

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL INDICTMENT
 :
 : NO. 4:10-CR-012-HLM-WEJ
 GEORGE D. HOUSER :

**UNITED STATES' PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW, VOL. I**

Comes now the United States, by and through Sally Quillian Yates, United States Attorney for the Northern District of Georgia, and Glenn D. Baker and William G. Traynor, Assistant United States Attorneys, and hereby submits its proposed findings of fact and conclusions of law. Due to its length, the Government has split its submission and is filing it in three volumes.

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I. THE HOMES

INTRODUCTION

This case involves the operation of three nursing homes by defendant George Houser and his wife Rhonda Washington Houser¹ between June 2004 and September 2007. Second Superseding Indictment, Doc. 139, at Count One. The nursing home referred to at trial as “Moran Lake” was located at 139 Moran Lake Road in Rome, in the Northern District of Georgia. Sheppard Transcript (“Tr.”) at 1080-85, 1091-92, Exhibits 100, 103.² The second nursing home, generally referred to as “Mt. Berry,” was located at 2 Three Mile Road, also in Rome. Sheppard Tr. at 1080-1085, 1091-92, Exs. 101 & 104. The third home, generally referred to as “Wildwood,” was located at 2611 Wildwood Drive in Brunswick, which is a coastal city in southeastern Georgia. Sheppard Tr. at 1080-85, 1091-92, Exs. 102 & 105.

The Moran Lake and Mt. Berry nursing homes each had approximately 100 beds, and generally maintained an occupancy rate of approximately 90 percent. Stanley Tr. at 7; Austin Tr. at 631; Justice Tr. at 1150; Landers Tr. at 1737; Mattie

¹Rhonda Washington Houser will be referred to as “Rhonda.”

²Citations to the transcript will list the witnesses, followed by the exhibits the witnesses referenced.

Cox. Tr. at 2428 (Moran Lake had 95 residents in late May 2007); Exs. 76a, 76c, 116, 117 & 118. The Wildwood nursing home had 204 beds, and had an occupancy rate of approximately 75 percent. Justice Tr. at 1150; Exs. 76a, 76c. Medicare or Medicaid paid the nursing home expenses for the vast majority of the homes' residents. *See* Stanley Tr. at 7 (ten percent of Mt. Berry residents were private-pay, ten-fifteen percent were Medicare residents, and the rest were Georgia Medicaid residents); Edwards Tr. at 128; Free Tr. at 398; Grant Tr. at 1417.

Houser operated the two nursing homes in Rome in the early 1990s. Justice Tr. at 1107-10. Houser did not pay over his employees' payroll taxes, however, and in 1993, the Internal Revenue Service seized the Mt. Berry home, and the State of Georgia revoked his license to operate the homes. *Id.* The IRS imposed tax liens on the home, which expired after ten years. *Id.*

Forum Healthcare Group ("FHG") assumed management of the two Rome homes in May 2003. Sheppard Tr. at 1080-1085, 1091-92, Exs. 100 & 101. The Medicare Provider Applications for the two homes listed Rhonda Washington as the owner of FHG. Sheppard Tr. at 1083-86. The Georgia Department of Community Health, Division of Medical Assistance Provider Applications ("Medicaid") for the two homes listed Rhonda Houser as FHG's president, office manager or officer, and Denise Wilson as the entity's owner. Austin Tr. at 639-43,

Exs. 116 & 177.

Houser and Rhonda were romantically involved and eventually married during the conspiracy period. Stanley Tr. at 26. There is no dispute in this case that he managed the homes with her while FHG operated them. Indeed, Houser created FHG in the spring of 2003 and he asked his cousin, Denise Wilson, to be its president. Wilson Tr. at 589-91, 594-95, Ex. 133a. She declined his offer because she felt that Houser would control the homes under his proposal and she would be a “figurehead only.” Wilson Tr. at 589-91, 594-95, Ex. 133a. She was surprised years later to learn that she was listed as FHG’s owner on the Medicaid applications for the two Rome homes and that the State of Georgia Department of Revenue wanted her to pay \$159,000 in FHG’s delinquent payroll taxes. Wilson Tr. at 592-95.

FHG assumed management of the Wildwood nursing home in September 2003. Sheppard Tr. at 1085-86, Ex. 102. Rhonda signed the Wildwood Medicare Provider Application as president of FHG. Ex. 102. The Medicaid Provider Application listed Rhonda as FHG’s office manager and owner, with a corporate office address of 940 Spider Webb Drive, Rome. Austin Tr. at 644-45, Ex. 118.

Houser explicitly assumed control of the three homes on July 1, 2004. Sheppard Tr. at 1086-91, Exs. 106, 107, 108, 110, 111, 112; Justice Tr. at 1150.

The Medicare Provider Applications submitted at the time reflected a change of ownership from Rhonda to Houser and listed Houser as president, chief executive and owner of the homes, whose names were changed to Forum Healthcare Group at Moran Lake Nursing and Rehabilitation Center, LLC, Forum Healthcare Group at Mt. Berry Nursing and Rehabilitation Center, LLC, and Forum Healthcare Group at Wildwood Park Nursing and Rehabilitation Center, LLC. Sheppard Tr. at 1086-91, Exs. 106, 107, 108, 110, 111, 112; Austin Tr. at 646-650, Exs. 122, 123, 124, 125, 126, 127; Justice Tr. at 1150. The Medicaid Provider Applications listed the homes' owners as Houser, Forum Healthcare Corporation, and Louis K. Houser. Austin Tr. 646-650, Exs. 122, 123, 124. All the applications listed the homes' corporate address as 940 Spider Webb Drive in Rome. Exs. 110, 111, 112, 122, 123, 124.

In June 2007, the Georgia Office of Regulatory Services ("ORS") gave notice that it was terminating the provider agreements of the two Rome homes – effectively closing the homes – because of numerous problems, including decrepit physical environmental conditions, staffing shortages, and irregularities with residents' trust fund accounts. The last residents were removed from Mt. Berry on June 30, 2007, and Moran Lake on July 5, 2007. Cannon Tr. at 1307-11, Exs. 254 & 254a; Chandler at Tr. 2309-10, 2320-21, Exs. 293, 294, 306, 308 & 361_10. In

early September 2007, ORS gave notice that it was closing Wildwood for the same reasons, and the last resident was transferred out of that home on September 7, 2007. Cannon Tr. at 1307-11, Exs. 254 & 254a; Exs. 327 & 328.

ADMINISTRATION

The administrators were the chief executive officers in the homes.

Goldsmith Tr. at 2829, 2838. They were Houser's eyes and ears in the homes, and were responsible for informing him of problematic issues in the homes.

Goldsmith Tr. at 2829, 2838.

Moran Lake

Michelle Prince was the administrator when Houser returned to managing the homes in the spring of 2003, and she remained the administrator until November 2003. Prince Tr. at 600. Kim McMichael Knowles was the home's Director of Nursing under Prince. Knowles Tr. at 279.

Knowles was promoted to the administrator's job upon Prince's departure. Knowles Tr. at 279-280. As conditions in the home deteriorated, she began faxing letters listing concerns and problems to Houser and Rhonda, and keeping copies of her faxes as evidence that she had notified the owners of the problems. Knowles Tr. at 290-91; Ex. 487. When Knowles and other administrators who faxed letters to Houser's fax machine received no response, they telephoned FHG Payroll

Administrator Laverne Burrell, who worked in the office with Houser and Rhonda. Burrell Tr. at 1244-45. They also sent their faxes to Burrell, who would put them on Houser's desk. Burrell Tr. at 1245.

Knowles resigned from Moran Lake and FHG in mid-May 2007. Knowles Tr. at 340.

Lisa Garner followed Knowles. Primus Tr. at 732. She remained the administrator until ORS closed the home in July 2007. Primus Tr. at 732.

Mt. Berry

Suzanne Stanley was administrator of Mt. Berry from January 2000 until January 2005. Stanley Tr. at 4. Stanley worked for Capital Care when it took over the management of Houser's nursing homes in Rome in 1993. Stanley Tr. at 5-6. She went into those homes immediately after Houser turned them over to Capital Care, and she saw that the residents were in poor condition, the staff lacked supplies to care for the residents, and the homes were in bad repair and in need of maintenance. Stanley Tr. at 6. Consequently, she was unsure about working for Houser when he resumed managing the Rome homes. Stanley Tr. at 7. But Houser assured Stanley and her staff "that he was going to try to do it right and that he was going to try to, you know, do things by the regulations and keep the facilities up and pay the bills; the things he had not been able to do previously."

Stanley Tr. at 7.

Houser fired Stanley in January 2005 and replaced her with Lois Greenway. Stanley Tr. at 29, 45-46. Greenway was the administrator until she resigned in February; her last day was February 23, 2007. Greenway Tr. at 778, 889. As conditions in the home deteriorated, she began faxing or emailing lists of problems to Houser and Rhonda, and she printed and retained copies of some of those faxes and emails. Exs. 800, 805, 807, 808, 809, 810, 811, 812, 813, 814, 815, 821, 822, 826.

Houser hired Angie Chandler to be the administrator at Mt. Berry in late March 2007, and she remained in that position until ORS closed the home in July 2007. Chandler Tr. at 2306-08.

Wildwood

Rosa Free was the administrator of Wildwood from August 2003 until July 2005. Free Tr. at 394, 420. Rhondia Grant followed Free, and she was the administrator until she resigned in April 2007. Grant Tr. at 1317-18. As conditions in the home deteriorated, she began emailing lists of problems to Houser and Rhonda, and she printed and retained copies of some of those emails. Grant Tr. at 1334; Exs. 831.1, 831.3, 831.4, 831.6, 831.7, 831.8, 831.9, 831.11, 831.15, 831.17, 831.18, 831.19, 831.20, 831.23, 831.24, 831.26, 831.27, 831.29,

831.33, 831.35, 831.36, 831.37, 831.38, 831.39, 831.40, 831.41, 831.43, 831.44, 831.45.

Barbara Chal was the administrator at Wildwood from July 12, 2007, until it closed in September 2007. Chal Tr. at 2652-53. She described her brief tenure as “a whirlwind of problems that kept spinning out of control,” and she communicated with Houser almost daily about the problems she encountered trying to maintain and operate the home. Chal Tr. at 2654, 2659-60; *e.g.*, Exs. 1088, 1089, 1090, 1091, 1092, 1093, 1097, 1098, 1099, 1100, 1101, 1102, 1104, 1005.

II. MEDICARE & MEDICAID

Between June 1, 2004, and when the three homes were closed, Medicare and Medicaid paid Houser’s Forum entities a total of \$32,914,304.66 pursuant to the provider applications that Houser had submitted in July 2004. Sheppard Tr. at 1078-1080; Canon Tr. at 1309, Exs.254, 254a, 255a, 255b, 255c, 255d. Of that total, Medicaid paid \$25,965,047.29, and Medicare paid \$6,949,257.37. Canon Tr. at 1307-11; Sheppard Tr. at 1078-80, Exs. 254, 254a, 255a, 255b, 255c, 255d.

All three homes were “skilled nursing facilities” within the meaning of 42 U.S.C. § 1396r. Mauldin Tr. at 135-36. As such, they were required to care for their residents “in such a manner and in such an environment as will promote

maintenance or enhancement of the quality of life of each resident.” *Id.* at 136-37; 42 U.S.C. § 1396(b)(1)(A). Houser was required to provide his residents with a clean, safe, sanitary living environment. Mauldin Tr. at 137. Houser was required to provide the dietary meals and snacks, care, supplies, activities, and services that would maintain or support “the highest practicable level of physical, mental, and psychosocial well-being to every resident.” Mauldin Tr. at 138-39; 42 U.S.C. § 1396r(b)(2)(A); 42 C.F.R. § 483.25. To provide residents with “the highest practicable level” of well-being, the applicable federal regulations – which are codified in Title 42 of the Code of Federal Regulations; Ex. 27 – required Houser to employ a sufficient number of staff to care for the residents, many of whom were incontinent or in need of assistance in being turned, bathed, moved, and fed. Mauldin Tr. at 142-45. Houser was required to equip, supply and maintain the homes in a manner that would protect the health and safety of the residents, which means the homes should have had everything from cups to pest control to intact roofs. Mauldin at 145-46, 177-79; 42 C.F.R. § 483.70. Something as simple as a small leak in a roof can cause a puddle, which could cause a resident to slip and break her hip. Mauldin Tr. at 178.

As a provider of skilled nursing facilities, Houser was required to care for his residents in a dignified and respectful manner, providing them with the

services necessary to attain or maintain their highest practicable level of living. Mauldin Tr. at 151-153; 42 C.F.R. § 483.15 & 483.25. Houser was required to protect the residents and staff from infection by using special cleaning supplies, sanitizing laundry and dishes, and properly storing and removing biohazardous waste from the homes. Mauldin Tr. at 156-57, 172-73.

As the provider, Houser was required to provide for the nutrition of each of his residents, many of whom had different and unique dietary needs. Mauldin Tr. at 159; 42 U.S.C. § 1396r(b)(4)(A)(i-iv); 42 C.F.R. § 483.25. Ingredients, preparation methods, and portions must be adjusted to provide nutritional and balanced meals for each resident, some of whom may need protein supplements or other supplements for their therapeutic diets. Mauldin Tr. at 159-69. Meals with fellow residents are often the high point of many residents' days and, therefore, once the homes' dieticians planned their menus for the coming week, the homes were required to post their menus and serve the meals listed in the menus. Mauldin Tr. at 168-170, 175-77. Houser was required to provide nourishing snacks for his residents, which often help residents sleep better through the night, and which are especially important to helping diabetic residents maintain steady blood sugar levels. Mauldin Tr. at 170-71, 173-74.

As the provider, Houser was required to furnish residents with

pharmaceutical services that would provide medications in a timely and appropriate manner, and laboratory and x-ray services, which are necessary to follow physicians' orders regarding the monitoring and care of the residents. Mauldin Tr. at 171-72, 181-82.

Houser's and Rhonda's Providers' Certifications

By signing the enrollment applications to seek Medicare and Medicaid payments for their residents, Rhonda and Houser certified that they were aware of all the applicable federal statutes and regulations governing the operating, staffing, and maintenance of nursing homes, and they certified that they would comply with those statutes and regulations and not knowingly present or cause to be presented false claims for payment. Sheppard Tr. at 1080-87, 1088-1094, 1098; Austin Tr. at 632-650; Exs. 100, 101, 102, 103, 104, 105, 106, 107, 108, 110, 111, 112, 116, 117, 118, 122, 123, 124, 125, 126, 127.

For example, in his application to be a Medicare provider at the Moran Lake home, Houser certified the following: "I will not present or cause to be presented a false or fraudulent claim for payment by Medicare, and will not submit claims with deliberate ignorance or reckless disregard of their truth or falsity." Ex. 110.

Medicare claims are paid on a fee schedule within 14 days of filing. Sheppard Tr. at 1076-77. In paying claims, Medicare relies on the provider's

certification that (1) he knows and is operating his nursing homes as the applicable federal statutes and regulations require, (2) the services being billed for were provided, and (3) the provider is not submitting false or fraudulent claims for payment. Sheppard Tr. at 1099-1101. The truth of a claim for payment is a material issue, as Medicare would not knowingly pay a claim that contained false information. Sheppard Tr. at 1100-1101.

Similarly, in accepting Medicaid payments for residents, Rhonda and, later, Houser certified as the provider that the services listed in each claim for payment “were rendered by or under the supervision of the provider.” Austin Tr. at 635, Ex. 125; *see also* Exs. 116, 117, 118, 122, 123, 124, 126, 127. In accepting Medicaid payments, Rhonda and, later, Houser understood as the providers that “payment will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.” Ex. 125; *see also* Exs. 116, 117, 118, 126, 127. The truth of a claim for payment is a material issue, because Medicaid would not knowingly pay a claim that contained false information. Cannon Tr. at 1311.

When a provider files a claim for payment from Medicare or Medicaid, he represents that he provided the service. Goldsmith Tr. at 2881. A provider cannot rely on subordinates to pay for and provide services for which he seeks payment

from Medicare or Medicaid. Cox Tr. at 2460-61. Under the terms of his enrollment applications, the provider is obligated to operate the homes in accordance with the applicable statutes and regulations and to provide the services those statutes and regulations require, in the manner they require. Cox Tr. at 2460-61, Mauldin Tr. at 142-43; Sheppard Tr. at 1080-87, 1088-1094, 1098; Austin Tr. at 632-650; Exs. 100, 101, 102, 103, 104, 105, 106, 107, 108, 110, 111, 112, 116, 117, 118, 122, 123, 124, 125, 126, 127. Medicaid and Medicare pay according to the provider number pursuant to the provider agreement, and they do not pay staff. Cox Tr. at 2460-61. Medicaid's money, for example, is paid "to a provider to make payments and to do what we expect to be done with that money. So it is our concern if our money is not being used properly as the contract was signed." Cox Tr. at 2461.

The provider agreements permitted Houser to bill Medicare and Medicaid for every day that the residents were in the homes. Chandler Tr. at 2322. Medicaid paid Houser for claims made for caring for residents in Moran Lake until July 5, 2007. Cannon Tr. at 1310. Similarly, it paid claims for residents in Mt. Berry until June 30, 2007, and Wildwood until September 7, 2007. Cannon Tr. at 1310-11.

III. PHYSICAL ENVIRONMENT

Houser was responsible as the Medicare and Medicaid provider for equipping, supplying, and maintaining the nursing homes in a manner that protected the health and safety of the residents and provided them with a clean, safe, sanitary living environment to maintain or support "the highest practicable level of physical, mental, and psychosocial well-being [of] every resident."

Mauldin Tr. at 137-39; 42 U.S.C. § 1396r(b)(2)(A); 42 C.F.R. § 483.70; Ex. 25.

Something as simple as a small leak in a roof could cause a puddle, which could cause a resident to slip and break her hip. Mauldin Tr. at 178. A leaking roof puts residents at risk every day it remains unrepaired. Mauldin Tr. at 178.

LEAKING ROOFS

Moran Lake

The roof at Moran Lake leaked when Rhonda and Houser assumed the management of the home in 2003, and the leaks grew increasingly worse during the conspiracy period. Knowles Tr. 326-27; Dodson Tr. at 1534; Landers Tr. at 1731-32, 1753-54, 1757; Thomas Tr. at 2195-96; Lee Tr. at 2287-88; Garrett Tr. at 2700.

Employees placed large trash barrels and buckets throughout the home to catch the rainwater in the home, but water still spilled on the floors because the

staff could not anticipate all the leaks. Prince Tr. at 606; Landers Tr. at 1731; Lee Tr. at 2287-88; Garrett Tr. at 2700.

The home's maintenance staff attempted to patch the roof temporarily, at Houser's direction, and they covered portions of the roof with tarps, but these measures did not stop the increasing leaks. Landers Tr. 1753-54; Thomas Tr. at 2216; Young Tr. at 2556, 2572. Tarps are ineffective at repairing a flat roof because water may drip into the building 20 or 30 feet from the location of the actual location of the leak. Young Tr. at 2572.

When it rained, the roof in Moran Lake leaked water in residents' rooms and common areas in the home and even flooded one resident's room. Knowles Tr. 326-27; Landers Tr. 1731-32; Lee Tr. at 2287-88; Garrett Tr. at 2700. "When it rained, it leaked. They'd have buckets all up and down the hallway, have the mop buckets out there to keep it mopped up with." Dodson Tr. at 1534.

The home had a ceiling of large fiberglass ceiling tiles that were suspended beneath the roof. Knowles Tr. 326-27. When it rained, tiles would become saturated with water until they dropped on the floor or into the trash cans that staff had placed to catch the rainwater in the home. Knowles Tr. 327. Saturated ceiling tiles bulged over residents' beds, in the bathrooms, and in the day room. Glymph Tr. at 448-52; Ex 350.

Staff moved residents' beds to keep the residents from being soaked by the leaks. Knowles Tr. 326-28.

Once, a saturated tile fell on a resident's unoccupied bed. Thomas Tr. at 2195-96; Lee Tr. at 2287-88; Garrett Tr. at 2700.

Once, leaking rainwater destroyed a residents' personal television. Landers Tr. at 1731-32.

On another occasion, rainwater was leaking directly on the center of a resident's bed. Thomas Tr. at 2195-96, 2215-16; Young Tr. at 2555-56. Jamie Young, the maintenance man, fastened a plastic tarp beneath the roof and diverted the water to a trash can that was placed at the end of the resident's bed. Young Tr. at 2555-56, 2572. The resident remained in the bed and the tarp remained over his bed at least until the time that Young stopped working at the home in early 2007. Young Tr. 2555-56, 2571-72.

The administrator and employees told Houser of the leaking roof. Landers Tr. at 1731-32.

Knowles, the administrator, advised Houser of the problem in numerous faxes. Ex. 487. In letters faxed October 19, 2006, October 23, 2006, October 30, 2006, November 1, 2006, December 11, 2006, and December 13, 2006, Knowles told Houser: "**ROOF**: I HAVE 2 BEDS THAT I CANNOT TAKE NEW

ADMISSIONS FOR BECAUSE OF THE FLOODING AND THE FALLING OF CEILING TILE. THE LEAK IS SPREADING THROUGHOUT THE BUILDING AND I AM RUNNING OUT OF ROOM TO KEEP RESIDENTS SAFE.” Ex. 487 (emphasis in original).

In a letter faxed December 22, 2006, Knowles told Houser:

**WE HAVE CEILING TILES AND ROOF LEAKS
ON RESIDENTS’ BEDS AND CLOTHES. I NEED
SOME ONE TO EITHER TAKE CARE OF IT OR
BRING MONEY FOR JAMIE [Young] TO DO
SOMETHING!!!**

Ex. 487 (emphasis in original).

In letters faxed March 1 and 2, 2007, Knowles told Houser: “THE ROOF CONTINUES TO LEAK WHICH CAUSES MORE CEILING TILES TO HAVE TO BE REPLACED.”

Houser rejected the recommendation to replace the roof at Moran Lake. Chisolm Tr. at 527-29. Instead, Houser had leaks patched with a material that Maintenance Supervisor Jerry Chisolm advised against, because he thought the material would eventually make the leaks worse – which it did. Chisolm Tr. at 527-29. When Subacute Services leased and renovated the building in the fall of

2007, the roof was so decrepit that the only choice was to replace it for \$129,000. Forrister Tr. at 2346-47.

Wildwood

The roofs on several wings and hallways leaked when Rhonda and Houser assumed control of Wildwood in September 2003, and the leaks grew increasingly worse during the conspiracy period. Herrington Tr. at 1036, 1045-47; Patrick Tr. at 1272; Grant Tr. at 1327; Brunner Tr. at 1807-08; Chal Tr. at 2656; Browning deposition, ex. 634a at 7-9. The roof was very old and Houser was very much aware that it needed to be replaced when he took over the building. Free Tr. at 415. Every time there was heavy rain in Brunswick, the roof leaked and saturated ceiling tiles fell into the home. Free Tr. at 415. The staff placed large 55-gallon barrels under the leaks to catch the water. Free Tr. at 415. There were also several air conditioning units on the roofs of the wings that would occasionally freeze over and leak into the home. Grant Tr. at 1327. The ceiling tiles were constantly being damaged by water leaking through the roof, so maintenance eventually stopped replacing them and just left the ceiling open. Grant Tr. at 1327. Employees had to constantly look up and make sure nothing was falling. Free Tr. at 415-16.

Employees placed large trash cans and buckets throughout the home to

catch the rainwater in the residents' rooms and common areas, and they attempted to contain the rainwater that fell on the floors with blankets and towels.

Herrington Tr. at 1045-47; Browning deposition, ex. 634a at 7-9. "When I was working there, when it used to rain, the tile used to fall [to] the floor. And, like, the wall here, you could see the rain come down. And if it rained too hard, you knew that you better move the residents from out of the middle of the floor because the tile was going to fall, and when it fell we used to have to put blankets or buckets to catch the water." Collins Tr. at 1871.

Frances Browning, who lived in Wildwood from 2005 until shortly before it closed in September 2007, testified that it rains frequently and heavily in coastal Brunswick, and the nursing home "had a major problem with rain leaking" in common areas and residents' rooms whenever it rained. Ex. 634a at 8.

Winifred Herrington visited her aunt daily in Wildwood between approximately May 2006 and August 2007. Herrington Tr. 1031, 1042. When it rained, water cascaded down the walls of her aunt's room and behind her bed. Herrington Tr. at 1045-46. During one rain, a saturated ceiling tile fell on her aunt's roommate's unoccupied bed. Herrington Tr. at 1046. When the air conditioning was used, some times the ceiling units would freeze and leak water, which would create puddles on the floor. Herrington Tr. at 1036.

Like Moran Lake, Wildwood had a ceiling of large fiberglass ceiling tiles that were suspended beneath the roof. Chisolm Tr. at 529-30; Grant Tr. 1327. When it rained, tiles would become saturated with water until, weighing approximately 25 pounds soaking wet, they dropped on the floor or in the barrels positioned to catch the water. Chisolm Tr. at 529-30; Dunham Tr. at 2491-92; Browning deposition, ex. 634a at 7-9. Sometimes the tiles dropped in residents' rooms. Chisolm Tr. at 529-30. Sometimes water-stained ceiling tiles were spray painted to hide the stains. Brunner Tr. at 1807-08. The leaks were equally as bad in the dining room, where there were always containers set up to catch the water. Usher Tr. at 1782.

The leaks in the north wing were "horrendous" and filled the barrels positioned to catch the rainwater as it fell in the building. Patrick Tr. at 1272; Chal Tr. 2656; *see also* Hamilton Tr. at 674-75. The state ORS directed Chal to close the north wing in early August 2007 because of the leaking roof and the mold that was growing in the building. Chal Tr. at 2667-68, 2690; Ex. 1099.

As in Moran Lake, Houser rejected Chisolm's recommendation to replace the roof at Wildwood. Chisolm Tr. at 530-31. Instead, Houser again had leaks patched with a material that Chisolm advised against, because he thought the material would eventually make the leaks worse – and he had them cover some

portions of the roof with a tarp. Chisolm Tr. at 530-31. In July 2007, in response to Chal's notices and the state's demands, Houser sent men to put some tarps on the roof. Chal Tr. at 2656-57, 2674; Ex. 1105. But they were not licensed roofers, and smelled of alcohol and, consequently, the state prohibited them from working on the roof. Chal Tr. at 2656-57, 2674; Ex. 1105.

In August 2007, roofer Herman Sloan recommended that Houser replace the roof on the north wing, but Houser rejected that idea and, instead, he contracted with Sloan for patching and repair work. Sloan Tr. at 1765-77. But Sloan stopped his work mid-project because Houser paid him with a bad check. Sloan Tr. at 1766-71, Exs.756a. While he was on the roof, Sloan saw that "a good bit of work had been done on the roof, but it was improperly done." Sloan Tr. at 1733; Johnson Tr. at 2034-37.

When Dennis Johnson walked through the nursing home on September 10, 2007 – three days after the last resident was removed – he saw that between the "multitude of blown out ceiling tiles" and the holes in the roof, it was possible to look up through the roof and see the sky. Johnson Tr. at 2034-35. Throughout the building, Johnson found mold on the floors and walls, or beneath the vinyl wallpaper, and in one wing, mold had grown in the sheet rock, which had to be removed. Johnson Tr. at 2034-36. Such mold growth showed an inability to

control the humidity within the nursing home. Johnson Tr. at 2036.

Johnson took several photographs of the home from a subsequent walk-through on September 20, 2007, including a photograph of a funnel that was duct-taped to a roof girder beneath a large hole in the roof. Ex. 758a. A garden hose was clamped to the funnel, and the hose dropped to a barrel on the floor below. Johnson Tr. at 2056; Ex. 758a. When Johnson's employer, Southeast Georgia Health Systems, began renovating the Wildwood home in the fall of 2007, his crew had to replace the roofs on all the wings, hallways, and common areas, with the exception of the roof on the south wing. Johnston Tr. at 2033-39.

LACK OF HEATING AND AIR CONDITIONING

Medicare and Medicaid providers are required to provide their nursing home residents with an environment that protects their health and safety, which includes functioning air conditioning and heat. Mauldin Tr. at 145-46, 174-75; Knowles Tr. at 339; 42 C.F.R. § 483.70. Climate control is important throughout the home, including the dining room. Mauldin Tr. at 175. The dining room is important because community meals are essential for the residents' socialization. Mauldin Tr. at 175; Knowles Tr. at 346; Hannay Tr. at 1436-37; Davis Tr. at 2588.

Moran Lake

The residents' rooms and the dining room in Moran Lake were heated and

cooled with “PTAC” units that fit in openings in the walls that were beneath the windows and close to ground level. Forrister Tr. at 2348, 2353-54, 2356-57; Ex. 765. When Houser became the Medicare and Medicaid provider in July 2004, the PTAC units in Moran Lake were old and many malfunctioned, and they continued to do so until the home closed. Young Tr. at 2568-69, 2575.

When units failed in residents’ rooms, Jamie Young, the maintenance man, would replace it with a unit from the dining room. Young Tr. at 2552-53. By the fall of 2006, none of the PTAC units in the dining room worked, meaning there was no heat in the dining room from November 2006 until the weather turned with the arrival of spring in 2007. Knowles Tr. at 365; Young Tr. at 2553-54, 2569; *see also* Lee Tr. at 2300 (heat and a/c problems were constant in Moran Lake between when she started working there in February 2006 and when the home closed in July 2007). The dining room was so cold in the fall and winter of 2006-2007 that residents eventually chose to eat in their rooms, alone, on either a chair or a bed. Knowles Tr. at 346, 366. At times during the winter months, residents were dressed in coats and bundled in blankets so they could eat their meals in the dining room, and the staff had to wear coats to work in the dining room. Lee Tr. at 2289.

Administrator Knowles faxed Houser continually between January and

March 2007 asking for heat for the dining room, but to no avail. Knowles Tr. 339-346, 365; Ex. 487. In letters faxed to Houser and Rhonda on January 31, 2007, Knowles reported: “**HEATERS: MY DINING ROOM HAS NO HEATERS. I NEED 6 HEATERS ASAP. THIS HAS BEEN NOTED BY THE SURVEYORS AND OMBUDSMAN ON THIS VISIT.**” Ex. 487 (emphasis in original). Knowles stopped working at Moran Lake in mid-May 2007, and there was no heat in the dining room for the last four-to-six months that she worked there. Knowles Tr. at 349, 365; Ex. 487.

Despite taking all of the functioning PTAC units out of the dining room, Young was not able to keep every unit working in every resident’s room. Young Tr. at 2554, 2563-64. Residents might go weeks or a month without heat or air conditioning in their rooms. Young Tr. at 2568-69; Thomas Tr. at 2191. Despite this lack of climate control, these residents were not moved from their rooms during times of no heat or no air conditioning. Young Tr. at 2568.

In addition to the PTAC problems, the central air unit that cooled approximately one-half of the building, the “B Unit,” stopped working in July 2006, and was never repaired. Knowles Tr. 297-98, 304. In a letter faxed July 11, 2006, Knowles told Houser: “**AC UNIT ON B-SIDE: I UNDERSTAND THAT THE UNIT HAS BEEN PUT IN, BUT I CONTINUE TO NOT HAVE AIR ON**

THAT SIDE. I CONTINUE TO GET RESIDENT, STAFF, AND FAMILY COMPLAINT AS TO THE HEAT.” Ex. 487 (emphasis in original).

Employees and family members testified that some residents’ rooms and the dining room in Moran Lake were frigid in the winter and sweltering in the summer, and the dining room became too hot for the residents to use. Dodson Tr. at 1532; Edwards Tr. at 1588-89; Thomas Tr. at 2191; Lee Tr. at 2289-90 & 2300; Cox. Tr. at 2431; *see also* Hannay Tr. at 1455 (no air conditioning in the therapy room). When Christy Glymph surveyed Moran Lake in January 2007, upon entering the building she immediately noticed that the facility was cold. Glymph Tr. at 446. A resident in the day room told her that he was cold as well. Glymph Tr. at 552.

Caren Kelley took her mother home from Moran Lake for baths because there was no heat in the shower rooms. Kelley Tr. at 1498.

When Subacute Services renovated the Moran Lake building, it found that none of the PTAC units worked in the dining room, and the majority of units in the residents’ rooms did not work and had to be replaced. Forrister Tr. at 2348, 2356.

Mt. Berry

The Mt. Berry home faced the same problems as Moran Lake in keeping the PTAC units working in residents’ rooms and the dining room. Greenway Tr. at

796. There were times when there was no heat or air conditioning in the dining room. Greenway Tr. at 796. Residents cannot use a nursing home dining room when its temperature exceeds 88 degrees. Edwards Tr. at 1587. At times the temperature in the dining room exceeded that limit, which forced the residents to eat in their rooms. Dixon Tr. at 1566; Greenway Tr. at 796.

Wildwood

As in Moran Lake, the residents' rooms in Wildwood were heated and cooled with individual units that fit in openings in the walls that were beneath the windows and close to ground level. Patrick Tr. at 1274-76.

Wildwood also had several central air conditioning units on the roofs that served the common areas in the wings and hallways. Patrick Tr. at 1274-76.

When Houser became the Medicare and Medicaid provider in July 2004, the units in the residents' rooms were old and many malfunctioned, and they continued to do so until the home closed. Patrick Tr. at 1274-76. Some of the units in the residents' rooms were wired directly into the wall for power, with the wiring exposed. Patrick Tr. at 1275.

Winifred Herrington's aunt lived in Wildwood from May 2006 until August 2007. Herrington Tr. at 1031-32. The living conditions in the home prompted Herrington to visit her aunt nearly every day. Herrington Tr. at 1041-42. There

was frequently no heat in her aunt's room or the common areas in her wing.

Herrington Tr. at 1034-36. At times her aunt stayed in her bed all day and said it was too cold in the home to get out of bed. Herrington Tr. at 1035-36.

Herrington's aunt developed pneumonia twice when she lived in Wildwood, and her doctor attributed her illnesses to the change in temperatures between leaving the home's warm shower rooms and returning to the unheated hallways and residential rooms. Herrington Tr. at 1036-1037.

The air conditioning did not work in the kitchen. Browning depo., ex. 634a at 10. Frances Browning became very ill once because the heat in the kitchen had spoiled the meat on her sandwich. Browning depo., ex. 634a at 20. Thereafter, she was always careful to check the milk before she drank any. Browning depo., ex. 634a at 30.

When Barbara Chal became the administrator of Wildwood in July 2007, she found that the air conditioning in the home worked intermittently. Chal Tr. at 2695. "Intermittent" air conditioning is not acceptable in a nursing home in Brunswick, where the temperatures exceed 90 degrees and the humidity exceeds 90 percent for four months of the year. Chal. Tr. at 2695; Johnson Tr. at 2035.

When Ombudsman Kathy Gaulin visited Wildwood on July 12, 2007, she found that the air conditioning was not working in the home, and the maintenance

man told her that “it had been out for three months and that there were several individual units in the [residents’] rooms that were out, too.” Gaulin Tr. at 1925; Ex. 361.41. Gaulin found that it was 81 degrees in the south wing and 90 degrees in the north wing. Gaulin Tr. at 1925; Ex. 361.41. Gaulin was especially concerned because the residents’ rooms did not have any fresh water, which they needed while living in such hot conditions. Gaulin Tr. at 1925; Ex. 361.41.

When Southeast Georgia Health Systems began renovating the Wildwood building in the fall of 2007, it found that all of the PTAC units in the residents’ rooms were corroded and had to be replaced. Johnson Tr. at 2037-38. Similarly, all of the air conditioning units on the roof that served the common areas in the home had to be replaced because they had not been maintained. Johnson Tr. at 2037-38.

LACK OF MAINTENANCE

The Moran Lake home was an older building that required substantial maintenance. Young Tr. at 2552. Similarly, the building at Wildwood was fifteen to twenty years old. Patrick Tr. 1292.

Six or seven months after Houser took over the homes, maintenance men Jamie Young (at Moran Lake) and Danny Patrick (at Wildwood) found that they had no maintenance budget, and the Home Depot would not let them charge parts

and supplies because of unpaid bills. Patrick Tr. at 1267-69, 1281-82; Young Tr. at 2550-51; Fuqua Tr. at 2173-74.

Young would occasionally obtain money from his administrator (Knowles). Young Tr. at 2551-52. Young also bought needed parts and supplies with his money – for which he was not reimbursed – or he would, when possible, obtain needed parts and supplies from relatives. Young Tr. at 2551-52. In a letter faxed to Houser on January 22, 2007, Knowles told Houser: **“THERE ARE SEVERAL THINGS THAT MAINTENANCE NEEDS TO FIX BUT HE CAN’T BECAUSE HE HAS NO SUPPLIES.”** Ex. 487 (emphasis in original).

The lack of maintenance at the homes extended to required alarm systems and sprinkler systems. Knowles continually notified Houser of the need to repair and maintain the fire alarm and door alarms at Moran Lake, which fell out of repair because the vendor refused to provide maintenance services because of unpaid bills. Knowles Tr. at 295-96; Ex. 487.

The sprinkler system, fire extinguishers, and kitchen hood were not inspected at Mt. Berry because the inspection services refused service because of unpaid bills. Greenway Tr. at 795-797; Ex. 800.

Similarly, the sprinkler system at Wildwood was not inspected between January and August 2007 because of unpaid bills. Chal Tr. at 2673; Ex. 1102.

As noted above, when Southeast Georgia Health Systems began renovating the Wildwood building in the fall of 2007, it found had to replace all of the air conditioning units on the roof because they had not been maintained. Johnson Tr. at 2037-38.

FILTH AND MOLD

Medicare and Medicaid require providers to provide their nursing home residents with a clean, safe environment, and to protect the residents and staff from infection by using special cleaning supplies and sanitizing laundry and dishes. Mauldin Tr. at 156-57, 172-73; 42 C.F.R. § 483.70.

All three nursing homes suffered from shortages or a complete lack of cleaning supplies because the cleaning supply vendors would stop delivering to the homes because of unpaid bills. Sometimes Houser would pay the vendors to restore deliveries, and sometimes he would persuade other vendors to service the homes. Stanley Tr. 13; Patrick Tr. at 1278; Thomas Tr. at 2190-91, 2203-05; Lee Tr. at 2299; Terhune Tr. at 2640; Chal Tr. at 2663 (“Just basics. We had nothing.”). Knowles complained to Houser continually about Moran Lake’s cleaning supply vendors refusing to deliver needed cleaning and sanitizing supplies. Knowles Tr. at 308; Ex. 487.

Employees would go to retail stores and purchase cleaning supplies, but

they could not buy enough to clean and sanitize the homes. Thomas Tr. at 2212-13. For example, employees would buy bleach, which is not the type of sanitizing cleaner that the regulations require. Greenway Tr. at 812. The use of bleach is not allowed in long-term care facilities. Grant Tr. at 1400.

Moran Lake

Because of the lack of cleaning supplies, the Moran Lake home always had a strong odor of urine and feces. Thomas Tr. at 2190-91, 2203-05; Lee Tr. at 2299; Terhune Tr. at 2640.

Linda Dodson's brother, Austin Locklear, lived in Moran Lake from November 2006 until the home closed in July 2007. Dodson Tr. at 1526, 1536. She visited him daily, and she frequently had to clean feces from his bathroom walls. Dodson Tr. at 1531. She once thought that the wall behind the toilet was rusting, but upon cleaning it, she found it was actually mold growing out of urine stains. Dodson Tr. at 1531. She bought and installed deodorizers "so his room wouldn't smell so bad." Dodson Tr. at 1531.

It was common in Moran Lake for residents' toilets to overflow onto the bathroom floor. Lee Tr. at 2288; Terhune Tr. at 2618. Helen Hart lived in Moran Lake from 2003 until July 2007. Kelly Tr. at 1497. During the last six months Hart lived there, she frequently told her daughter that the residents were instructed

not to flush their toilets. Kelly Tr. at 1501.

In a visit to Moran Lake on January 29, 2007, state surveyor Christy Glymph found that the nursing home “had dirty toilets in there that were smeared with feces, stool on the toilet seat and there's no way to determine how long it had been like that.” Glymph Tr. at 452-53. She could not imagine “that anybody would have been able to go in there and use it. And if it was there, it means somebody was able to go to the bathroom and use it. They just may not have had help to get cleaned back up.” Glymph Tr. at 452-53.

When Ann Wells inspected Moran Lake on May 20-23, 2007, she found the entire building to be so filthy that it was “horrendous.” Wells Tr. at 2075, 2087; Ex. 361. The residents’ shower room was “horrendous.” Wells Tr. at 2085; Ex. 361. The shower room had a constant strong, stale, moldy odor. Wells Tr. 2085. The toilets were covered in feces and attracting flies. Wells Tr. 2085. The shower room remained filthy after housekeeping purported to clean it. Wells Tr. 2086. Ex 361. Similarly, the odor of urine in the residents’ bathrooms was overpowering. Wells Tr. 2088. There were puddles of urine on the floor and the bases of the toilets were yellowed and sticky. Wells Tr. 2088. In her career, Wells has never used words like “appalling” and “horrendous” to describe a nursing home – except Moran Lake. Wells Tr. at 2096.

When Subacute Services leased and renovated the Moran Lake home in the fall of 2007, it replaced the majority of the toilets in the home. Forrister Tr. at 2358-59. They found that the tile in many residents' bathrooms was stained from beneath, because the toilets leaked, which caused the tiles to become stained and saturated, and which also damaged the floors and baseboard. Forrister Tr. at 2358-59.

Wildwood

Mold growing on interior walls is an indication of poor housekeeping. Goldsmith Tr. at 2890-91. The proper way to deal with mold is to eliminate it, not merely cover it up. Goldsmith Tr. at 2890-91. When Danny Patrick showed Houser the mold that was growing in the shower rooms and producing a terrible odor, Houser instructed him to paint over the mold. Patrick Tr. at 1273-74.

Sonya Brunner was an LPN who worked at Wildwood for approximately twelve years, from before the time that Houser became the provider until it closed in September 2007. Brunner Tr. at 1805-06. She saw that as the roof leaks went unrepaired under Houser's management, mold became a problem throughout the home. Brunner Tr. at 1807-1809. She saw that "[t]he walls were molded. There was mold throughout, mold in the ice machines. It was – it was just a look. I mean, you could see mold throughout. . . . [you could see mold] on the walls,

patient rooms, in corners, ice machine.” Brunner Tr. at 1808-09. Brunner said that under Houser’s management, the mold was “pacified,” meaning that it was not removed, but “brushed up.” Brunner Tr. at 1808-09.

Frances Browning, who lived in Wildwood from 2005 until shortly before it closed in September 2007, said that the mold would cause the wallpaper to bubble, and when the maintenance men stripped the wallpaper from the wall, the mold beneath it became visible. Browning depo., Ex. 634a at 9.

Observing the state of the nursing home in February 2005, Ombudsman Kathy Gaulin reported that “[d]uring routine visits to facility, shower rooms are often observed dirty. Feces on floor and toilet. Dirty towels and clothing on floor.” Gaulin Tr. at 1894; Ex. 361.29.

Gerry Dunham, then a Special Agent of the Department of Health & Human Services Office of Inspector General, toured the Wildwood home on August 17, 2007. Dunham Tr. at 2486-88; Ex. 626. His photographs showed that the home was a filthy and unkempt facility, with mold on the walls, feces and a cockroach in the showers, numerous barrels and buckets placed in the common areas to catch water from the leaking roof, an obviously used and filthy diaper in one of the bath tubs, heaps of soiled linens and bed pads piled up with robes and gowns, dangerously exposed wiring, and numerous inoperable air conditioning units.

Dunham Tr. 2488-2500; Ex. 626.

When Dennis Johnson walked through the Wildwood home on September 10, 2007, three days after the last resident had been removed, he saw (and photographed) black mold growing on walls throughout the home. Johnson Tr. at 2033-36, 2045; Ex. 758a. Johnson explained that vinyl wallpaper should not be used in Brunswick because it is a humid, coastal area where the temperatures exceed 90 degrees and the humidity exceeds 90 percent for four months of the year. Johnson Tr. at 2035. Johnson said the glue used to apply vinyl wallpaper is an excellent growth medium for mold. Johnson Tr. at 2035. The growing mold turns the glue black and causes the wallpaper to bubble and peel. Johnson Tr. at 2035. Johnson said that “every place we encountered the vinyl wallpaper we encountered the mold” Johnson Tr. at 2035-36. The mold was so pervasive that the sheet rock had to be removed from the hallways of an entire wing because the mold had grown into the sheet rock. Johnson Tr. at 2035-36, Ex. 758a.

Johnson saw (and photographed) an air supply diffuser that blew air across mold-covered ceiling tiles. Johnson Tr. at 2050-51; Ex. 758a. Johnson also found that in many areas of Wildwood, water had stood for so long on the floor tiles that the corners of the tiles were coming up, and water squirted up when the tiles were stepped on. Johnson Tr. at 2045. Among many other maintenance problems,

Johnson found that the majority of the toilets at Wildwood were inoperable and badly rusted in September 2007. Johnson Tr. at 2040.

Johnson said that the Wildwood nursing home was in such poor shape on September 10, 2007, that he “wouldn’t have kept animals in that building.”

Johnson Tr. at 2033.

LAUNDRY

Many nursing home residents are incontinent and, consequently, much of the laundry consists of bed linens that are soiled with feces or soaked with urine, or both. Fuqua Tr. at 2146.

Nursing home laundry must be washed at sufficiently high temperatures, with sanitizing chemicals, to protect the residents and staff from the spread of infection and cross-contamination. Fuqua Tr. at 2146; Wells Tr. at 2093-95; Goldsmith Tr. at 2880.

Moran Lake

The laundry facilities at Moran Lake were located in a building that was behind the main nursing home facility. Knowles Tr. 304-05.

The laundry facilities at Moran Lake became inoperable when Georgia Power would discontinue service to the laundry building because Houser failed to pay the power bill. Knowles Tr. at 304-05; Barker Tr. at 385-87; Young Tr. at

2563.

The laundry facilities at Moran Lake also became inoperable when the washing machines (or the soap- and sanitizer-dispensing equipment) would break down and the company that serviced them refused to make repair calls because Houser had not paid outstanding bills. Knowles Tr. at 301-02, 306, 315-16; Young Tr. at 2563. In a letter faxed to Houser on July 11, 2006, Knowles said: **“SOUTHERN LAUNDRY REPAIR: WE HAVE A WASHING MACHINE AND DRYER THAT NEEDS TO BE FIXED. THIS IS NOT DONE BECAUSE WE CANNOT GET THEM OUT TO DO REPAIRS.”** Ex. 487 (emphasis in original).

Six months later, in a letter faxed January 22, 2007, Knowles told Houser: **“SOUTHEASTERN LAUNDRY: THE WASHER IS NOT RUNNING CORRECTLY. IT NEEDS TO BE RE-SET. THEY WILL NOT COME OUT UNTIL PAYMENT IS MADE.** Ex. 487 (emphasis in original).

At times when the laundry facilities at Moran Lake were inoperable, employees would wash the laundry at laundromats, until the laundromats banned them from bringing the soiled nursing home linens to their facilities. Thomas Tr. at 2221-22. In a letter faxed to Houser on August 21, 2006, Knowles said: **“WASHERS: CASH IS NEEDED. THERE IS NO LINEN AVAILABLE FOR**

STAFF TO USE THIS MORNING.” Ex. 487 (emphasis in original).

At times the Moran Lake employees took the soiled linens to Mt. Berry and used its laundry facilities – when those facilities were operating. Knowles Tr. at 316; Young Tr. at 2571.

Despite the employees’ efforts, the sheer amount of laundry from a 100-bed nursing home sometimes overwhelmed their efforts at the laundromats or Mt. Berry. Thomas Tr. at 2207-09. At times, dirty linens and soiled cloth diapers sat for a day or longer before they could be cleaned. Fuqua Tr. at 2169; Thomas Tr. at 2192. At those times, residents went periods of a day or longer before receiving clean linens for their beds. Thomas Tr. at 2209. Given the amount of laundry that must be done in a nursing home with more than 90 residents, many of whom were incontinent, there was no way the home could always furnish resident with clean linens during the frequent times when the Moran Lake laundry facilities were inoperable. Landers Tr. at 1733-34, 1744-45; Thomas Tr. at 2192, 2207-09.

Mt. Berry

The laundry facilities at Mt. Berry had the same problems as at Moran Lake, with the exception that they were housed within the nursing home, where Georgia Power would not terminate service. As at Moran Lake, Mt. Berry employees would take soiled linens to laundromats when the home’s washing machines had

broken down and the maintenance service refused service because of unpaid bills. Stanley Tr. at 33-34; Greenway Tr. at 816-819.

Wildwood

The laundry facilities at Wildwood became inoperable when the washing machines (or the soap- and sanitizer-dispensing equipment) would break down, and the company that serviced them refused to make repair calls because Houser had not paid outstanding bills. Herrington Tr. at 1047-48; Patrick Tr. at 1271; Grant Tr. at 1338-39, 1343; Ex. 831.23. As in Rome, laundromats in Brunswick would ban Wildwood employees from bringing the soiled linens from a 204-bed nursing home to their facilities. Grant Tr. at 1338-39, 1343. When the washing machines were inoperable at Wildwood, the piles of soiled linens would stink. Patrick Tr. at 1271.

The Wildwood laundry was inoperable in August 2007 because of “electrical issues, safety issues, [and] fire issues” and had to be taken to laundromats. Chal Tr. at 2675, Ex. 361.51.

HOT WATER SHORTAGES

Laundry issues were made more difficult because the homes went through periods of no hot water.

Linda Dodson visited her brother in Moran Lake daily, and she frequently

took his clothes and washed them at her home because the home often did laundry in water that was not sufficiently warm to clean his soiled clothes thoroughly.

Dodson Tr. at 1531.

When Mattie Cox inspected Moran Lake in early May 2007, she was told that the home had been without hot water for laundry and housekeeping **for months**. Cox Tr. at 2430; Ex. 355 (emphasis added).

At Wildwood, the home had undependable boilers that needed to be replaced, but they never were. Patrick Tr. at 1270-71, 1275. Houser never provided the home with the money needed to fix the boilers. Patrick Tr. at 1270-71, 1275. Plumbers came once to work on the boilers, but they left before they finished because Houser did not pay them. Patrick Tr. at 1288; Grant Tr. at 1346. Thereafter, the boilers were not serviced because of Houser's failure to pay the vendor. Grant Tr. at 1346.

Wildwood was without hot water in the east and west wings for two weeks in March 2006. Grant Tr. at 1329-30; Ex. 831.1.

When Southeast Georgia Health Systems renovated the Wildwood home in the fall of 2007, all the water heaters in the home had to be replaced because the coils were corroded and unusable. Johnson Tr. at 2039.

Troubles with hot water affected more than laundry. Residents were forced

to take cold baths or showers because of the lack of hot water. McPherson Tr. at 699-700 (Wildwood); Greenway Tr. at 874 (Mt. Berry); Kelly Tr. at 1500-01 (Moran Lake); Dodson Tr. at 1536 (Moran Lake); Peyton Tr. at 1546 (Mt. Berry); Usher Tr. at 1795-96 (Wildwood); Thomas Tr. at 2193, 2219 (Moran Lake); Terhune Tr. at 2638 (Moran Lake).

The dishwasher at Moran Lake did not heat the water hot enough to sanitize the dishes. Fuqua Tr. at 2145-46. When the dishwashing equipment was broken down, the staff at Moran Lake washed the dishes by hand, which would necessarily be at temperatures too low to sanitize the dishes. Knowles Tr. at 314-15. In a letter faxed October 23, 2006, Knowles told Houser: **DISHWASHER:** THE SANITIZER IS NOT WORKING. ECOLAB HAS TO FIX IT, AS WE CANNOT [] GET THE PARTS FROM ANYONE ELSE. **OUTSTANDING BALANCE: \$1697.89.****SURVEY ITEMS ****** (Ex. 487)(emphasis in original).

Similarly, the kitchen at Wildwood often was without hot water to wash dishes because the boiler was broken, and the repair service would not make a repair call because Houser had not paid its previous bills. Grant Tr. at 1346.

SHOWER ROOMS

Wildwood

The shower rooms in Wildwood stunk because they were filled with mold, bugs, roaches, and black, raw sewage often backed up through the drains. Patrick Tr. at 1273-74, 1289-90. When Danny Patrick showed Houser the mold growing in the shower rooms, Houser ordered him to paint over the mold. Patrick Tr. at 1273-74. Painting over mold temporarily improves the appearance, but it does not eliminate the mold. Patrick Tr. at 1273. There were five shower rooms or bath houses in Wildwood, two of which had working showers, but all had mold problems and backed up sewage, and none were clean enough to use. Patrick Tr. at 1273-74, 1289-95.

As noted above, Special Agent Gerry Dunham's photographs of Wildwood on August 17, 2007, showed mold growing on the walls, feces and a cockroach in the showers, and an obviously used and filthy diaper dropped in one of the bath tubs. Dunham Tr. at 2486-2500; Ex. 626.

Moran Lake

When Ann Wells inspected Moran Lake May 20-23, 2007, she found the residents' shower room was so filthy it was "horrendous." Wells Tr. at 2075, 2085; Ex. 361. The shower room had a constant strong, stale, moldy odor. Wells

Tr. 2085. The shower room remained filthy after housekeeping purported to clean it. Wells Tr. 2086. Ex 361.

TRASH – LACK OF GARBAGE PICKUP

A nursing home must “dispose of garbage and refuse properly.” 42 C.F.R. § 483.35(i)(3).

A common feature of Houser’s three nursing homes was that the trash removal service was frequently stopped because Houser failed to pay the waste removal services’ bills. Stanley Tr. at 13-14; Knowles Tr. at 321-22; Ex. 487 (e.g., fax dated October 4, 2006, balance of \$3,965 owed to Allied Waste); Chisolm Tr. at 533; Greenway Tr. at 787; Grant Tr. at 1322, 1343; Brunner Tr. at 1811-12; Gaulin Tr. at 1895; Ex. 361.30.

Nursing homes of 100 and 200 residents generate immense amounts of garbage in a short time. Knowles Tr. at 321-22; Chisolm Tr. at 533.

Consequently, when the waste removal services refused to empty the dumpsters at the homes, employees would leave garbage near them, creating open garbage heaps that attracted flies and other insects, rodents, and dogs, and which generated tremendous odors. Knowles Tr. at 321-22; Chisolm Tr. at 533; Grant Tr. at 1324; Edwards Tr. at 1590-91; Landers Tr. at 1732; Thomas Tr. at 2193-94; Lee Tr. at 2288.

Moran Lake

Moran Lake had four dumpsters, and between early 2006 and June 2007 garbage service was stopped at least four or five times for non-payment. Mitchell Tr. at 1615-18; Knowles Tr. at 321-22. In a letter faxed October 4, 2006, Knowles told Houser: “**ALLIED WASTE**: THEY HAVE STOPPED PICKING UP GARBAGE. **OUTSTANDING BALANCE: \$3965.60.**” Ex. 487 (emphasis in original).

In a letter faxed January 15, 2007, Knowles told Houser: “**ALLIED WASTE**: MY GARBAGE IS OVERFLOWING AGAIN.” Ex. 487 (emphasis in original).

In a letter faxed February 21, 2007, Knowles told Houser: “**ALLIED WASTE**: THE GARBAGE NEEDS TO BE EMPTIED ASAP. IT LOOKS AWFUL IN THE BACK.” Ex. 487 (emphasis in original).

Service was usually cut off for a week. Mitchell Tr. at 1618, 1623. In the late winter or early spring of 2007, service was cut off for three weeks. Mitchell Tr. at 1619, 1625. On that occasion, the garbage was piled so high on the dumpsters that when the waste removal driver first arrived, he could barely see the dumpsters. Mitchell Tr. at 1619-20. Bags of garbage were ripped open, dogs were eating the garbage, and the combination of rotten food and soiled diapers

radiated a horrifically bad odor. Mitchell Tr. at 1619-20.

The dumpsters at Moran Lake were located near the end of a residential hall, and employees and residents of that hall could smell the stench whenever waste removal service was cut off and the garbage piled up around the dumpsters. Edwards Tr. at 1590-91; Landers Tr. at 1732; Thomas Tr. at 2193-94; Lee Tr. at 2288. The trash attracted flies, roaches, other insects, mice, rats, and snakes. Edwards Tr. at 1590-91; Landers Tr. at 1732; Thomas Tr. at 2193-94; Lee Tr. at 2288.

Lisa Landers, a social worker at Moran Lake until the facility closed in 2007, said that “[t]he dumpsters would be overflowing with, maybe, sometimes, three times the amount the dumpster would hold. Of course, the dogs would come and drag the trash out because there were dirty diapers in there. It would be all over in the yard, and the smell would be horrible.” Landers Tr. at 1732.

Mt. Berry

As at Moran Lake, the garbage would frequently pile up around the dumpsters at Mt. Berry when Houser’s failure to pay the waste service company would result in trash service being cutoff. Stanley Tr. at 13-14; Greenway Tr. at 787 & Ex. 800 (fax dated July 13, 2005). The garbage piles around the dumpsters attracted insects and rats. Stanley Tr. at 13-14; Greenway Tr. at 787 & Ex. 800.

During the lengthy periods when the waste management service was stopped due to unpaid bills, Jerry Chisolm made frequent trips to the dump to haul away trash using the same truck that he used to haul the residents' laundry.

Chisolm Tr. at 533-34.

Wildwood

Southland Waste Systems picked up the trash at Wildwood from January 2004 to May 2007 (40 months). Tillery Tr. at 1299-1300; Grant Tr. at 1324-26; Ex. 666a. There was a single garbage dumpster and a dumpster for cardboard for a 200-resident nursing home, and Wildwood contracted to have them emptied three times a week for \$420 per month. Tillery Tr. at 1298, 1303. Southland Waste would cut off service for customers who fell more than 90 days behind in their payment. Tillery Tr. at 1298-1299. In the forty months that Southland serviced Wildwood, it stopped service for nonpayment at least 25 times, usually for 5-6 days at a time. Tillery Tr. at 1300-1301. When the dumpsters were not emptied, employees would pile garbage bags around and on them. When Southland Waste resumed service, the driver would complain that the bags were split open and teeming with maggots. Tillery Tr. at 1304-05. Southland Waste received complaints from the county code enforcement office when the trash piled up at Wildwood. Tillery Tr. at 1302.

When waste removal service was cutoff, the garbage at Wildwood piled high around the overflowing dumpster and emitted a strong odor of urine, feces, and rotting food. Free Tr. at 412; McPherson Tr. at 700-01; Grant Tr. at 1322, 1343; Brunner Tr. at 1811-12; Hazel Evans depo, ex. 633a at 13-15 & 48. The garbage would pile up around the building, extending 15 feet from the dumpster and reeking badly of urine and rotten food. Patrick Tr. at 1276.

The dumpster was close to the back of the west wing, and employees also piled garbage on the back porch of the west wing. Evans depo, ex. 633a at 14-15. Some of the garbage on the porch was in plastic bags, and some was in open buckets and used food containers. Evans depo., ex. 633a at 14-15. The piles and buckets of rotting garbage attracted flies, insects, rats, and cats. Free Tr. at 412; McPherson Tr. at 700-01; Patrick Tr. at 1276; Grant Tr. at 1324; Brunner Tr. at 1811-12; Gaulin Tr. at 1895; Ex. 361.30.

When Kathy Gaulin visited Wildwood on July 19, 2005, she saw that “[t]he dumpster lid was full, and it was all over the ground spewing out onto the ground, probably, three or four feet from the dumpster. Piled maybe a foot.” Gaulin Tr. at 1895; Ex. 361.30. Because the waste management bill was not being paid, trash was overflowing, creating a bad situation with flies, rodents, roaches, and other animals digging through the trash. Free Tr. at 412-13. Grant Tr. at 1324. Brunner

Tr. at 1811-12.

BIOHAZARDOUS WASTE

Medicare and Medicaid require that biohazardous waste in nursing homes are properly stored and regularly removed. Mauldin Tr. at 172-73; 42 C.F.R. § 483.65. This is required because heavily germ-laden biohazardous waste poses a tremendous risk of infection and cross-contamination. Mauldin Tr. at 173.

Biohazardous waste often accumulated in the Moran Lake, Mt. Berry and Wildwood homes because Houser failed to pay the removal services, which then cutoff service to the homes. Stanley Tr. at 14 (biohazard removal service not paid); Knowles Tr. at 322-23 (Moran Lake); Free Tr. at 413 (Wildwood); Greenway Tr. at 820, 830 (Mt. Berry; not picked up for months at a time); Patrick Tr. at 1271-72, 1289 (Wildwood biohazardous waste stored in an unlocked shower room when the storage trailer was full); Lee Tr. at 2289 (piled up containers on the floor at Moran Lake); Cox Tr. at 2431, 2435; Ex. 355 (biohazardous waste not stored or removed properly at Moran Lake). When Ann Wells inspected Moran Lake on May 20-23, 2007, she found that biohazardous waste – dirty, used syringes and test tubes – were improperly left in an unlocked cabinet in the medical supply room. Wells Tr. 2075, 2092; Ex 361.

FLIES, RODENTS, AND OTHER PESTS

As part of maintaining a safe, healthy, and clean living environment, Medicare and Medicaid providers are required to “maintain an effective pest control program so that the facility is free of pests and rodents.” 42 C.F.R. § 483.70(h)(4); Mauldin Tr. at 178-79; *see also* 42 C.F.R. § 483.25(h)(4). This is necessary for infection control as well as to help the residents maintain the highest practicable quality of life. Mauldin Tr. at 178-79.

The Moran Lake, Mt. Berry and Wildwood homes were plagued with ongoing infestations of flies. Flies were in the residents’ rooms, in the dining room, on the residents’ food, and physically on the residents and their sores. Knowles Tr. at 296, 304; Greenway Tr. at 788, 874-75; Prince Tr. at 606; Brunner Tr. at 1812-13; Wells Tr. at 2080-82; Lee Tr. at 2288-89.

Flies were an intense problem in the homes in part because the uncollected trash that piled up around the dumpsters attracted flies that entered the homes. This was the case at Moran Lake (Edwards Tr. at 1589-91; Landers Tr. at 1732; Thomas Tr. at 2193-94; Lee Tr. at 2288-89; Garrett Tr. at 2699), Mt. Berry (Stanley Tr. at 13-14; Greenway Tr. at 787), and Wildwood (Free Tr. at 412; McPherson Tr. at 700-01; Patrick Tr. at 1276; Grant Tr. at 1324; Brunner Tr. at 1811-12; Gaulin Tr. at 1895; Ex. 361.30.).

Flies and other pests were also a problem because pest control services stopped serving the homes because Houser did not pay them. This was the case at Moran Lake. Knowles Tr. at 296-97, 304, 307, 315. In a letter faxed July 11, 2006, Knowles told Houser:

BIOTECH: THIS ISSUE IS STILL NOT RESOLVED. I HAVE NOT HAD PEST SERVICE COMPLETED IN 6 MONTHS. WE HAVE SPIDERS, FLIES, BUGS, ETC. THROUGHOUT THE FACILITY. THIS IS ALSO A SURVEY TAG.

Ex. 487 (emphasis in original).

Still without pest service two months later, Knowles told Houser in a letter she faxed September 5, 2006:

BIOTECH: THIS ISSUE IS STILL NOT RESOLVED. I HAVE NOT HAD PEST SERVICE COMPLETED IN 6 MONTHS. WE HAVE SPIDERS, FLIES, BUGS, ETC. THROUGHOUT THE FACILITY. THIS IS ALSO A SURVEY TAG. I HAVE SENT YOU THE CONTRACT AND F469 [the survey deficiency] PER YOUR REQUEST. **OUTSTANDING BILL DUE \$7,223.22.**

Ex. 487 (emphasis in original); *see also* Prince Tr. at 616; Dodson Tr. at 1532.

Caren Kelley found what she recognized to be mice feces in her mother's room in Moran Lake. Kelley Tr. at 1502. Instead of paying a pest control service, Houser equipped the nursing stations at Moran Lake with flyswatters. Lee Tr. at 2288.

Houser also failed to pay for the pest service at Mt. Berry. Greenway Tr. at 788-89 & Ex. 800 (“WE HAVE CRITTERS”). Employees bought insecticide spray to kill the flies, which is an improper means to address a fly infestation in a nursing home. Greenway Tr. at 875-76.

Rats were a problem at Mt. Berry. Dixon Tr. at 1565-66. One resident used to complain to the employees that she heard rats running in the suspended ceiling. Dixon Tr. at 1565-66. On one occasion, a saturated ceiling tile fell on a resident’s bed, and when it dropped, rats fell on the bed with it. Dixon Tr. at 1565-66.

The lack of pest control because of nonpayment of bills was an on-going problem at Wildwood despite family complaints. Patrick at 1276 (rats, roaches and ants in the home); Grant Tr. at 1324-26, 1342-43 & Ex. 831.23 (“pest control continues to be an issue”). The garbage at Wildwood attracted rats, which nested in the nursing home kitchen. Patrick Tr. at 1276.

Ants would enter the residents’ rooms at Wildwood around or through the floor-level, through-the-wall air conditioning units. Herrington Tr. at 1049. Employees would spray insecticide in the residents’ rooms to kill the ants, but the ants would return the next day. Herrington Tr. at 1049.

Ms. Herrington decided to move her aunt out of Wildwood after her aunt was hospitalized for dehydration. Herrington Tr. at 1048. As noted above, a

doctor examined her aunt in the hospital and found that a roach had crawled deep into one of her aunt's ears. Herrington Tr. at 1048-49.

Residents at Mt. Berry complained about the amount of flies in the home, and Greenway asked Houser to pay the pest service bill for pest control at the home. Greenway Tr. at 819-20; Ex. 492.

Flies and other insects were also a problem at Moran Lake because of torn and poorly fitting screens, doors, or the floor-level air conditioning units. At Moran Lake, the windows were kept open to vent the foul odor in the home and to provide relief from the heat inside the home due to the lack of working air conditioners, but many windows lacked screens, had torn screens, or screens that did not fit tightly. Wells Tr. at 2080-82; Thomas Tr. at 2191, 2193-94; Ex. 361. In addition, some doors did not fit well, or were missing knobs, and the seals around many air conditioning units had rotted away, leaving gaps for flies, roaches, ants, and other insects to enter the home. Forrister Tr. at 2353-54, 2357, 2359-60; Ex. 765.

Flies, insects, and other pests were also a problem at Moran Lake because the home's septic tank regularly clogged, which caused raw sewage to pour on the ground and down the hill into a neighboring yard. Knowles Tr. at 305-06; Young Tr. at 2554-55. The raw sewage had a powerful odor. Knowles Tr. at 305-06;

Landers Tr. at 1732; Young Tr. at 2554-55.

When Ann Wells inspected Moran Lake on May 20-23, 2007, she found that window screens had holes and were so bent out of shape that they did not fit the windows. Wells Tr. at 2075, 2080-81; Ex. 361. The windows were open because it was so hot in the home because of the lack of air conditioning. Wells Tr. at 2082. As a result, the facility had flies everywhere. Wells Tr. at 2081. The flies landed on residents, and she saw one resident who had to bat away a fly as she was receiving treatment for pressure sores. Wells Tr. at 2081-82. Because flies are drawn to wounds, that resident was in danger of the fly laying eggs inside her pressure sore and causing an infestation of maggots. Wells Tr. 2081-82.

UTILITIES

Georgia Natural Gas

Georgia Natural Gas (GNG) negotiated for months with Houser and Rhonda about their failure to pay for the Moran Lake and Wildwood natural gas service. McFadin Tr. at 1713-1715. Houser and Rhonda agreed to several payment plans with GNG, but then failed to keep their promises. McFadin Tr. at 1715-1716, 1721-23.

GNG sent 16 disconnection notices to Moran Lake for falling more than 45 days behind on their account between July 2003 and August 2007. McFadin Tr. at

1717-1712; Ex. 1500. GNG cut gas service to Moran Lake on May 18, 2006. McFadin Tr. at 1720-23; Ex. 1500. Service was restored later that day based on Rhonda's promise to make payments. McFadin Tr. at 1720-23. After Rhonda defaulted on that payment plan, GNG authorized an Atlanta Gas Light representative to cut off the gas at the home on June 1, 2006, but the staff and residents prevailed upon him to refrain from carrying out the cutoff order. McFadin Tr. at 1720-23. Houser owes a balance of \$4,349.86 on this account. McFadin Tr. at 1723; Ex. 1500.

GNG sent 18 disconnection notices to Wildwood between August 2003 and October 2007. McFadin Tr. 1723-25; Ex. 1500. GNG cutoff gas service three times for nonpayment at Wildwood: June 13, 2006, Aug 6, 2006, and Oct 23, 2007. McFadin Tr. at 1723-25; Ex. 1500; Grant Tr. at 1329-36; Ex. 831.8. Service was reconnected the same day on June 13, 2006, and it was reconnected after two days in August 2006. McFadin Tr. at 1723-25; Ex. 1500. Houser owes a balance of \$6,107.58 on this account. McFadin Tr. at 1724; Ex. 1500.

Georgia Power

Georgia Power sent numerous disconnection notices to the three nursing homes, but it would not stop service to the buildings in which the residents lived. Barker Tr. at 385-86. It would cut service to the laundry building at Moran Lake

and to Forum Healthcare Group's office on Spider Webb Drive in Rome. Barker Tr. at 386-87; Chisolm Tr. at 263. Houser negotiated numerous payment plans with Georgia Power, but he defaulted on them all. Barker Tr. at 386-87.

After the three homes and corporate offices were closed, Houser was left owing Georgia Power approximately \$291,000. Barker Tr. at 389. This total included a balance of \$40,172.34 at Moran Lake, \$77,271.26 at Mt. Berry, and \$173,022.17 at Wildwood. Barker Tr. at 389; Exs. 706_2, 706_3 & 706_4.

OTHER SERVICES

Other services that contributed to the operation of the homes and the quality of the residents' lives were interrupted during the conspiracy period because of Houser's failure to pay for them. These includes telephone services at Wildwood, Herrington Tr. 1032-33; Grant Tr. at 1325-26, 1339-40; 1347, 1405-06; lawn services at Mt. Berry and Wildwood, which affected residents' ability to go outside in the fresh air and created a potentially hazardous environment around the home, Greenway Tr. at 786, 818 & ex. 800; Grant Tr. at 1326, 1335; and cable television for the Wildwood residents. Herrington Tr. at 1034; Grant Tr. at 1348-49; Chal Tr. at 2669.

When Ann Wells first arrived at Moran Lake on May 20, 2007, the lot was so overgrown and the home so unkempt that it appeared to be her be abandoned.

Wells Tr. at 2073.

Water service was also cutoff at Wildwood at various time for nonpayment. Herrington Tr. at 1034, 1070-71; Gaulin, Tr. at 1925, Ex. 361.41; Browning dep. ex. 634a at 18-19.

CHAOS

The frequency of the cutoff notices, the interruption of utilities, supplies, and services, the lack of maintenance, the leaking roofs, the lack of air conditioning and heat, the infestations of flies and other pests all contributed to an atmosphere of chaos in the homes during the conspiracy period, and a physical environment that did not provide for the residents' highest practicable standard of living. Stanley Tr. at 32-34, ex. 456, 701 (received cutoff notices frequently), 40 (a nursing home cannot be operated properly without steady utilities); Greenway Tr. at 852, 856 (impact of all the problems was chaos); Grant Tr. at 1355 (Houser was not doing the basic things necessary to running a nursing home).

Grant described one example of the chaos at Wildwood when the home lacked hot water, so it could not sanitize the residents' dishes and silverware and the kitchen pots and pans. Grant Tr. at 1346. The home was forced to serve meals on disposable plates and cups. Grant Tr. at 1346. But this "solution" to the hot water shortage created another problem, because it increased the amount of

garbage the home produced – but the garbage was not being picked up because Houser had again fallen behind in payments to Southland Waste. Grant Tr. at 1346; Tillery Tr. at 1300-1301 (service cut 25 times in 40 months, usually for a week).

Greenway said the impact from not having the necessary resources and services to run a facility was chaos, as administrators spent all or nearly all their time dealing with unpaid vendors and upset employees and family members. Greenway Tr. at 852, 856. Similarly, when Rosa Free was the administrator at Wildwood, the majority of her time was spent dealing with the fallout from unpaid bills. Free Tr. at 411.

The administrators' candid observations about an atmosphere of chaos overtaking their nursing homes is consistent with many employees' and family members' reports that conditions in the nursing homes took an obvious downward turn after Houser took control of them in 2004. Hamilton Tr. at 674-75 (Wildwood "kept going downhill"); McPherson (Wildwood went downhill "very bad the last few years"); Hinkley Tr. at 751-54 (Mt. Berry started deteriorating in 2005-06); Herrington Tr. at 1031-32 (Wildwood started going downhill six months after her aunt moved there in May 2006); Patrick Tr. at 1282 (Wildwood started to decline eight or nine months after Houser took over); Hannay Tr. at

1429 (shortages, turnover “created a very black cloud of turmoil over the whole situation”); Peyton Tr. at 1546-48 (Mt. Berry started going downhill in 2005); Brunner Tr. at 1856 (at Wildwood, “[w]hen things were starting to go downhill, when the trucks weren't being delivered for the supplies, when the Sysco trucks for food wasn't coming, when things weren't coming in like they – we started slacking off in all areas.”); Fuqua Tr. at 2184, 2186 (the sheer volume of problems, the lack of financial support to make the necessary corrections, and the constant payroll problems resulted in an environment of chaos).

IV. HOUSER’S CORRUPTION OF THE SURVEY PROCESS

The most common method used by the government to monitor nursing homes is the survey, which is normally performed by a state agency. Mauldin Tr. 182-83. Surveyors are not federal criminal investigators, and claims submitted for reimbursement and payments made for a resident are not paid based on survey performance or whether or not a facility passes a survey. Mauldin Tr. at 193-94; Goldsmith Tr. at 2882-83. “If you file that claim, as long as you have a provider agreement that has been signed, your survey results don't have anything to do with whether or not the [provider] receives payment for services.” Mauldin Tr. 237.

As the name suggests, annual surveys are generally performed once a year. Mauldin Tr. 183. A typical annual survey for a 100-bed facility would include

three or four surveyors to come into the facility for two, three, or four days.

Mauldin Tr. 183. The annual surveys are “snapshots in time.” Mauldin Tr. 183.

A complaint survey is performed when the state receives a complaint about the facility. Mauldin Tr. 183. It is a very small snapshot of that facility. Gaulin Tr. at 1961. An unsubstantiated complaint does not mean that the complaint was not true. Goldsmith Tr. 2864; Glymph Tr. at 460; Mauldin Tr. 183. There are many times where complaints may be unsubstantiated yet the situation does, in fact, exist. Goldsmith Tr. 2864.

During the conspiracy period of June 2004 to September 2007, state surveyors conducted annual surveys at Moran Lake on June 23, 2004, July 21, 2005, September 13, 2006, and May 23, 2007. Exs. 275, 280, 284, 292.

Between June 2004 and September 2007, state surveyors conducted annual surveys at Mt. Berry on September 22, 2004, October 19, 2005, September 13, 2006, and May 23, 2007. Exs. 295, 301, 303, 306.

Between June 2004 and September 2007, state surveyors conducted annual surveys at Wildwood on February 24, 2005, March 23, 2006, and February 15, 2007. Exs. 312, 316, 319. (Wildwood was closed based on complaint surveys conducted in August and September 2007. Exs. 323, 324, 325, 326, 327, 328.)

The surveyors in this case found the three facilities out of substantial

compliance on every single annual survey they conducted during the course of the conspiracy, meaning the facility did not meet the requirements for participation in the program at that particular time. Mauldin Tr. at 219; Goldsmith Tr. at 2851, 2871; Exs. 275, 275a, 280, 284, 292, 295, 301, 303, 312, 316, 319. The surveyors also substantiated a large number of the complaints made against the three facilities during the course of the conspiracy. Goldsmith Tr. at 2853-56.

Immediate jeopardy tags are given by surveyors in a situation in which the “provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.” Mauldin Tr. at 185; Ex. 29; 42 C.F.R. § 489.3. A survey performed at Moran Lake on May 23, 2007, identified five “immediate jeopardies” and multiple other deficiencies. Ex. 292. A survey conducted at Mt. Berry on May 23, 2007, identified two immediate jeopardies tags, for nutrition and administration, and 19 other deficiencies. Ex. 306. Wildwood was placed in immediate jeopardy both in August and September 2007. Chal Tr. at 2680-2683, 2694-95; Exs. 136, 323, 328. A survey performed at Wildwood on August 3, 2007, found that the Wildwood facility was not in substantial compliance with participation requirements and that conditions in the facility constituted immediate jeopardy to resident healthy and safety. Ex. 323. A revisit survey at Wildwood on August 20, 2007, determined

the facility was not in substantial compliance but that immediate jeopardy had been removed. Ex. 136. A complaint survey conducted at Wildwood from September 4-6, 2007, found that the Wildwood facility was not in substantial compliance with participation requirements and that conditions in the facility constituted immediate jeopardy to resident health and safety. *Id.*

On June 15, 2007, Medicare sent letters to the Moran Lake and Mt. Berry facilities notifying each administrator of the involuntary mandatory termination of their respective facility, effective immediately. Ex. 134, 361_10. On September 13, 2007, Medicare sent a letter to the Wildwood administrator notifying her of the involuntary mandatory termination of the Wildwood facility, effective immediately. Ex. 136. The termination letter noted that the immediate jeopardy at Wildwood was considered ongoing since September 4, 2007. *Id.*

The surveyors are extremely reluctant to close down nursing facilities and involuntary closure is an extremely rare occurrence. Mauldin Tr. at 190. Karon Goldsmith testified that she was not aware of any nursing facilities in Georgia, other than the three Houser facilities, that were involuntarily closed in the last five years. Goldsmith Tr. at 2884. Ann Wells said that she was not aware of any other facilities that have been closed in Georgia in the last eight years. Wells Tr. at 2126. Closing a nursing home is always the very last resort. Wells Tr. at 2131;

Goldsmith Tr. at 2884. “Decertification is something that just doesn't happen in [the nursing home] industry. You can, probably, count on one hand in the last 30 years, since they began issuing provider numbers and licenses, how many facilities have been decertified. It's just not something you hear of.” Forrister Tr. at 2376. The main reason for this is the adverse impact such a move has on the resident’s well-being and continuity of care. Mauldin Tr. at 191. Moving residents out of their homes can have significant negative consequences for them and their families. Mauldin Tr. at 190-92. The term “transfer trauma” is sometimes used to describe when a resident in a nursing home is transferred to another nursing home as a result of closure or a sudden event, and the negative impact this has on the resident’s physical, mental, and psychosocial well-being. Mauldin Tr. at 190; Goldsmith Tr. at 2835.

1. Employee Fear

When the surveyors enter a facility to conduct an annual survey or investigate a complaint, they review records and interview employees, residents and family members. Gaulin Tr. 1889-91; Wells Tr. at 2118. Employees may be afraid of being fired if they talk to the surveyors. Wells Tr. at 2128.

In November 2004, Suzanne Stanley, the administrator at Mt. Berry, discovered that the Housers had improperly been withdrawing money from the

resident trust fund. Stanley Tr. 21-29, Ex. 451. On December 1, 2004, she filed a complaint letter with the state reporting the theft. Ex. 451. Stanley requested that her letter be kept confidential. *Id.* The surveyors investigated the complaint and determined that money had been removed inappropriately from the trust fund account, and the facility was cited. Stanley Tr. at 29. Notwithstanding Stanley's request for confidentiality, Houser discovered that Stanley had reported him to the state, and he fired her a day after the facility was cited by the state. Stanley Tr. at 29. When Houser fired Stanley, he informed her it was because of the complaint she had filed with the state, and told her that she had not been loyal to him by doing so: "His exact statement to me was that he had paid me good money for my loyalty, and I had not been loyal." Stanley Tr. at 46.

Stanley was not the first employee Houser terminated for what he viewed as a lack of loyalty to him. From March 2004 until August 2004, Kay Edwards worked at the Forum corporate office doing the accounting work, although she was not an accountant. Edwards Tr. at 92-93, 101, 112. When Edwards first arrived at Forum, she determined that they were receiving "massive amounts" of overpayments from Medicaid. Edwards Tr. at 97-98. Medicaid was sending Forum two payments each week for every Medicaid resident in all three facilities for the resident's care for the same period of time; one payment would come

electronically and the other would be a printed out check that came through the mail. *Id.* at 98, 127-28. The duplicate payments continued during the entire time Edwards worked at Forum. *Id.*

Edwards told Houser that keeping the extra payment Medicaid was making for each resident constituted fraud and was stealing money from the Government. *Id.* at 108. She suggested that they write up a plan of correction to pay the money back to Medicaid. *Id.* at 108-09. Houser, however, specifically instructed her not to do so. *Id.* Soon after that, Houser asked her if she knew any accountants who did nursing home work. *Id.* at 109. Edwards found an accountant and had him come in and look at Forum's financial records to see how the accounts were being handled. *Id.* 109. When Houser found out about this, he terminated not only Edwards, but also her husband, who was doing maintenance work for the company. *Id.* at 110-11. When he terminated her, Houser accused Edwards of jeopardizing his business, and threatened her and her husband that he would sue them if they ever discussed how Houser ran his business. *Id.* at 110, 116.

By firing Edwards for questioning him about his theft from Medicaid and exposing his financial information to an outside accountant, and Stanley for reporting his theft from the resident trust fund in January 2005, Houser made it clear to all of his employees that he would not tolerate them reporting issues to the

surveyors or acting in any other manner that he viewed as disloyal. Other employees suffered the same fate as Stanley and Edwards. Tamara Primus was also fired because she was cooperating with the state. Primus Tr. at 739. Laverne Burrell was fired by Houser after he requested that she provide false testimony to the police about an incident she had not witnessed, and she refused to do so. Burrell Tr. 1249-50.

Stanley's firing had a demonstrable impact on employees' willingness to report issues. Rosa Free, the administrator at Wildwood, indicated that as a result of Stanley's firing, she believed she would lose her job if she reported any issues to the surveyors. Free Tr. at 419. Free therefore did not report issues out of fear of losing her job, and even instructed employees not to talk to the surveyors. Free Tr. at 419; Patrick Tr. at 1291. Defense expert Goldsmith acknowledged that an employee would be more afraid to complain if they knew an administrator was fired after filing a complaint. Goldsmith Tr. at 2848-49.

Many of the employees at Mt. Berry and Moran Lake did not report issues to the surveyors for fear of being fired. Hannay Tr. at 1439-40. Dr. Keith Hannay, the attending physician for a majority of the residents at Mt. Berry and Moran Lake during the entire course of the conspiracy, encouraged employees at both facilities to report the terrible conditions, but the employees consistently told him

that they would be fired if they said anything. Hannay Tr. at 1439-40. Employees told Dr. Hannay that “If we say anything about Mr. Houser, we say anything of the bad stuff that's going on here, we'll get fired.” Hannay Tr. at 1440. In a letter to the state dated July 18, 2005, a frustrated Dr. Hannay wrote that he could not live with the level of fraud at the nursing homes, and that he was told by the Director of Nursing at Moran Lake that if employees were to say anything about Houser to the surveyors they would be “immediately terminated.” Hannay Tr. at 1438-39; Ex. 1235.

The same level of employee fear existed at the Wildwood facility. Kathy Gaulin was the ombudsman for the Wildwood facility. Gaulin Tr. at 1891. An ombudsman is an advocate for the residents of a nursing home. Gaulin Tr. 1890. The ombudsman is not a part of the survey team and does not get involved in the individual investigations conducted by the surveyors. Gaulin Tr. at 1943; Wells Tr. at 2112; Mauldin Tr. 255.

Gaulin started out visiting Wildwood on a monthly basis, but in the last two years her visits increased to every week because the complaints she received increased while the quality of care at the facility decreased. Gaulin Tr. at 1891. Employees at Wildwood “begged” Gaulin not to say anything to the surveyors because they feared they would lose their jobs. Gaulin Tr. at 1899. Employees

would call Gaulin's office call and say, "I'm a staff person, but I don't care to give my name." *Id.* at 1892. Gaulin's "hands were tied" as a result of not being able to give specific names of employees to the surveyors. Gaulin Tr. at 1900.

Gaulin filed a complaint with the state on July 31, 2006, stating that employees were being told that, if "they talk to the state, go to a lawyer, or make any similar action they will lose their jobs." Gaulin Tr. at 1899; Ex. 361.32. Gaulin's complaint also noted that if an employee chose to leave the nursing home they were "blackballed" and would not get a good reference. Gaulin Tr. at 1900; Ex. 361.32. Wildwood employee Sonya Brunner explained the difficult moral dilemma the employees faced: "I was -- I was afraid, fearful of my job, yes. I knew things were not as they should be. But, again, that's something I, personally, I guess, have to give an account for because I didn't complain to them [the surveyors] because I knew I would lose my job and that's my livelihood, and I didn't complain to them." Brunner Tr. at 1825.

2. Administrators' Concealment

The surveyors rely on what the administrators tell them. Gaulin Tr. at 1989. Wildwood Administrator Rosa Free was not the only administrator who concealed information from the surveyors. Documentary evidence shows that the administrators at Mt. Berry and Moran Lake, with Houser's knowledge, also

concealed crucial information from the surveyors about conditions and resident care in the facilities that would have placed them in immediate jeopardy if they had been reported. Lois Greenway, the administrator at Mt. Berry, sent multiple faxes to the Housers about problems with lab work being completed and informed the Housers that, if the surveyors were to find out about the situation, the nursing home would be placed in immediate jeopardy:

Doctor's lab did not come to draw labs today...will be an immediate jeopardy!! If they come in and find it!! And I am sure someone will report it to the State. Ex. 800; Ex. 565 ("the lab will not do ammonia levels...if the surveyors find out we are in trouble—jeopardy!!"); Ex. 471 ("the lab did not come yesterday...this puts me out of compliance with the surveyors and it will be an immediate jeopardy if they find it!!!"); Exs. 512, 563, 809.

Notably, Greenway did not provide the surveyors with the constant updates she was faxing to Houser. Greenway Tr. at 964.

Faxes to the Housers by Kim Knowles, the administrator at Moran Lake, similarly reveal that she was intentionally concealing immediate jeopardy information from the surveyors:

We are in a jeopardy situation being unable to draw the ammonia levels...George we are going to be in big trouble for this if someone calls the state. This has dragged on for a while and it is really making me nervous!!! Ex. 487 (12/20/06 fax; 12/13/06 fax) *See also* Ex. 487 (07/31/06 fax) ("They are not coming [to do] X-

rays. This is an immediate jeopardy...”); Ex. 487 (10/19/06 fax) (“Housekeeping supplies are needed. We did receive a housekeeping tag and if they walked in today we would get another one...the floors look horrible. ***Survey Items***”).

Several of the faxes McMichael sent to Houser identified issues that she believed were “survey” or “jeopardy” issues. *See* Ex. 487.

3. Resident Fear of Retaliation

Similar to employees, residents are also many times afraid to report problems at nursing homes for fear they will be retaliated against or that the facility may be closed as a result of their complaints, and they would then have to move. Glymph Tr. at 452; Goldsmith Tr. at 2848; Gaulin Tr. 1964, 1991; Cox Tr. at 2443, Wells Tr. at 2129. This fear, of course, impacts the effectiveness of the surveys. Cox Tr. at 2443; Glymph Tr. at 452. Surveyor Christy Glymph explained that when the residents fear retaliation it is extremely difficult to get an accurate survey “[b]ecause if your residents are afraid, they don't want to tell you what's going on. It makes it real hard to get to the bottom of things, if they're fearful.” Glymph Tr. at 452. Ombudsman Gaulin testified that, based on her actual observations, the surveyors at Wildwood were not getting an accurate reflection of what was going on because residents and staff both had a lot of fear about retaliation. Gaulin Tr. at 1991.

During a survey at Moran Lake in January 2007, Glymph interviewed a resident named John who complained to Glymph that he was cold and that the heat was not working, and then also told Glymph not to “tell anyone I said that.” Glymph Tr. at 452; Ex. 350. During Mattie Cox’s investigation visit at Moran Lake in May 2007, her investigative team spoke with a resident who, in addition to complaining about the amount of food served at the facility, described the lack of empathy and professionalism of the nursing aides. Cox Tr. at 2445; Ex. 354. The resident further noted that he had notified the nursing staff about his concerns and that, while their performance might improve for a few weeks, it always reverted back. Cox Tr. at 2445; Ex. 354. Despite his serious complaints, however, the resident was also “emphatic” about not wanting to identify a specific person, and even stated that his care was “generally” good.” Cox Tr. at 2445; Ex. 354. The Court finds this to be another example of a resident’s reluctance to provide any negative information for fear of being retaliated against.

4. Family Members’ Fear

Family members are also afraid to complain, even to facility staff, because they are afraid their loved ones may be mistreated if they complain or that the facility might be closed, in which case the family members may not have the ability to visit the resident as often. Cox Tr. 2443; Mauldin Tr. 254; Wells Tr. at

2129; Goldsmith Tr. at 2845. This also impacts the accuracy of the survey, making it difficult for the surveyors to make an adequate assessment. Glymph Tr. at 452; Wells Tr. at 2129; Cox Tr. at 2443.

5. Anonymity of Complaints

Surveyors try to assure employees, residents and family members that their complaints will remain anonymous, but they cannot always allay the fear of retaliation these individuals have. Wells Tr. at 2128. Sometimes an administrator will tell the surveyor that she knows exactly who made the complaint, despite all efforts the surveyor may have made to keep that complainant anonymous. Wells Tr. at 2130-31. Residents are sometimes afraid to complain even after being told about anonymity. Goldsmith Tr. at 2848. The system is not working well if residents are still fearful of complaining even after being told their complaint will remain anonymous. Goldsmith Tr. at 2845.

Many employees who called the complaint hotline anonymously were identified. Brunner Tr. at 1849. The credibility of and trust in the anonymity hotline was impacted as a result. *Id.* Dr. Hannay testified that anonymity did not exist at Moran Lake and Mt. Berry: “Well, there's no anonymity if people are fired. I mean, I saw people leaving right and left. I don't know where this anonymity is, but it didn't exist most of the time that I saw.” Hannay Tr. at 1482.

6. False/Inaccurate Records

The survey process depends on nursing home records being complete and accurate. Wells Tr. at 2129; Gaulin Tr. at 1990-91. This includes staffing, weight loss and menu records. Gaulin Tr. at 1902-03. If the nursing home records that the surveyors rely on are not accurate and honest the survey process has been corrupted from the start. Gaulin Tr. at 1903. If the surveyors receive false records, then they do not see “the real picture.” *Id.* A surveyor cannot control someone failing to tell the truth or falsifying evidence. Wells Tr. at 2122.

Crucial weight loss records were falsified at the nursing facilities on Houser’s instructions: “I was a record CNA for a short period of time, and a lot of the residents was losing a whole bunch of weight, yeah...We started off recording it. And then after they start losing so much weight and, you know, they told us -- well, we had a supervisor, Barbara Hamilton, she told us to stop recording it per George Houser.” Dixon Tr. at 1564. The surveyors cannot effectively do their job when the weight loss records in a facility are inaccurate because the owner has directed that weight loss should not be recorded. Goldsmith Tr. at 2843. *See also* Chandler Tr. at 2324, 2338 (unable to monitor weight properly and perform a proper assessment of the residents because the scales did not work).

There were numerous times that medications were not available for residents because Houser had not paid the pharmacy bill. Stanley Tr. at 65; Ex. 1239a. Sometimes the nurses would “borrow” the medications from one resident and give them to another resident, which was improper, but necessary for helping the resident. Hannay Tr. at 1455-56; Lee Tr. at 2284; Edwards Tr. at 1593-94. Other times, however, the residents never received the medication they were supposed to have. Stanley Tr. at 65; Lee Tr. at 2284. When this happened, nurses did not always record it in the resident’s chart: “there were many times that nurses did not document such in the fear of they've been programmed not to circle medications indicating that they were not delivered.” Brunner Tr. at 1832. Sonya Brunner explained that nurses verbalized to her that they were doing this under the direction of the administration and the Director of Nursing at Wildwood. *Id.*

Staffing records also were suspect. Family member Tonia Hamilton became so concerned about the understaffing at Wildwood, that, at different times of the day and night, she would actually compare the staffing numbers that were publically posted by the facility with the number of staff that she actually observed were physically present: “And they had always a list of how many nurses were on staff, how many CNAs were on staff, but I never seen that many there.” Hamilton Tr. at 667-68. Sonya Brunner confirmed Hamilton’s observations: “Just because

it's posted on this schedule does not mean those people were present.” Brunner Tr. at 1865.

The menu is used to determine if the residents are being fed properly. Gaulin Tr. at 1902-03. What was listed on the menu at Wildwood did not usually match what they were feeding the residents. Gaulin Tr. at 1903. Ombudsman Gaulin testified that this corrupts the survey process and prevents the surveyors from substantiating complaints:

If they're telling you that they had beef stew, if it's on the menu that they had beef stew, and the resident's telling you they had peanut butter sandwiches, you have no way to prove that without seeing it yourself. When you go in to do a survey, you're taking -- you're there a very short time, three days. So it's a very short -- you have a picture, a very small picture of that facility in those three days.

Gaulin Tr. at 1903-04.

7. Houser's Advance Knowledge and the "Quick Fix"

There were many times when Houser knew the surveyors were coming in advance. Wanda Chisolm Tr. at 264-65. According to Wanda Chisolm, who worked at the corporate office with Houser as the business manager: “[Houser] would tell us...come in earlier or be aware that surveyors would probably be in Mt. Berry next week or Moran Lake, but he knew when they were coming. I don't know if someone called -- a family member called, and that's how he knew. I don't

know, but he would know a lot when they were coming.” Chisolm Tr. at 264-65. Ms. Chisolm noted that when Houser would tell them the surveyors were coming it was related to a complaint survey, not a plan of correction or a followup survey. Chisolm Tr. at 273. She contrasted Houser’s advance knowledge about the surveys with the nursing home company she has worked at for the last seven years, where she has never received similar advance information about the surveyors coming. Chisolm Tr. at 274.

Extra measures were taken by the facilities as soon as they found out the surveyors or the ombudsman was coming. Gaulin Tr. at 1987; Patrick Tr. at 1278-79; Brunner Tr. at 1850. Staff and residents at Wildwood told Kathy Gaulin that things were always different when she arrived. Gaulin Tr. 1987. One resident told Gaulin that whenever she came they had tapioca pudding. Gaulin Tr. 1987. As Gaulin put it: “[W]e all know that things are different in the facility when the state is doing a survey.” Gaulin Tr. at 1904.

Employees at Wildwood received notice when the surveyors were coming and changed what they would do when the surveyors arrived. Patrick Tr. at 1278. Maintenance man Danny Patrick testified about receiving notice the surveyors were coming at Wildwood: “Well, they gave notice that [the surveyors] were coming, I don't know how much in advance, but it would be -- as soon as [the

surveyors] walked in the building, it was, like, everybody was scattering around trying to do their job.” Patrick Tr. at 1278-79. The attitude was “just do whatever it takes to get through this inspection, and we'll go from there.” Patrick Tr. at 1279. Sonya Brunner testified that “[a] lot of times a quick fix occurs prior to [the surveyors] arrival.” Brunner Tr. at 1850.

Yvonne Garrett, a CNA at Moran Lake, testified that the surveyors came into the facility one weekend when she was working and that extra people were called in when the surveyors arrived to make it seem like they had more staff at work than they actually had. Garrett Tr. at 2701-03. The weekend supervisor told Garrett that if the surveyors asked her anything about staffing, Garrett should “just make it seem like...we've got enough help and all that.” Garrett Tr. at 2702-03. Defense expert Karon Goldsmith acknowledged that calling in extra staff when the surveyors arrive can corrupt the survey process. Goldsmith Tr. at 2849.

Hazel Evans testified about one day at Wildwood when she saw the surveyors come in on a complaint and that she believed somebody had told the staff in advance that the surveyors were coming. Evans Depo. Tr. at 31-32. Evans said that, while a lot of times the nurses and aides would show up without even being in uniforms, the day the surveyors came “everything was spick and span” and “everybody was dressed to the hilt in their uniforms.” Evans Depo. Tr. at 31.

Evans further noted that the meal “was great looking” when the surveyors came. Evans Depo. Tr. at 32. This prompted Evans to ask a nurse who she liked whether someone had notified the employees that the surveyors were coming. *Id.* The nurse just looked up at Evans and grinned. *Id.*

Tonia Hamilton, Evans’ daughter, who was present at Wildwood on the same day Evans testified about, corroborated Evans’ testimony about how much things changed the day the surveyors arrived. Hamilton Tr. at 671-72, 682-84. Hamilton testified that the night before the surveyors came in the food was inedible, but when the surveyors came it was like a “Thanksgiving dinner.” Hamilton Tr. at 671. The very next day the facility went back to serving “slop.” Hamilton Tr. at 671. Hamilton concluded that the poor conditions at the nursing home would never change because the surveyors did not get a true picture of what was happening at the facility when they came in: “There was plenty of staff on that day we went. Instead of there being very few people working, it was fully staffed. Instead of seeing the atrocious food, it was wonderful. The appearances was not there for them [the surveyors] to see the negative.” Hamilton Tr. at 683. Hamilton testified that, if she were the surveyor that day, she also would not have identified anything wrong with the food. Hamilton Tr. at 672. Concluding that the Wildwood staff had to know the surveyors were coming, Hamilton testified that:

“When I see rotten food one day and wonderful Thanksgiving food the next and then rotten food the day afterward . . . how else did they know if the state did not tell them?” Hamilton Tr. at 682.

The testimony and observations of Hamilton and Evans is consistent with Kathy Gaulin’s observations about the Wildwood facility. Gaulin explained how the surveyors would come into the facility at 9:00 a.m., and then the meals were prepared: “I know what I saw during my visits. So I think that when the state is there they prepare the meals differently.” Gaulin Tr. at 1972.

8. Frustration with the Survey Process

As a result of the concealment and intentional corruption of the survey process by Houser, the surveyors failed to find a number of serious issues that were consistently complained about by a number of individuals. This was a source of extreme frustration to those individuals who were filing complaints and were at the nursing home on a much more frequent basis than the surveyors. These individuals had seen these issues with their own eyes, but their complaints were sometimes not substantiated:

Ombudsman Gaulin testified that “[i]t was frustrating to me . . . Because I had seen it with my own eyes. The residents would tell me these things, and I knew that it was true. I would see it myself. I didn't, generally, go by hearsay.

When someone said, 'The dumpster is full and overflowing,' I would make sure I got out there to look at that. If someone said there was flies, I'd go to the rooms and I would look at the dining -- see if there were flies. I didn't ever go on hearsay. I always followed up on those complaints and concerns. So I saw it." Gaulin Tr. at 1901.

Out of frustration that the surveyors were not substantiating Gaulin's complaints, Kathy Gaulin and her supervisor, Becky Kurtz, the state ombudsman, sent an email to ORS asking why the surveyors were unable to validate her complaints. Ex. 361.42. Gaulin testified that "[i]t didn't seem like anyone was hearing what was going on. We were seeing these items, these things that were happening, and nobody was doing anything about it. That was my frustration." Gaulin Tr. at 1928-29. "I was very surprised [surveyors were not citing what I saw]." Gaulin Tr. at 1929. Gaulin covered approximately 75 other facilities between the Brunswick and Savannah territory and never had to get her supervisor involved with any of them. Gaulin Tr. at 1960.

Dr. Hannay testified that "[o]n that moment in time, they [the surveyors] did the best job they probably could. It still is frustrating to me that what is so apparent to me, the staff, the CNAs, my nurse practitioners, and a lot of families, they couldn't see what we could see . . . I think you can now see my frustration . . .

These things that everybody knew were true, they couldn't see. This is the frustration." Hannay Tr. at 1473, 1480. "I do know. I talked one-on-one -- these are from people who were afraid to lose their jobs. Definitely and probably -- you know, I was there hours and hours. That's what's so frustrating about this, when you know something is true and you get a report like this, you just want -- this [survey] isn't worth the paper plane that you could make out of it." Hannay Tr. at 1481.

Family member Reba Usher testified that

The things that I took to the -- the things that I took directly to them [the surveyors], you know, about what it was that I was complaining to them about, you know, wasn't satisfied with -- they made me look like I -- you know, I was a liar, and that's the reason I went through the administrator and give her that letter. I had -- I had read that letter, I know -- I think, for a couple weeks and went over it and re-read it and re-read it. I said, "This is just not right. It makes me look like a liar." And I was very unsatisfied and unhappy with it. And then at that moment, after I seen I'm not getting nowheres with this, I said -- you know, I'm like, well, I'm going to just keep on coming. And I didn't feel like that it would do any good to go to them anymore and say anything to them or the staff anymore. I just started taking -- tried to take even better care of Aunt Bertha and keeping my eyes open more that she was being taken care of because, you know, I'm like, I didn't give up hope. But I'm like, what's the use?"

Usher Tr. at 1798-99.

Sonya Brunner explained that she “was very much surprised because I was expecting them to see that there wasn't proper equipment. I was expecting them -- I was passing the buck on my behalf. I was expecting them to identify these obvious things that I saw.” Brunner Tr. at 1856-57. Tammy Edwards was also very surprised, and did not understand how the surveyors could permit Moran Lake to remain open when the residents were obviously so cold and hungry. Edwards Tr. at 1611.