

Modern Healthcare

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Roots of trouble run deep; U.S. alleges Medicare fraud started in 1987; HCA says charges are 'nothing new'

BY: Mark Taylor

For the first time since the criminal and civil fraud investigation of the nation's largest hospital chain began five years ago, the U.S. Justice Department has revealed its belief that the roots of the wide-ranging Medicare billing fraud allegations against HCA-The Healthcare Co. extend to the pre-Columbia Hospital Corp. days of the original Hospital Corporation of America and its co-founder, Thomas Frist Jr., M.D.

The allegations were contained in a 104-page amended complaint (more than 1,000 pages with exhibits) that the Justice Department filed March 15 in U.S. District Court in Washington. That complaint alleges that HCA and its predecessor companies illegally received more than \$400 million from fraudulently filed Medicare cost reports at more than 400 HCA-owned hospitals dating back to at least 1987. The amended complaint does not name Frist specifically.

The government lawsuit alleges that relying on company policies and practices, HCA regularly and routinely practiced a "cat and mouse game" by obtaining payment from the government for costs it knew were not reimbursable. The complaint abounds with examples of how individually and as a corporation HCA misled, deceived or concealed from state and federal authorities its real costs by keeping a dual set of cost reports. The first cost report was submitted to Medicare.

HCA spokesman Jeffrey Prescott said no surprises were in the newly filed federal documents. "There's certainly nothing new, even if no one's reported on it before," he said.

He would not comment on specific allegations or Frist's leadership during the period of the alleged cost-reporting schemes.

In a two-paragraph statement, HCA said the government remains active in only eight of the 30 whistleblower suits filed.

"The company has, for the past several years, been in good faith discussions with the government about a reasonable and fair resolution of these matters," the statement said.

The Justice Department filed the amended complaint, status report and accompanying legal documents with the court as required in a previous court order. That order, issued on Jan. 30 by U.S. District Judge Royce Lamberth, gave the Justice Department a March 15 deadline to reveal which of the 30 civil fraud whistleblower lawsuits against HCA it was joining as a plaintiff.

Three weeks prior to Lamberth's order, Frist resigned as HCA's chief executive officer but remained chairman of the board. HCA Chief Operating Officer Jack Bovender, 55, a 20-year HCA veteran who left when Columbia bought HCA in 1994, was named his successor. Frist brought Bovender back in 1997 to restructure what was then Columbia/HCA Healthcare Corp.

Frist was chairman and CEO of Hospital Corporation of America when it spun off its mostly unprofitable rural hospitals into HealthTrust in 1987, and he kept those titles until HCA's 1994 merger with then-Columbia Hospital Corp.; the two formed Columbia/HCA.

Frist ceded control in 1994 to lawyer Richard Scott, who became chairman and CEO. Scott had headed Columbia Hospital Corp. Frist became the company's vice chairman.

The company reacquired HealthTrust in 1995.

Frist re-emerged as the company's chairman and CEO after Scott and President David Vandewater were ousted in July 1997 once the criminal and civil fraud investigations came to light earlier that year.

Despite the company's portrayal of Frist as a white knight, the government alleges that the corporate culture of fraudulent cost reporting began while Frist was first at the helm.

The 1996 complaints, on which the amended complaint was based, were filed by James Alderson in Montana and John Schilling in Florida. Alderson was chief financial officer for North Valley Hospital in Whitefish, Mont., which was managed by Quorum Health Resources, and Schilling was a reimbursement officer for several HCA hospitals in Florida.

Specifically, the new complaint alleges that HCA illegally charged Medicare for financing interest it incurred when it spun off HealthTrust. When HCA refinanced those hospitals, it passed the debt and interest on to HealthTrust. Although Medicare will pay for some financing costs, it does not pay for interest costs related to corporate restructuring. The complaint alleges that HCA funneled money through an employee stock plan in 1987, describing costs as employee compensation and then billing Medicare.

The reacquisition of HealthTrust in 1995 allegedly saw the company again bill Medicare for restructuring charges that were not reimbursable. Those costs were kept in reserve, and when Medicare didn't notice, they allegedly were treated as profits. The government contends HCA billed Medicare on cost reports for more than \$100 million in HealthTrust sale and repurchase costs.

San Francisco whistleblower lawyer Stephen Meagher of the firm Phillips & Cohen, who represents Alderson and Schilling, said it's disingenuous for HCA to describe its longtime legal troubles as a "Columbia" problem.

Because the government joined the suits under the federal False Claims Act, which allows high damages and penalties, if the feds prevail in a court trial, HCA faces a liability of more than \$1.2 billion on the cost-reporting claims alone. That's in addition to the \$845 million in civil and criminal costs HCA agreed to pay in December 2000.

In addition to the amended cost-reporting complaints brought by Alderson and Schilling, the government announced it would intervene in six other whistleblower suits addressing fraud schemes not covered by the Dec. 14, 2000, civil settlement.

Sources said negotiations between HCA and the Justice Department continue.