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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA, NEW YORK STATE,
ex rel. KIRSTIN ROGERS and JUAN C. GONZALEZ,

Plaintiffs and Relators,

v

THE DOOR—A CENTER OF ALTERNATIVES
and UNIVERSITY SETTLEMENT SOCIETY OF NEW
YORK

Defendants.

**COMPLAINT-IN-
INTERVENTION OF THE
UNITED STATES OF AMERICA**

19 Civ. 5195 (AKH)

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v

THE DOOR—A CENTER OF ALTERNATIVES,

Defendant.

The United States of America, by its attorney, Damian Williams, United States Attorney
for the Southern District of New York, alleges for its complaint-in-intervention as follows:

PRELIMINARY STATEMENT

1. This is a civil fraud action brought by the United States of America (the “United

States” or the “Government”) against The Door—A Center of Alternatives (“The Door” or “Defendant”) under the False Claims Act (the “FCA”), 31 U.S.C. §§ 3729-3733, to recover treble damages sustained by, and civil penalties owed to, the Government resulting from the submission of false and fraudulent claims for reimbursement from the Indigent Care Pool (“ICP”), *see* N.Y. Pub. Health Law § 2807-k, which is a program, funded in part by Medicaid, *see* 42 U.S.C. §§ 1396 *et seq.* (“Medicaid”).

2. The ICP is a fund that provides compensation to medical providers that treat uninsured individuals. Specifically, this funding is provided to hospitals and diagnostic and treatment centers (“D&TC”) licensed under Article 28 of the New York Public Health Law. *See* N.Y. Pub. Health Law §§ 2801, 2807-k. The goal of the ICP is to ensure that these medical providers can provide medical care to patients who are unable to pay for the cost of their care—*i.e.* uncompensated care.

3. Funding from the ICP is based upon a multi-step formula that, first, determines the amount of uncompensated care costs incurred by the given medical provider. Then, because the ICP is a limited fund that must be allocated among many providers, an allocation formula is applied to determine a given provider’s payment from the ICP based upon their uncompensated care costs. Critical to the funding that an entity receives from the ICP is the number of threshold visits (“Threshold Visits”) to that entity on an annual basis. This metric is reported by each facility to the New York State Department of Health (“DOH”) in Ambulatory Health Care Facility Cost Reports (“Cost Reports”) that hospitals and D&TCs are required to submit on an annual basis. As discussed more fully herein, a Threshold Visit occurs each time a patient crosses the threshold of a provider’s facility, regardless of the number of services received during that visit.

4. The Door is a New York non-profit corporation that, *inter alia*, provides a wide

range of medical services to both Medicaid recipients and uninsured individuals. The Door is a certified D&TC under Article 28 of the New York Public Health Law and receives funding from the ICP.

5. Between 2009 and 2016 (the “Covered Period”), The Door knowingly overstated the number of Threshold Visits to its facility on a yearly basis. As noted above, a Threshold Visit occurs each time a patient crosses the threshold of the medical facility without regard to the number of services provided during that visit. During the Covered Period, The Door improperly reported Threshold Visits to DOH by linking the number of Threshold Visits to the number of services provided during a given visit, rather than reporting the number of times a person crossed the threshold to its facility. Accordingly, had The Door properly reported its Threshold Visit statistics on the Cost Reports that it submitted to DOH, it would have received substantially less funding from the ICP.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the claims brought under the FCA pursuant to 31 U.S.C. § 3730(a) and 28 U.S.C. §§ 1331 and 1345.

7. Venue lies in this District pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. §§ 1391(b) and 1391(c) because The Door transacts business in this District.

PARTIES

8. Plaintiff is the United States of America suing on its own behalf and on behalf of the United States Department of Health and Human Services (“HHS”), and its component agency, the Centers for Medicare & Medicaid Services (“CMS”), which provides funding for the federal portion of the ICP.

9. The Door is a New York non-profit corporation that, among other things, is a D&TC providing a variety of healthcare services. Its principal place of business is located at 555

Broome Street, New York, NY 10013.

BACKGROUND

I. ICP

10. The ICP is a program, created by New York Public Health Law § 2807-k, that provides funding to hospitals and D&TCs to assist in paying for the cost of health care services provided to patients who are unable to pay for the cost of their own care. Part of the funding from the ICP comes from the federal Medicaid program and the remainder comes from New York State funds.

11. The amount of funding that each eligible hospital and D&TC receives from the ICP is based, in part, upon a formula that multiplies a provider's Medicaid reimbursement rate by the number of Threshold Visits to its facility as reported on that provider's Cost Report to DOH. This calculation results in a figure referred to as the "nominal loss coverage." Because the ICP is a limited fund and there are many providers across New York State seeking distribution from it, a further calculation is done in order to allocate funds among these providers based upon their respective nominal loss coverage amounts.

12. As noted, central to the amount of funding an entity receives from the ICP is the number of Threshold Visits to the facility. This statistic is reported on an annual basis when a provider submits its Cost Report to DOH. *See* 10 NYCRR 86-1.47(b). A Threshold Visit is defined by New York State regulation as occurring "each time a patient crosses the threshold of a facility to receive medical care without regard to the number of services provided during that visit." *See* 10 NYCRR § 86-4.9(b). Moreover, the instructions that accompany the Cost Report define a Threshold Visit as occurring "each time a patient crosses the threshold of a facility to receive medical care, without regard to the number of services provided during that visit."

Finally, when submitting the Cost Report, the provider must certify that "the information

furnished in this report . . . is in accordance with the cost report instructions and is true and correct to the best of my knowledge.”

II. False Claims Act

13. The FCA establishes liability to the United States for any person who “knowingly presents, or causes to be presented, to an officer or employee of the United States Government . . . a false or fraudulent claim for payment or approval,” 31 U.S.C. § 3729(a)(1), or “knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim,” *id.* § 3729(a)(1)(B). “Knowingly” is defined to include actual knowledge, reckless disregard and deliberate indifference. *Id.* § 3729(b)(1). No proof of specific intent to defraud is required. *Id.*

FACTS

14. During the Covered Period, The Door annually submitted false Cost Reports to the State of New York that overstated the number of Threshold Visits to its facility. More specifically, The Door inflated this metric by linking the number of Threshold Visits to the number of services provided during a given visit instead of reporting only one Threshold Visit for each time a patient crossed the threshold to its facility. This misreporting caused The Door to receive millions of dollars from the ICP to which it was not entitled.

15. The Door’s practice of reporting Threshold Visits varied slightly during the Covered Period. For Cost Reports submitted between 2009 and 2015 (which reported statistics from fiscal years 2008 to 2013), The Door reported each separate service rendered during a given visit as a Threshold Visit. For example, if an individual received three medical services on one day (such as two dental services and one mental health service), then The Door reported three Threshold Visits, when it should have reported only one Threshold Visit.

16. For Cost Reports covering fiscal years 2014 and 2015 (both of which were

submitted to DOH by The Door in 2016), The Door linked the number of Threshold Visits reported on the Cost Reports to the number of different cost centers at which a patient received treatment during a given visit.

17. As defined in the instructions to the Cost Reports, services fall within different cost centers. For example, if someone has an x-ray of his teeth, that would fall within the dental cost center. Similarly, if someone received treatment from a psychiatrist, that would fall within the mental health cost center.

18. Accordingly, for fiscal years 2014 and 2015, if an individual received two dental services and one mental health service on a given day, The Door reported two Threshold Visits because it counted one visit to the dental “cost center” and another visit to the mental health “cost center.” The proper number of Threshold Visits to report under this scenario is one.

19. The Door was aware of how it was supposed to report Threshold Visits—specifically that it was only permitted to count one Threshold Visit each time a patient crossed its threshold to obtain medical care, regardless of the number of services the patient may have received during that visit. Nevertheless, The Door deliberately inflated the number of Threshold Visits through the schemes described in Paragraphs 15 and 16.

20. In fact, in a December 4, 2014 email, The Door’s then-Chief Financial Officer (“CFO”) wrote, “[t]he cost report must note only one visit per day – does the 34k note one visit only, or are some of those duplicate or triplicate?” In other words, the CFO was stating that a given visit can only be counted once for purposes of the Threshold Visit statistic, and that this number could not be increased even if the patient received multiple services during that visit.

21. Six days later, on December 10, 2014, the then-CFO received an email that attached three versions of the Cost Report for fiscal year 2014. One version calculated Threshold Visits using the total number of services provided, as described in Paragraph 15 (which, if used

as the basis of reporting, would lead to the most inflated Threshold Visit count). Another version reported the total number of Threshold Visits based on the number of different cost centers in which a patient received services during a given day, the method described in Paragraph 16 (which, if used as the basis of reporting, would also lead to an inflated Threshold Visit count). The last version reported Threshold Visits properly—counting the visits based upon the number of times the individual crossed the threshold to the facility.

22. Even though The Door’s then-CFO knew that “[t]he cost report must note only one visit per day,” The Door submitted Cost Reports to DOH throughout the Covered Period that improperly inflated the number of Threshold Visits. More specifically, between 2009 and 2016, The Door misrepresented the number of Threshold Visits as follows:

- a. In 2009, The Door, using the scheme described in Paragraph 15, falsely stated in its Cost Report for fiscal year 2008, that it had 40,589 Threshold Visits to its facility, while the accurate number of Threshold Visits was approximately 15,237. Had The Door reported the proper number of Threshold Visits, it would have received substantially less funding from the ICP.
- b. In 2011, The Door, using the scheme described in Paragraph 15, falsely stated in its Cost Report for fiscal year 2009, that it had 36,996 Threshold Visits to its facility, while the accurate number of Threshold Visits was approximately 13,888. Had The Door reported the proper number of Threshold Visits, it would have received substantially less funding from the ICP.
- c. In 2012, The Door, using the scheme described in Paragraph 15, falsely stated in its Cost Report for fiscal year 2010, that it had 37,819 Threshold Visits to its facility, while the accurate number of Threshold Visits was approximately 17,048. Had The Door reported the proper number of Threshold Visits, it

- would have received substantially less funding from the ICP.
- d. In 2013, The Door, using the scheme described in Paragraph 15, falsely stated in its Cost Report for fiscal year 2011, that it had 36,878 Threshold Visits to its facility, while the accurate number of Threshold Visits was approximately 16,624. Had The Door reported the proper number of Threshold Visits, it would have received substantially less funding from the ICP.
 - e. In 2014, The Door, using the scheme described in Paragraph 15, falsely stated in its Cost Report for fiscal year 2012, that it had 37,580 Threshold Visits to its facility, while the accurate number of Threshold Visits was approximately 15,581. Had The Door reported the proper number of Threshold Visits, it would have received substantially less funding from the ICP.
 - f. In 2015, The Door, using the scheme described in Paragraph 15, falsely stated in its Cost Report for fiscal year 2013, that it had 34,258 Threshold Visits to its facility, while the accurate number of Threshold Visits was approximately 11,233. Had The Door reported the proper number of Threshold Visits, it would have received substantially less funding from the ICP.
 - g. In 2016, The Door, using the scheme described in Paragraph 16, falsely stated in its Cost Report for fiscal year 2014, that it had 27,695 Threshold Visits to its facility, while the accurate number of Threshold Visits was approximately 11,984. Had The Door reported the proper number of Threshold Visits, it would have received substantially less funding from the ICP.
 - h. Again in 2016, The Door, using the scheme described in Paragraph 16, falsely stated in its Cost Report for fiscal year 2015, that it had 32,672 Threshold Visits to its facility, while the accurate number of Threshold Visits was

approximately 13,243. Had The Door reported the proper number of Threshold Visits, it would have received substantially less funding from the ICP.

CLAIMS FOR RELIEF

FIRST CLAIM

Violation of the False Claims Act: Presenting False Claims for Payment (31 U.S.C. § 3729(a)(1)(A))

23. The United States incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

24. The Government seeks relief against The Door under Section 3729(a)(1)(A) of the False Claims Act.

25. As a result of improperly reporting the number of Threshold Visits on its Cost Reports submitted to DOH during the Covered Period, The Door knowingly presented false claims to DOH that caused it to receive an excessive award from the ICP in violation of 31 U.S.C. § 3729(a)(1)(A).

26. By reason of these false or fraudulent claims that The Door presented or caused to be presented, the United States paid funds to The Door through the ICP, and is entitled to recover treble damages plus a civil monetary penalty for each false claim.

SECOND CLAIM

Violation of the False Claims Act: Use of False Statements (31 U.S.C. § 3729(a)(1)(B))

27. The United States incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

28. The Government seeks relief against The Door under Section 3729(a)(1)(B) of the False Claims Act.

29. As a result of improperly reporting the number of Threshold Visits on its Cost Reports submitted to DOH during the Covered Period, The Door knowingly made, or caused to be made, false records or statements that were material to a false or fraudulent claim to funds from the ICP in violation of 31 U.S.C. § 3729(a)(1)(B).

30. By reason of these false or fraudulent records or statements that The Door made, or caused to be made, the United States paid funds to The Door through the ICP, and is entitled to recover treble damages plus a civil monetary penalty for each false claim.

PRAYER FOR RELIEF

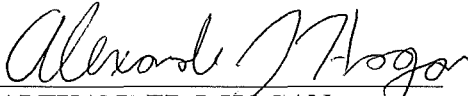
WHEREFORE, the United States demands judgment against Defendant as follows:

- A. A sum equal to treble the United States' damages and civil penalties to the maximum amount allowed by law;
- B. Award of costs pursuant to 31 U.S.C. § 3792(a)(3); and
- C. Such further relief as is proper.

Dated: January 27, 2022
New York, New York

Respectfully submitted,

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