

The New York Times <https://nyti.ms/2cXi9v1>

N.Y. / REGION

Whistle-Blower Suit Accuses Visiting Nurse Service of Fraud

By NINA BERNSTEIN SEPT. 23, 2016

The Visiting Nurse Service of New York, one of the largest nonprofit home health care agencies in the United States, likes to highlight a lineage going back to its founder, Lillian Wald, who began nursing the poorest immigrant New Yorkers in their homes in 1893.

Whatever its outcome, a federal whistle-blower lawsuit served on the agency on Thursday showcases how far today's billion-dollar entity has come from its early days, when Ms. Wald's visiting nurses charged a dime, or nothing at all, for their services.

The lawsuit, brought under federal and state False Claims Acts by a senior manager who worked at the agency for 16 years, charges that the Visiting Nurse Service of New York has systematically extracted hundreds of millions of dollars from Medicare and Medicaid through falsified and improper billings, while shortchanging needy patients of the care their doctors ordered.

“Beyond this massive financial fraud on the government, the ultimate

victims here are the tens of thousands of elderly, disabled and impoverished New York residents who because of V.N.S.N.Y.'s misconduct have not been getting the critical home health care services they require," the lawsuit says.

In an emailed statement, Richard Rothstein, a spokesman for the agency, called the lawsuit "self-serving and baseless." He said its allegations were made by "a disgruntled former employee with no responsibility for and little knowledge of the clinical realities of our business who has spun a tale out of whole cloth."

The lawsuit was brought by Edward Lacey, vice president of operations improvement and integration until he left the company in January. It is the most far-reaching in a cascade of audits, investigations and legal actions that have shaken the Visiting Nurse Service in recent years, even as the agency played a key role in the Cuomo administration's overhaul of Medicaid.

The suit was originally filed under seal in 2014 in the United States District Court for the Southern District of New York, prompting a confidential investigation by federal and state authorities, who allowed the amended complaint to be unsealed last week. Federal and state prosecutors have declined to join the case for now but reserved the right to intervene later.

The current complaint alleges three main areas of fraud, all involving the agency's core operations as a provider of home health care services to about 150,000 patients a year in New York City; Nassau, Suffolk and Westchester Counties; and several upstate counties.

It charges that for financial gain, the agency "intentionally ignored" the plans of care prescribed by physicians, providing only a fraction of the nursing and rehabilitation visits that had been ordered under Medicare, which pays a set rate for an "episode of care." The practice seriously endangered the welfare of patients, the lawsuit charges, and resulted in needless rehospitalizations.

Among the examples cited from the agency's own 2014 records is a patient with lupus who had undergone a lower-limb amputation and used a

wheelchair. The patient's doctor had ordered 27 rehabilitation visits and 38 nursing visits to be made over a 60-day period. The agency provided none of the rehabilitation visits and only five nursing visits during the two-month period, but it collected a full \$3,537 in government reimbursement, the lawsuit says.

Similar cases cited in the complaint involve patients coping with the aftereffects of a mastectomy, a kidney transplant, a hip fracture and a knee replacement, some with complications from diabetes, high blood pressure or heart disease, others with bedsores and Alzheimer's disease. All are said to have received a fifth or less of the care prescribed, without the agency notifying them, their doctor or the government of the reduction in services.

Mr. Lacey tried to get executives at the agency to correct the fraud and misconduct, to no avail, according to the lawsuit. Through his lawyers at Constantine Cannon, he declined to talk about the case. Under the rules of this type of suit, he could be awarded up to 30 percent of any money the government recovers.

The lawsuit depicts an agency in escalating turmoil. Regional managers warned of agency patients languishing without care, but agency policy, enforced by the chief executive, was still to accept all patient referrals in order to maximize billings, the suit says, despite a shortage of staff to provide the ordered services.

"The scope of V.N.S.N.Y.'s failure to provide its patients with the level of care they require has been increasing and engendering a growing chorus of complaints," the lawsuit says, quoting heated exchanges at executive meetings from April to July 2014.

At a meeting that Mr. Lacey attended with several other agency vice presidents that April, for example, the manager overseeing home health care services in Brooklyn warned that in her region alone, there were 600 patients for whom the agency was unable to provide the ordered therapy services, and

that even if the services could eventually be provided, it would be too late for the patients to derive any benefit.

Similar concerns were voiced by those overseeing the agency in Manhattan, Queens, the Bronx and Westchester. An internal report showed that nearly half the 5,000 patients referred for rehabilitation services during that period had gone without the prescribed services; another internal report, titled “Therapy Services Not Provided as of May 9,” showed 2,038 patients still waiting, including some who had gone eight weeks without any care.

The lawsuit quotes Eloise Goldberg, who oversees the agency in Queens, telling an executive meeting that the failures were damaging the agency’s reputation and causing some to refer to it as “the ‘No’ Visiting Nurse Service.”

But when executives briefly told certain referring hospitals that the Visiting Nurse Service would have to limit the number of patients it accepted, Mary Ann Christopher, then the chief executive, angrily ordered that those instructions be rescinded, the lawsuit said.

Ms. Christopher resigned in November 2014, two weeks after the agency completed a \$35 million Medicaid settlement with state and federal officials in a different whistle-blower lawsuit. The settlement related to VNSNY Choice, the agency’s company for Medicaid managed long-term care, which had been cherry-picking able-bodied, ineligible older New Yorkers to enroll in its program through adult day care centers that offered table tennis and free casino trips. After the state temporarily suspended enrollment, the agency laid off more than 1,500 employees. Nevertheless, shortly before Ms. Christopher’s resignation, it was awarded a \$2.3 billion state contract for a new managed-care program.

Ms. Christopher did not return calls seeking comment.

A second type of fraud alleged in the suit is the falsification of time and service records by hundreds of agency nurses and therapists. For years, the Visiting Nurse Service’s internal reports tracking home-care visits have shown

claims for an impossibly high number of visits, or visits too short to provide meaningful care, and without required patient verification that the visits ever took place, the lawsuit says. Based on the agency's standards, the average full-time nurse should be providing roughly six home care visits a day of about 37 minutes each. But agency records show routine claims made for more than triple that number of visits in a single day.

Among the examples cited is a nurse in Manhattan who claimed to have made 20 patient visits at nine different addresses on the Upper East Side on a single February day and said none of the patients were capable of providing a signature to verify the visit. Another nurse, in Brooklyn, claimed 20 visits each workday for an entire year, or about 4,000 visits instead of the standard 1,300.

The agency has been aware of these patterns of fraud for years, the lawsuit says, but has taken no action because its prevailing practices yield more billings.

The third type of fraud described involves the agency's billing for home health aides who are provided through Partners in Care, its wholly owned subsidiary, and many other vendor agencies. The lawsuit charges that the Visiting Nurse Service has routinely billed the government for home aide services that were not provided or properly supervised, and that it routinely double-bills when patients are eligible for both Medicare and Medicaid.

A version of this article appears in print on September 24, 2016, on Page A16 of the New York edition with the headline: Lawsuit Says Visiting Nurse Service Committed Fraud and Shortchanged Patients.