally ill. Medicare’s hospice benefit is available for patients who elect palliative treatment (medical care focused on the patient’s relief from pain and stress) for a terminal illness and have a life expectancy of six months or less if their disease runs its normal course. Patients who elect the hospice benefit forgo the right to curative care (medical care focused on treating the patient’s illness). The government’s complaint alleged that Vitas billed for patients who were not terminally ill and thus did not qualify for the hospice benefit. The government alleged that the defendants rewarded employees with bonuses for the number of patients receiving hospice services, without regard to whether they were actually terminally ill and whether they would have benefited from continuing curative care.

The settlement also resolves allegations that between 2002 and 2013, Vitas knowingly submitted or caused to be submitted false claims to Medicare for continuous home care services that were not necessary, not actually provided, or not performed in accordance with Medicare requirements. Under the Medicare hospice benefit, providers may be reimbursed for four different levels of care, including continuous home care services. Continuous home care services are only for patients who are experiencing acute medical symptoms causing a brief period of crisis. The reimbursement rate for continuous home care services is the highest daily rate that Medicare pays, and hospices are paid hundreds of dollars more on a daily basis for each patient they certify as having received continuous home care services rather than routine hospice services. According to the complaint, the defendants set goals for the number of continuous home care days billed to Medicare and used aggressive marketing tactics and pressured staff to increase the volume of continuous home care claims, without regard to whether the patients actually required this level of crisis care.

“This litigation and settlement demonstrate the commitment of the U.S. Attorney’s Office to investigate and pursue hospice providers engaging in practices that abuse the Medicare hospice benefit,” said Acting U.S. Attorney Thomas M. Larson of the Western District of Missouri. “The integrity of the Medicare program must not be compromised by a hospice provider’s financial self-interest.”

Vitas also entered into a five-year Corporate Integrity Agreement (CIA) with the HHS Office of Inspector General (HHS-OIG) to settle the agency’s administrative claims.

Steve Hanson, Special Agent in Charge, for the U.S. Department of Health and Human Services, Office of Inspector General, Kansas City Region, stated, “Healthcare providers who knowingly overbill our programs simply to increase their profits need to be put on notice that such conduct will not be tolerated, and we will pursue any and all remedies at our disposal to protect the tax payer and the Medicare and Medicaid programs.”

In addition to resolving the lawsuit filed by the United States, the settlement resolves three lawsuits filed under the whistleblower provision of the FCA, which permits private parties to file suit on behalf of the United States for false claims and share in a portion of the government’s recovery. The Act permits the United States to intervene in such a lawsuit, as it did in the three whistleblower cases filed against the defendants. These cases were subsequently transferred to the Western District of Missouri and consolidated with the government’s pending action. The amount to be recovered by the private whistleblowers has not yet been determined.

The settlement was the result of a coordinated effort among the Commercial Litigation Branch of the Justice Department’s Civil Division and the U.S. Attorney’s Office for the Western District of Missouri, with assistance from the U.S. Attorneys’ Offices for the Central District of California and the Northern District of Texas and the Department of

## Health and Human Services Office of Inspector General.

The claims resolved by the settlement are allegations only; there has been no determination of liability.

The civil lawsuits are: *United States v. Vitas Hospice Services, LLC, et al.*, Civil Action No. 13-00449 (W.D. Mo.); *United States ex rel. Laura Spottiswood v. Chemed Corporation, et al.*, Civil Action No. 13-505 (W.D. Mo.), transferred from the United States District Court for the Northern District of Illinois; *United States ex rel. Barbara Urick v. VITAS HME Solutions, Inc., et al.*, Civil Action No. 13-536 (W.D. Mo.), transferred from the United States District Court for the Western District of Texas; and *United States ex rel. Charles Gonzales v. VITAS Healthcare Corporation, et al.*, Civil Action No. 13-00344 (W.D. Mo.), transferred from the United States District Court for the Central District of California.

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**Topic(s):**

False Claims Act  
Health Care Fraud

**Component(s):**

Civil Division  
USAO - Missouri, Western

**Press Release Number:**

17-1220

*Updated October 30, 2017*

**U.S. Department of Justice**

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