

# FROHSIN & BARGER, LLC

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## **Alabama Hospice Provider Settles Whistleblower Lawsuit for \$24.7 Million**

*Largest Medicare Hospice Fraud Civil Settlement in U. S. History*

**Birmingham, AL** – SouthernCare, Inc., one of the nation’s largest hospice providers, today paid the United States government \$24.7 million to settle allegations that the company submitted false Medicare claims to the government for patients treated at its hospice facilities. Headquartered in Birmingham, Alabama, SouthernCare operates approximately 99 locations that provide hospice services in 15 states. The company has over 2,500 employees and provides home hospice care for over 5500 patients.

Today’s settlement results from two qui tam (whistleblower) actions filed by former SouthernCare, Inc. employees. The employee filing the initial false claims lawsuit in 2005 was represented by Birmingham attorney Stephen D. Heninger of the law firm Heninger Garrison Davis, LLC. Birmingham attorneys Henry Frohsin and Jim Barger, Jr. of Frohsin & Barger LLC, represented the whistleblower who filed her lawsuit in 2007.

The investigation was jointly handled by the U. S. Attorney’s office in the Northern District of Alabama, the U. S. Attorney’s office for the Northern District of Georgia, the Civil Division of the Department of Justice, the Department of Health & Human Services, the Office of Inspector General, and the FBI. “Our investigation showed a pattern and practice to falsely admit patients to hospice care who did not qualify and to bill Medicare for that care. This

resulted in taxpayers bearing inappropriate costs,” said Alice H. Martin, U.S. Attorney for the Northern District of Alabama. David E. Nahmias, United States Attorney for the Northern District of Georgia, explained that the fraudulent claims also potentially endangered patients, stating, “Every provider that submits claims to the Medicare program must ensure that its services are billed appropriately. Falsely admitting people to hospice care who did not qualify for the benefit exposed these patients to potential harm and contributes to the soaring costs of health care for everyone.”

Hospices provide palliative care – any form of medical care or treatment that concentrates on reducing the severity of a disease’s symptoms – to patients who decide to forego curative care of their illness. Medicare beneficiaries are entitled to hospice care if they have a terminal prognosis of six months or less to live. The qui tam charges alleged that SouthernCare was submitting false claims for hospice care for patients who were not eligible for such care.

“We’re not talking about good faith mistakes here,” says Jim Barger. “This lawsuit involved allegations of systematic fraud. Obviously, estimating life expectancy is not an exact science -- but when you bill taxpayers for years and years for patients who have never had a legitimate terminal diagnosis and when you aggressively market your services by telling people who aren’t dying that you’ll clean their house and wash their dishes on the Government dime, then that’s a real problem.

“Our client also reported instances where patients who were chronically – but not terminally ill – were taken off the rolls to receive curative treatment only to be recertified shortly thereafter. We believe that is gaming the system, plain and simple. If a cancer patient is willing to undergo the trauma of aggressive chemotherapy, she is hoping to live, not expecting to die. It makes zero sense to put a terminal patient through the horror of chemo, and

the big for-profit Hospice providers have to know that. Unfortunately, Hospice care – one of the most noble services in our country that began with non-profits and volunteers – has in many instances been taken over by for-profit companies whose primary interest is the bottom-line.”

The \$24.7 million landmark settlement is the largest whistleblower settlement in Alabama history and the largest civil settlement involving allegations of Medicare hospice fraud in U. S. history. The two whistleblowers in the case will receive a 20 percent share of the settlement.

“When employees with the courage to report fraudulent acts and aggressive private attorneys combined with the Federal Government work to uncover the facts, we all benefit,” said Mr. Heninger. “It is apparent that some companies undertake illegal acts to secure Medicare funds. In a time of such financial crisis as we are currently undergoing, settlements like this give notice that such conduct will be aggressively pursued.”

Frohsin also commended the courage of the whistleblowers saying their actions will bring more corporate fraud to light. “It is always extremely gratifying to right the wrongs of corporate excess because in this kind of fraud – and it is clearly epidemic – it is the American taxpayer who bears the brunt of the damage,” said Frohsin. “Cases like this - and the media attention they receive - are a beacon to other potential whistleblowers who can help fight fraud. Lawbreaking companies in the Healthcare industry and other industries, who would not have been held accountable at all without the courage of whistleblowers, often pay triple damages and other penalties under the False Claims Act.”

Frohsin, Barger, and Heninger also praised the work of the governments’ investigative team. “The federal and state prosecutors on this case represent the highest calling of public

service. “If it had not been for Lloyd Peoples and the rest of the government team, we would not be announcing today’s landmark settlement.”

If you have any questions or you need further information, please contact John Harrod at (205) 933 - 4006 ([jlharrod@charter.net](mailto:jlharrod@charter.net)) or Karen Vest at (205) 933 - 4006 ([karen@frobar.com](mailto:karen@frobar.com)).

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