



Department of Justice

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Middle District of Florida

Tampa Orlando Jacksonville Fort Myers Ocala
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CHARGES FILED AGAINST WELLCARE HEALTH PLANS, INC.;
WELLCARE ENTERS INTO DEFERRED PROSECUTION AGREEMENT
AGREES TO PAY \$80 MILLION IN RESTITUTION AND FORFEITURE

Tampa, Florida - United States Attorney A. Brian Albritton announces the filing of an Information against and a Deferred Prosecution Agreement concerning WellCare Health Plans, Inc. ("WELLCARE"). The Information charges WELLCARE with engaging, through its executives and employees, in an elaborate scheme to defraud the Florida Medicaid program and the Florida Healthy Kids Corporation ("Healthy Kids" or "FHKC") program of approximately \$40,000,000. The Deferred Prosecution Agreement ("DPA") will allow WELLCARE to avoid a health care fraud conviction on the charges in the Information if it complies with the DPA's stringent requirements. The DPA requires WELLCARE to, among other things:

- (1) consent to the civil forfeiture of \$40,000,000;
- (2) pay an additional \$40,000,000 in restitution to the Florida Medicaid and Healthy Kids programs to repay proceeds from those programs to which WELLCARE was not entitled;
- (3) accept and acknowledge full responsibility for the conduct that led to the government's investigation of WELLCARE;

(4) retain and pay an independent Monitor, who will be selected by the U.S. Attorney's Office and who will review and monitor WELLCARE's business operations and regularly report concerning WELLCARE's compliance with all federal and state health care laws, regulations, and programs;

(5) continue cooperating in the government's ongoing federal and state criminal investigation of former WELLCARE executives and employees responsible for the alleged fraudulent conduct at issue;

(6) implement, within 60 days, updated policies and procedures designed to ensure that WELLCARE completely and accurately reports all federal and state health care program information; and

(7) continue to develop and operate an effective corporate compliance and governance program that includes adequate internal controls to prevent recurrence of any improper and/or illegal activities.

In the event that WELLCARE fails to comply with the provisions of the DPA, then WELLCARE agrees that the United States Attorney may proceed with its prosecution of WELLCARE and that WELLCARE will stipulate and agree that the Statement of Facts attached to the DPA may be used against it in the prosecution.

The Investigation of and Allegations Against WELLCARE

The government first revealed its ongoing investigation concerning WELLCARE on October 24, 2007, when more than 200 Special Agents and Investigators from the FBI, the Office of the Inspector General of the United States Department of Health and Human Services ("HHS/OIG"), and the State of Florida Medicaid Fraud Control Unit, Office of The Attorney General ("MFCU"), raided WELLCARE offices at 8735 Henderson Road in Tampa, Florida.

The investigation of WELLCARE focused upon allegations that WELLCARE, through its executives and employees, falsely and fraudulently inflated expenditure information that it submitted to the Florida Medicaid and Healthy Kids programs from mid-2002 through 2006. The Information specifically charges that WELLCARE submitted fraudulently inflated expenditure information to the Florida Medicaid program (through Florida's Agency for Health Care Administration, or "AHCA"), on required Behavioral Healthcare Worksheets. The Information further charges that WELLCARE submitted falsely and fraudulently inflated expenditure information to the Healthy Kids program, in annual filings that were required under its contracts with the program. The Information alleges that one of the primary methods WELLCARE used to defraud the health care programs was the creation of:

a wholly-owned entity named Harmony Behavioral Health, Inc. (formerly known as Wellcare Behavioral Health, Inc.), [that WELLCARE used] to conceal and falsely and fraudulently inflate [its health] plans' true and actual expenses incurred in providing the required certain medical services to Florida Medicaid and FHKC program recipients.

According to the Information, WELLCARE received money from the Florida health care programs each year under an "80/20" or "85/15" contractual arrangement: WELLCARE could retain either 20% or 15% of the contractual proceeds it received from AHCA and FHKC for overhead (depending on the contract), but it could only spend the remaining 80% or 85% of proceeds to provide health care services. If WELLCARE did not spend the 80% or 85% on services pursuant to these contracts, it had to return at least a portion of the unspent money to the Florida health care programs.

The Information alleges that WELLCARE engaged in several fraudulent strategies to avoid returning unspent money to the Florida health care programs. Primarily,

WELLCARE established a wholly-owned entity, "Harmony Behavioral Health, Inc." ("Harmony"), to which it funneled a portion of the 80/20 and 85/15 money it received from its contracts with AHCA and FHKC. WELLCARE, however, fraudulently reported money that went to Harmony as expenditures on services. Thus, regardless of how much money WELLCARE actually expended for health care services during each year, WELLCARE fraudulently avoided refunding the Florida health care programs for money it had given Harmony.

The Deferred Prosecution Agreement

Under the DPA, WELLCARE agrees to pay a total of \$80,000,000 (plus interest), which includes \$40,000,000 in restitution to the Florida health care programs and \$40,000,000 in civil forfeiture. The DPA specifies that WELLCARE will pay the money as follows: (1) WELLCARE will receive a credit of \$35,200,000 for the amount it previously paid pursuant to an August 18, 2008 agreement with the USAO and other parties; (2) WELLCARE will pay an additional \$25,000,000 within five business days of the effective date of the DPA; and (3) WELLCARE will pay the remaining balance of \$19,800,000 by December 31, 2009 (and will make its best efforts to pay that balance as soon as possible).

The DPA will be in effect for three years, but the USAO can reduce that term to two years based upon consideration of: (a) WELLCARE's continued remedial actions; (b) WELLCARE's compliance with all federal and state health care laws and regulations; (c) the independent Monitor's written reports regarding WELLCARE's compliance; and (d) WELLCARE's satisfaction of all of its obligations under the DPA. The DPA further provides that, if WELLCARE complies with the DPA, the USAO will move within five days of the DPA's expiration to dismiss with prejudice the Information filed against WELLCARE.

United States Attorney A. Brian Albritton stated, regarding the WellCare Information and DPA: “Health care providers must be held accountable for Medicaid fraud abuse. In this case, we will recover \$80,000,000 from WELLCARE, twice the amount involved in the fraud, and we are continuing to pursue criminal charges against individuals. This Information and DPA serve as a wake up call for the corporate community to evaluate the effectiveness of their compliance plans to prevent criminal violations before they occur. WELLCARE’s compliance program failed to prevent the misconduct alleged in the Information, and as a result, WELLCARE has been charged with a felony.”

FBI Special Agent in Charge Steven E. Ibison said: “In this case, corporate greed was responsible for the theft of funds from critical government programs. These programs were designed to facilitate health care services to adult citizens and children who otherwise would not be able to afford needed treatments. The company executives and employees allegedly responsible for defrauding Medicaid and other health care programs in Florida had a choice, to help or steal, and they chose the latter. The investigation of these individuals will continue until all those criminally responsible have been brought to justice.”

Daniel R. Levinson, Inspector General of the U.S. Department of Health and Human Services, said: “Falsely inflating Medicaid costs and taking taxpayers’ dollars fraudulently jeopardizes the solvency of our federal health care programs. Today’s announcement is the culmination of work by literally hundreds of state and federal law enforcement officials and should serve as a clear warning that those who steal from Medicaid will be aggressively pursued and brought to justice.”

Other Investigations Arising Out of the Investigation of WELLCARE

The public filing of the Information and the DPA is the latest development in an ongoing investigation by the FBI, the HHS/OIG, and the MFCU. The investigation

continues against those former employees and executives of WELLCARE who are responsible for the conduct alleged in the Informations filed against WELLCARE and Gregory West. Assistant United States Attorneys Jay G. Trezevant and Anthony E. Porcelli have and will continue to serve as the key prosecutors throughout the investigation of WELLCARE and its former employees and executives.

In October 2008, the United States Attorney previously announced the unsealing of an Information and Plea Agreement for Gregory West (age 50, of Tampa), a former WELLCARE employee. West had pleaded guilty in December 2007 to conspiracy to defraud the Florida Medicaid program of more than \$20,000,000. WEST faces maximum penalties of ten years in federal prison and a \$250,000 fine. At the government's request, WEST's sentencing hearing has been postponed; a status conference is scheduled for October 8, 2009.

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As the Information's allegations against WELLCARE reveal, the ongoing investigation does not directly concern WELLCARE'S delivery of health care services to any person.