



Mental health provider faces False Claims Act lawsuit due to alleged unlicensed, untrained and unsupervised personnel

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After a federal judge denied its motion to dismiss the case, a Massachusetts mental health provider, formerly known as South Bay Mental Health Center, Inc. (South Bay), faces claims under the federal False Claims Act and the Massachusetts False Claims Act that it overbilled state and federal health insurance programs for eight years. South Bay's clinics were allegedly run by unlicensed and unsupervised personnel in violation of express legal requirements of the Massachusetts Medicaid program and certain managed care organizations.

The *qui tam* case was brought by a relator, Christine Martino-Fleming, who was employed by South Bay as a licensed mental health counselor and who claims she attempted to bring the alleged noncompliance to South Bay management's attention. The Commonwealth of Massachusetts intervened in the case to recover overpayments that allegedly occurred as a result of the false claims.

An investigation into the staffing policies of 17 of South Bay's Massachusetts mental health clinics led to allegations that these clinics were not managed by qualified individuals. In most clinics, directors lacked the required independent licenses (e.g., licensed psychiatrist, licensed psychologist, independent licensed social worker, psychiatric nurse specialist or psychiatric nurse), and the clinics lacked required interdisciplinary balance.

As in many states, Massachusetts permits unlicensed individuals to diagnose and treat patients and bill the state's Medicaid program only if they are properly supervised by a someone who holds a specified independent license. However, the

professionals diagnosing and treating Massachusetts Medicaid patients lacked the required degree or license to diagnose and treat these patients and to bill under the Massachusetts Medicaid program. Additionally, South Bay allegedly failed to meet requirements to employ specified professional staff members at its headquarters and at each of its clinics. Mental health facilities must ensure that they are appropriately staffing mental health clinics and services in accordance with applicable federal and state health care program requirements and state scope of practice laws. In Ohio, the scope of practice laws for mental health providers and counselors can pose staffing and billing challenges for mental health providers, particularly providers of psychotherapy services.

Authors

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