UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA and the COMMONWEALTH OF MASSACHUSETTS *ex rel.* DAVID PERRY,

Plaintiffs,

v.

FIRST PSYCHIATRIC PLANNERS, INC. d/b/a BOURNEWOOD HEALTH SYSTEMS and BOURNEWOOD HOSPITAL

Defendant.

No. 21-cv-11483-WGY

JURY TRIAL DEMANDED

UNITED STATES' AND COMMONWEALTH OF MASSACHUSETTS' AMENDED COMPLAINT IN INTERVENTION

Introduction

1. The United States of America ("United States") and the Commonwealth of Massachusetts ("Massachusetts") bring this Amended Complaint in Intervention against the defendant First Psychiatric Planners, Inc., d/b/a Bournewood Health Systems and Bournewood Hospital ("Bournewood" or "defendant"). The United States seeks to recover damages, restitution, and civil penalties, under the federal False Claims Act, 31 U.S.C. §§ 3729-33 ("FCA"), and under the common law. Massachusetts seeks to recover damages, restitution, and civil penalties under the Massachusetts False Claims Act, M.G.L. c. 12, § 5A-O ("MFCA"); the Massachusetts Medicaid False Claims Act, M.G.L c. 118E, §§ 40 and 44 ("MMFCA"); 130 C.M.R. §§ 450.237, 450.260(A), and 450.260(I); and under the common law.

2. From at least July 2003 through May 2022, the defendant induced substance use recovery patients to enroll in, and attend, the defendant's Partial Hospital Program ("PHP"), an outpatient, intensive, substance use treatment program, by paying for, and offering to pay for,

sober housing in violation of the federal Anti-Kickback Statute ("AKS"), 42 U.S.C. § 1320a-7b and the Massachusetts Anti-Kickback Statute ("MAKS"), M.G.L. c. 175H, § 3. Through their illegal conduct, the defendant caused the submission of false claims for payment to federal and state healthcare programs in violation of the FCA, MFCA, and MMFCA.

3. The defendant paid the sober housing costs for substance use recovery patients who agreed to attend the defendant's PHP, in part, to maintain and increase the PHP's census. The daily census allowed the defendant to bill (and receive payment from) insurers for providing PHP services for patients. The defendant knew that many of the patients that the defendant housed in sober homes were insured by federal and state healthcare programs that paid for the defendant's PHP services and the defendant knew that many of these patients could not pay the daily rate for sober housing absent the defendant's payments on their behalf.

4. The defendant contracted with sober homes operating near the defendant's PHP in Brookline. The contracts set out how much the defendant would pay the sober homeowners and operators to house substance use recovery patients on the condition that the patients regularly attend the defendant's PHP.

5. The defendant knew that their offer of free sober housing, often for up to ten days or more, would induce substance use recovery patients, many of whom were homeless and/or jobless, to enroll in their PHP over other possible outpatient treatment programs.

6. The defendant paid to house substance use recovery patients in sober houses even when they knew those sober homes were unsafe, and not conducive to substance use recovery. For example, between 2008 and 2018, the defendant paid to house over 46% of the nearly 5,400 patients it paid to house in sober homes in Recovery Education Services ("RES"), a sober home in Roxbury operated by David Perry. Over those 10 years, patients made numerous complaints

to the defendant about conditions at RES, including: Perry's sexual solicitations, drug overdoses, thefts of medication, sales of prescription drugs, and bed bug infestations. Although the defendant recognized that placing patients at RES inhibited patients' recoveries, the defendant continued to house patients at RES until they learned of Perry's possible indictment by the Commonwealth of Massachusetts for actions associated with RES.

7. The defendant paid over $1.85 million in kickbacks to sober homes on behalf of substance use recovery patients between September 16, 2013, and May 31, 2022 (the "Relevant Period") in exchange for the patients' enrollment and attendance in the defendant's PHP. During the Relevant Period, the defendant paid to house over 3,300 patients, which constituted illegal inducements under the AKS and MAKS. Approximately 90% of these patients were enrolled in federal healthcare programs from which the defendant received reimbursement for the provision of PHP services. The defendant received over $7.5 million in reimbursement from federal healthcare programs alone for services rendered by the PHP for these patients during the Relevant Period.

Jurisdiction and Venue

8. This Court has subject matter jurisdiction over the FCA claims pursuant to 31 U.S.C. § 3730(a) and 28 U.S.C. §§ 1331 and 1345, and over the common law claims pursuant to 28 U.S.C. § 1345.

9. This Court has subject matter jurisdiction over the MFCA, MMFCA, and common law claims under 28 U.S.C. § 1367(a) and under 31 U.S.C. § 3732(b).

10. This Court may exercise personal jurisdiction over the defendant pursuant to 31 U.S.C. § 3732(a), as both defendant transact business in this District.

11. Venue lies in this District pursuant to 31 U.S.C. § 3732(a), because the defendant transacts business in this District, and the defendant is headquartered in this District.

Parties

12. Plaintiff United States of America is acting on behalf of the United States Department of Health and Human Services ("HHS"), including HHS' Centers for Medicare & Medicaid Services ("CMS"), which administers the Health Insurance Program for the Aged and Disabled established by Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395, *et seq.*, ("Medicare") and the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 ("Medicaid").

13. Plaintiff Commonwealth of Massachusetts is a sovereign state and body politic duly organized by law and is represented by the Attorney General of the Commonwealth, who brings this action in the public interest and on behalf of the Commonwealth, its citizens, taxpayers, and the Massachusetts Executive Office of Health and Human Services ("EOHHS") and MassHealth, which jointly administers the Massachusetts Medicaid program ("Medicaid") with the United States.

14. The relator, David Perry, is a resident of Massachusetts and the former owner and operator of RES between 2008 and 2019. On or around October 2, 2019, Perry pleaded guilty in Suffolk Superior Court to thirty-six counts related to conduct arising out of his operation of RES including 1 count of Distribution of a Class B Substance, 6 counts of Sex for Fee, 6 counts of Possession of Illegal Class B, C, and E substances, 8 counts of Conspiracy to Distribute Illegal Drugs, and 15 counts of Evidence Tampering. *See* https://www.mass.gov/news/lawyer-who-ran-sober-home-pleads-guilty-sentenced-to-jail-in-connection-with-supplying-drugs-to-recovering-substance-users-for-sex (last accessed on September 13, 2023). Among the various allegations against Perry, the Massachusetts Attorney General's Office alleged that he "offered

substance users legal representation and advice as well as cash and free rent at the sober home in exchange for sex." *Id.* Perry was sentenced to two-and-a-half years in the House of Correction, followed by three years of probation, during which he was prohibited from operating any sober houses/treatment facilities, required to stay away from and have no contact with witnesses, and obligated to participate in and regularly attend Narcotics Anonymous meetings and remain drug free with random screens. *Id.*

15. The defendant Bournewood is a Massachusetts corporation with a principal place of business at 300 South Street, Brookline, MA 02167. *See* https://opennpi.com/provider/1093714412 (last accessed on Sept. 7, 2023). Bournewood is a behavioral health organization that provides inpatient and outpatient mental health services and dual diagnosis care for adults and adolescents. It describes its PHP on its website as a "step-down transition from inpatient level of care and can provide intensive treatment as an alternative to a psychiatric hospitalization." *See* https://www.bournewood.com/partial-hospital-program/ (last accessed on September 4, 2023).

16. While the defendant's corporate name is FPP d/b/a Bournewood Health Systems, the defendant also held itself out to federal healthcare programs as FPP d/b/a Bournewood Hospital. The defendant signed Forms CMS-855B with Medicare and provider contracts with the Massachusetts Medicaid Program as conditions of payment under the name of FPP d/b/a Bournewood Hospital. The defendant is also known as "Bournewood." For purposes of this complaint, there is no distinction between FPP d/b/a Bournewood Health Systems, FPP d/b/a Bournewood Hospital, and Bournewood.

17. Prior to 2018, the defendant entered into contractual relationships with sober homes as Bournewood Health Systems through which the defendant paid for substance use

recovery patients' sober home fees. From 2018 on, the defendant entered into contractual relationships with sober homes as FPP d/b/a Bournewood Hospital through which the defendant paid for substance use recovery patients' sober home fees. Throughout the Relevant Period, the defendant paid for patients' sober home beds.

18. In March 2017, Alita Care, Inc., a national behavioral services company based in Phoenix, Arizona, acquired the defendant. *See* https://www.kohlberg.com/news/alita-care-acquires-bournewood-health-systems-enhancing-capabilities-with-leading-new-england-acute-psychiatric-treatment-provider/ (last accessed on Sept. 7, 2023). *See also* https://www.mass.gov/doc/alita-care/download, at p. 4 (last accessed on Sept. 15, 2023).

Legal and Factual Background

I. THE FALSE CLAIMS ACT AND THE ANTI-KICKBACK STATUTE

19. The FCA establishes liability to the United States for any individual or entity that "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval," 31 U.S.C. § 3729(a)(1)(A), or "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim," 31 U.S.C. § 3729(a)(1)(B), or "conspires to commit a violation" of the above, 31 U.S.C. § 3729(a)(1)(C). The FCA defines "knowingly" to include actual knowledge, deliberate indifference, and reckless disregard. 31 U.S.C. § 3729(b)(1). No proof of specific intent to defraud is required. *Id.*

20. The AKS makes it illegal for individuals or entities knowingly and willfully to "offer[] or pay[] any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person . . . to purchase . . . order, or arrange for or recommend purchasing . . . or ordering any good . . . or item for which payment may be made in whole or in part under a Federal health care program." 42

U.S.C. § 1320a-7b(b)(2)(B). For example, the AKS prohibits a behavioral health provider from knowingly and willfully paying the sober home housing fees of substance use recovery patients to induce the substance use recovery patients to enroll in, and regularly attend, the behavioral health provider's intensive outpatient therapy program for which federal healthcare programs provide reimbursement. A violation of the AKS is a felony punishable by fines and imprisonment, 42 U.S.C. § 1320a-7b(b)(2), and can also result in exclusion from participation in all federal healthcare programs. *See* 42 U.S.C. § 1320a-7(a)(1) and 42 U.S.C. § 1320a-7(b)(7).

21. The AKS arose out of congressional concern that remunerative inducements may corrupt patient and professional healthcare decision-making, impose higher costs on federal healthcare programs, and divert federal funds towards goods and services that are medically unnecessary, of poor quality, or even harmful to a vulnerable patient population. To protect federal healthcare programs from these harms, Congress enacted a prohibition against the payment of kickbacks in any form. First enacted in 1972, Congress strengthened the statute in 1977 and 1987, to ensure that kickbacks masquerading as legitimate transactions did not evade its reach. *See* Social Security Amendments of 1972, Pub. L. No. 92-603, §§ 242(b) and (c); 42 U.S.C. § 1320a-7b, Medicare-Medicaid Antifraud and Abuse Amendments, Pub. L. No. 95-142; Medicaid and Medicaid Patient Program Protection Act of 1987, Pub. L. No. 100-93.

22. In 2010, Congress amended the AKS to provide that "a claim that includes items or services resulting from a violation of this section constitutes a false or fraudulent claim for purposes of [the FCA]." 42 U.S.C. § 1320a-7b(g). Congress added this provision to confirm "that all claims resulting from illegal kickbacks are considered false claims for the purpose of civil actions under the [FCA] . . .". 155 Cong. Rec. S10854 (Oct. 28, 2009).

23. Federal courts have held that a claim based on an illegal kickback relationship, which violates the Anti-Kickback Statute, taints the claim, making it per se false. *See, e.g.*, *Guilfoile v. Shields*, 913 F.3d 178, 190 (1st Cir. 2019) ("[a]n AKS violation that results in a federal health care payment is a per se false claim under the FCA."); *In re Pharm. Indus. Average Wholesale Price Litig.*, 491 F.Supp.2d 12, 18 (D. Mass. 2007) (holding that "the FCA is violated when a Medicaid claim is presented to the state government in violation of the Anti–Kickback statute"); *United States ex rel. Kneepkins v. Gambro Healthcare, Inc.*, 115 F.Supp.2d 35, 43 (D. Mass. 2000) (illegal kickback agreement was an "omitted material fact" to the reimbursement claim; thus, alleged violations of the AKS state a claim under the FCA); *U.S. ex rel. Brown v. Celgene Corp.*, No. CV 10-3165-GHK SSX, 2014 WL 3605896, at *8 (C.D. Cal. July 10, 2014) ("Because the government would not knowingly reimburse kickback-tainted claims, any claims resulting from [Defendant's] alleged kickbacks constitute false claims.").

24. The District Court for the District of Massachusetts has stated that "even if the Provider Agreement did not identify compliance with the Anti–Kickback Statute as a precondition of payment, this materiality analysis strongly suggests that, because the government will not pay kickback-tainted claims, Anti–Kickback Statute compliance must be a precondition of payment." *U.S. ex rel. Westmoreland v. Amgen, Inc.*, 812 F. Supp. 2d 39, 56 (D. Mass. 2011) (internal citations omitted); *U.S. ex rel. Lisitza v. Johnson & Johnson*, 765 F. Supp. 2d 112, 127 (D. Mass. 2011) (same). One rationale behind this tainted claim theory is "the Government does not get what it bargained for when a defendant is paid … for services tainted by a kickback." *U.S. ex rel. Westmoreland*, 812 F. Supp. 2d at 55.

25. The HHS Office of Inspector General ("HHS-OIG") has promulgated "safe harbor" regulations that identify payment practices not subject to AKS enforcement because such

practices are unlikely to result in fraud or abuse. *See* 42 C.F.R. § 1001.952. Safe harbor protection is afforded only to those arrangements that meet all of the specific conditions set forth in the regulations. The defendant's conduct does not fall within any regulatory safe harbor.

II. THE MASSACHUSETTS FALSE CLAIMS ACT, THE MEDICAID FALSE CLAIMS ACT, AND THE MASSACHUSETTS ANTI-KICKBACK STATUTE

26. The MFCA establishes liability to Massachusetts for any individual or entity that "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval," M. G. L. c. 12, § 5B(a)(1), or "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim," M. G. L. c. 12, § 5B(a)(2), or "conspires to commit a violation" of the above, M. G. L. c. 12, § 5B(a)(3).

27. The MFCA "was modeled on the similarly worded" FCA and is therefore, analogous. *See Scannell v. Attorney Gen.*, 70 Mass. App. Ct. 46, 49 n. 4 & 51 (2007). Accordingly, courts construing the MFCA rely upon cases and treatises interpreting the FCA. *Id.* at 49 n.4.

28. Under the MMFCA, a person who makes or causes to be made false claims to Medicaid or to retain payments from Medicaid that should not have been paid may be held civilly or criminally liable. *See* M.G.L. c. 118E, § 40 and§ 44 ("If any person violates the provisions of this chapter, the attorney general or a district attorney may bring a civil action, either in lieu of or in addition to a criminal prosecution, and recover three times the amount of damages sustained including the costs of investigation and litigation.").

29. The MMFCA states, in pertinent part: "Any person . . . who: (1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under this chapter; or (2) knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in

determining rights to such benefit or payment; or (3) having knowledge of the occurrence of any event affecting his or her initial or continued right to any such benefit or payment, or the benefit of any other individual in whose behalf he or she has applied for or is receiving such benefit or payment, conceals or fails to disclose such an event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized . . . shall be punished . . . ." M.G.L. 118E, § 40.

30. The elements of the MFCA and MMFCA are effectively the same, both in reach and effect, as they require the same elements: (1) a false or fraudulent representation; (2) with knowledge; (3) in the submission of false claims to Medicaid (or the causing thereof); and (4) that was material to payment. As the MMFCA's elements essentially are identical to the MFCA's, caselaw interpreting the FCA is equally relevant to the MMFCA. *See Commonwealth v. Stirlacci*, 483 Mass. 775, 794 (2020) ("Federal cases concerning similar false health care claim provisions further demonstrate that the fact that a falsehood stems from a deliberate violation of established rules can support the inference that the false statement was made knowingly.").

31. The MAKS was first enacted in 1988. Like the AKS, the MAKS, makes it illegal for any person to "offer[] or pay[] any remuneration, including any bribe or rebate . . . directly or indirectly, overtly or covertly, in cash or in kind to any person to induce any person to. . . order, or arrange for or recommend . . . ordering of any good, facility, service, or item for which payment is or may be made in whole or in part [by the Massachusetts Medicaid Program ("MassHealth")]…." M.G.L. c. 175H, § 3(a). For example, the MAKS prohibits a behavioral health provider from paying the sober home fees of substance use recovery patients to induce the patients to enroll in, and regularly attend, the behavioral health provider's PHP for which MassHealth, the Massachusetts Medicaid program jointly run and funded by the federal and state

governments, provides reimbursement. A violation of the MAKS is a felony punishable by fines and imprisonment, M.G.L. c. 175H, § 3(a), and can also result in exclusion from participation from the Massachusetts Medicaid Program. 42 U.S.C. § 1320a-7(b)(7). Any person who violates the MAKS may be held liable in a civil action. M.G.L. c. 175H, §3(a).

III. MEDICARE

32. In 1965, Congress enacted the Health Insurance for the Aged and Disabled Act through Title XVIII of the Social Security Act. 42 U.S.C. §§ 1395 *et seq.* ("Medicare"). A person's age, disability, or affliction with end-stage renal disease determines their entitlement to Medicare benefits. *See* 42 U.S.C. §§ 426 to 426-1.

33. Medicare is a "Federal healthcare program" for purposes of the AKS. *See* 42 U.S.C. § 1320a-7b(f).

34. CMS, an agency of HHS, administers the Medicare program. There are two primary components to the Medicare Program: Parts A and B. For purposes of this action, Medicare Part B is a federally subsidized, voluntary insurance program that covers "partial hospitalization services" provided by clinical social workers, mental health counselors, psychiatrists, and nurse practitioners. *See* 42 U.S.C. §§ 1395k and l. With respect to services provided by clinical social workers and mental health counselors, Medicare will pay "80 percent of the lesser of (i) the actual charge for the services or (ii) 75 percent of the amount determined for payment of a psychologist. . . ." 42 U.S.C. §§ 1395l(a)(1)(F) and (FF). With respect to services provided by nurse practitioners, Medicare will pay "80 percent of (i) the lesser of the actual charge or 85 percent of the fee schedule amount provided under [42 U.S.C. § 1395w-4]." 42 U.S.C. § 1395l(a)(1)(O).

35. To participate in Medicare, a healthcare provider must file a provider agreement with the Secretary of HHS. 42 U.S.C. § 1395cc. The provider agreement requires compliance with the requirements that the Secretary deems necessary for participation and payment.

36. To enroll in the Medicare program, a supplier must submit a Medicare Enrollment Application, Form CMS-855B. *See* https://www.cms.gov/medicare/cms-forms/cms-forms/downloads/cms855b.pdf (last accessed Sept. 14, 2023). Form CMS-855B requires, among other things, signatories to certify:

3. I agree to abide by the Medicare laws, regulations and program instructions that apply to me or to the organization listed in section 2A1 of this application. The Medicare laws, regulations, and program instructions are available through the Medicare Administrative Contractor. I understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations and program instructions (including, but not limited to, the Federal Anti-Kickback Statute, 42 U.S.C. section 1320a-7b(b) (section 1128B(b) of the Social Security Act) and the Physician Self-Referral Law (Stark Law), 42 U.S.C. section 1395nn (Section 1877 of the Social Security Act)).

6. I will not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare, and I will not submit claims with deliberate ignorance or reckless disregard of their truth or falsity.

37. An authorized official must sign the "Certification Statement" in Section 15 of Form CMS-855B, which "legally and financially binds this supplier to the laws, regulations, and program instructions of the Medicare program."

38. Eligible individuals who are sixty-five or older, or disabled, may enroll in Medicare Part B to obtain benefits in return for payments of monthly premiums. Medicare Part B reimburses the cost of medically necessary outpatient mental healthcare including partial hospitalization programs and group psychotherapy. Medicare Administrative Contractors ("MACs") are responsible for processing the payment of Medicare Part B claims to providers on behalf of CMS.

39. Healthcare providers, including the defendant, elect to enter into Medicare participation agreements that allow them to bill Medicare Part B for professional services provided by clinical social workers, psychiatrists, and mental health counselors. In order to bill Medicare for the services provided for each patient each month, the defendant must submit an electronic or hardcopy claim form, called a CMS 1500 form, to the relevant MAC. *See* https://www.cms.gov/medicare/cms-forms/cms-forms/downloads/cms1500.pdf (last accessed Sept. 14, 2023). Each time the defendant submitted a claim, the defendant certified that they had "familiarized [themselves] with all applicable laws, regulations, and program instructions, which are available from the [MAC];" and that "this claim . . . complies with all applicable Medicare and/or Medicaid laws, regulations, and program instructions for payment including but not limited to the Federal anti-kickback statute. . . ."

40. Compliance with the AKS is material to Medicare's decision to pay a claim.

IV. MEDICAID (MASSHEALTH)

41. MassHealth is the Massachusetts Medicaid Program. Medicaid provides health care benefits for certain eligible individuals, including low-income children, seniors, and people with disabilities pursuant to Title XIX of the Social Security Act (42 U.S.C. § 1396a, *et seq.*), Title XXI of the Social Security Act (42 U.S.C. § 1397aa, *et seq.*), M.G.L. c. 118E, and other applicable laws and waivers. *See* 42 U.S.C. §§ 1396 *et seq.*; 42 C.F.R. § 430.0.

42. Medicaid is a "Federal health care program" for purposes of the AKS. *See* 42 U.S.C. § 1320a-7b(f).

43. The Massachusetts Medicaid Program, MassHealth, is jointly funded and regulated by the Commonwealth of Massachusetts and the federal government. The federal Medicaid statute sets forth the minimum requirements for state Medicaid programs to qualify for

federal funding. 42 U.S.C. §§ 1396a *et seq.* The federal portion of each state's Medicaid budget, known as the Federal Medical Assistance Percentage ("FMAP"), is based on the state's per capita income compared to the national average. *Id.* § 1396d(b). The remainder of the Medicaid budget is funded by the state.

44. To participate in MassHealth, providers must agree to comply with all applicable healthcare laws and regulations, including the AKS and MAKS. Providers must also certify in their provider contract that they will "comply with all federal and state laws, regulations, and rules applicable to the Provider's participation in MassHealth." By signing the contract, providers make a representation that they are in compliance with the federal and state statutes and regulations governing kickbacks and referral practices, including the AKS and the MAKS.

45. In addition to specific regulations government specific provider types, all MassHealth providers are subject to the "All Provider" regulations at 130 C.M.R. §§ 450.000 *et seq.*

46. These "All Provider" regulations state, in relevant part, that every provider under contract with MassHealth agrees to comply with all laws, rules, and regulations governing MassHealth. 130 C.M.R. § 450.223(C)(1).

47. The regulations also state that every provider that submits claims to MassHealth certifies when submitting a claim for payment that "the information submitted in, with, or in support of the claim is true, accurate, and complete." 130 C.M.R. § 450.223(C)(2)(e). Therefore, providers impliedly certify that they are complying with applicable regulations when submitting claims for payment.

48. Compliance with the AKS and MAKS is material to MassHealth's decision to pay a claim.

49. MassHealth regulations define a "member" as "a person determined by the MassHealth agency to be eligible for MassHealth." 130 C.M.R. § 450.101.

50. MassHealth beneficiaries may receive coverage through MassHealth fee-for-service ("FFS"), or through one of MassHealth's contracting entities, called managed care entities ("MCE"), which administer services to MassHealth beneficiaries. MassHealth beneficiaries enrolled in an MCE plan must enroll in one of the MCEs approved by MassHealth. MassHealth pays providers directly for services delivered to members on an FFS plan. MassHealth pays for the services provided to MassHealth members enrolled in an MCE on a capitated basis from Medicaid funds MassHealth receives from the United States and the Commonwealth of Massachusetts. Each MCE contracts with providers within its network.

51. MassHealth regulations do not distinguish among MassHealth beneficiaries who receive MassHealth benefits via FFS or MassHealth MCEs. MassHealth beneficiaries are MassHealth members under 130 C.M.R. § 450.101, and their benefits are paid for using funds that have been provided by the United States and the Commonwealth through the Massachusetts Medicaid Program. Consequently, payment for these services, where the claims are submitted to MassHealth directly or through a MassHealth MCE, comes from the Massachusetts Medicaid Program and the federal government.

52. Thus, claims submitted by providers with respect to services to members through FFS or a MassHealth MCE must comply with Medicaid regulations. 130 C.M.R. §§ 450.000 *et seq.*, including but not limited to 130 C.M.R. § 450.235(B), or under any other applicable law or regulation. 130 C.M.R. § 450.260(A).

53. Under the MFCA, a "claim" is "[m]ade to a contractor, subcontractor, grantee, or other person, if the money or property is to be spent or used on behalf of or to advance a program

or interest of the Commonwealth or political subdivision thereof and if the Commonwealth or any political subdivision thereof: (i) provides or has provided any portion of the money or property which is requested or demanded; or (ii) will reimburse directly or indirectly such contractor, subcontractor, grantee, or other person for any portion of the money or property which is requested or demanded." M.G.L. c. 12, § 5A.

54. A request for payment made by a provider to an MCE on behalf of a MassHealth member is a "claim" for the purposes of M.G.L. c. 12, §§ 5B and 5C. Presenting a false or fraudulent request or demand for payment to an MCE for services provided to a MassHealth member is therefore a "false claim" for the purposes of M.G.L. c. 12, §§ 5B and 5C.

55. Claims submitted to MassHealth, whether directly to MassHealth on an FFS basis or to a MassHealth MCE, are submitted in batches and either approved or denied based on applicable system edits. A system edit may automatically deny a claim if a required field is not filled out—for example, the name of the member who received the services. Usually, though, claims are batched for submission and then are approved or denied by a computer algorithm that allows or denies such claims based on the system edits that have been programmed into the system.

56. The MassHealth regulations governing overpayments state, "A provider must report in writing and return any overpayments to the MassHealth agency within 60 days of the provider identifying such overpayment or, for payments subject to reconciliation based on a cost report, by the date any corresponding cost report is due, whichever is later." 130 C.M.R. § 450.235(B).

57. A provider is liable to the MassHealth agency for the full amount of any overpayments, or other monies owed under 130 C.M.R. 450.000, *et seq.*, including but not

limited to 130 C.M.R. § 450.235(B), or under any other applicable law or regulation. *Id*. § 450.260(A).

58. In order to receive reimbursement from Medicaid through MassHealth's FFS model or through a MassHealth MCE for the provision of any services, including partial hospital program services, providers must be a MassHealth provider. At all relevant times, the defendant was a MassHealth provider, and operated and billed for its PHP services under MassHealth identification ("ID") number 110027414 with a tax ID of [redacted].

59. As a MassHealth provider, the defendant signed a provider contract on or around January 27, 2014, with MassHealth and EOHHS, the state agency that oversees MassHealth. Before the Massachusetts Medicaid Program was known as MassHealth, the defendant signed a provider contract in 1992 with the Commonwealth of Massachusetts through the Massachusetts Medical Assistance Program under the Department of Public Health. Both provider contracts required the defendant to agree "to comply with all state and federal statutes, rules, and regulations applicable to the Provider's participation in [the Massachusetts Medicaid Program]." This included but was not limited to the AKS, MAKS, FCA, MFCA, MMFCA, and the "All Provider" regulations at 130 C.M.R. § 450.000 *et seq.*

60. The defendant also contracted with, submitted claims to, and received payment from the following MassHealth MCEs for PHP services rendered to MassHealth members who also received free sober housing from the defendant:[1]

a. Allways Health Partners/Mass. General Brigham Health Plan

b. Celticare

[1] The names of the MCEs listed in this paragraph are the names reflected in current claims data and do not reflect any company name changes, acquisitions, mergers, predecessor entities, or individual plans.

c. Commonwealth Care Alliance

d. Community Care Cooperative

e. Fallon Health

f. Health New England

g. MBHP

h. Neighborhood Health Plan

i. Point32Health

j. Steward Health Choice

k. UnitedHealth

l. Wellsense - Boston Medical Center Health Plan.

V. SUBSTANCE USE RECOVERY TREATMENT OPTIONS

61. Substance use recovery patients have many options to consider for their treatment. Their choice of treatment option depends on their physical, psychological, emotional, and social needs. Patients can, and often do, seek and follow guidance from clinicians and social workers when determining what steps to take for their treatment.

62. Substance use recovery patients that require initial stabilization and assistance with overcoming symptoms of withdrawal from drugs and/or alcohol may choose inpatient admission into a detoxification facility. The program can last for days or weeks and continues until the patient is stabilized. After achieving stabilization, substance use recovery patients can seek additional inpatient or outpatient mental health and substance use care in a variety of settings.

63. Some substance use recovery patients may choose inpatient or residential treatment programs after discharge from a detoxification facility. Under this high to medium-

high intensity treatment regimen, patients receive supervised treatment and a structured recovery plan while residing in a hospital or residential rehabilitation facility. While enrolled in this program, patients are monitored by licensed professionals twenty-four hours a day, seven days a week. Patients may attend the program for a period of weeks or months, depending on their recovery needs.

64. Another treatment option available to substance use recovery patients is the PHP. Patients who have a dual diagnosis requiring mental health care often use this medium-to-high intensity treatment option. The PHP, which falls within the ambit of intensive outpatient therapy, is an outpatient program through which patients receive up to eight hours of daily treatment on weekdays but return to their residence, be it temporary or permanent, thereafter. PHPs allow patients to integrate back into society while continuing to receive significant substance use and mental health treatment in an outpatient setting. The typical PHP lasts between two weeks to a month but can be extended as patients' needs require.

65. A lower intensity option for substance use recovery patients is often referred to as a traditional outpatient therapy program. Patients in this program live in the community and make office appointments with psychotherapists, psychiatrists, social workers, and medical management specialists as befits their needs and schedules.

66. Typically, a social worker at the detoxification facility or inpatient/residential treatment program will meet with a substance use recovery patient prior to discharge to discuss the various next available treatment options. The patient's treating clinician will also help advise the patient as to the best option to facilitate recovery following release from detoxification or inpatient/residential treatment programs. Neither the clinician nor the social worker, however, determine the provider the patient will choose.

67. Thus, if a substance use recovery patient expresses an interest in a particular treatment option, the social worker will then identify specific providers who have the availability and resources to treat the patient. The social worker will then present the patient with a list of potential providers that offer the treatment option of interest and various factors associated with each provider that could influence the patient's choice of provider.

68. Once the substance use recovery patient elects a provider, the social worker will work to refer the patient to that provider.

VI. THE DEFENDANT'S PHP

69. Bournewood has been in operation since 1884. *See* https://www.bournewood.com/partial-hospital-program/ (last accessed Sept. 14, 2023). The defendant offers both inpatient services and outpatient patient services, including PHPs.

70. The defendant currently offers PHPs at their locations in Dedham, Lowell, Woburn, and at their main campus in Brookline. The Brookline PHP is the largest of the PHPs the defendant offers to substance use recovery patients.

71. The defendant advertises their PHP via their website as being for "those who need intensive treatment but not in a 24/7 inpatient setting" and a "step-down transition from inpatient level of care and can provide intensive treatment as an alternative to psychiatric hospitalization." *See* https://www.bournewood.com/partial-hospital-program/.

72. The defendant's Adult PHP operates for five hours each weekday between 9 am and 2 pm. *See* https://www.bournewood.com/partial-hospital-program/. The defendant's Adolescent PHP, which treats patients between twelve and eighteen years old, operates weekdays from 9 am to 3 pm. *See* https://www.bournewood.com/wp-content/uploads/Adolescent-PHP-Sample-Schedule-1.pdf (last accessed Sept. 14, 2023).

73. The defendant's Adult PHP sample weekly schedule advises that substance use recovery patients receive approximately three hours of therapy in the form of open psychotherapy, psychoeducation group, group psychotherapy, and expressive therapy. *See* https://www.bournewood.com/wp-content/uploads/Adult-PHP-Sample-Schedule-1.pdf (last accessed on Sept. 14, 2023). The defendant's Adolescent PHP sample weekly schedule advises that patients receive approximately three hours of therapy in the form of psychoeducation group, group psychotherapy, open psychotherapy, expressive therapy, and health/wellness groups. *See* https://www.bournewood.com/wp-content/uploads/Adolescent-PHP-Sample-Schedule-1.pdf. Adolescents also receive an hour-and-a-half of tutoring. *Id.*

74. The defendant accepts "Medicare, MassHealth (Medicaid), and most other private insurance and managed care plans" for coverage of their PHP services. *See* https://www.bournewood.com/partial-hospital-program/.

75. A substance use recovery patient's total length of stay will depend on the patient's needs. On their website, the defendant advertises the average length of stay for a PHP patient is "about 10 days." *See* https://www.bournewood.com/partial-hospital-program/. The average length of stay for the 4,791 Medicare and Medicaid patients who enrolled in the defendant's PHP and received free sober housing between 2007 and 2022 was 17.83 days. The average length of stay for the 3,002 Medicare and Medicaid patients who enrolled in the defendant's PHP and received free sober housing during the Relevant Period was 17.68 days.

76. The defendant's website instructs anyone looking to refer a substance use recovery patient to their PHP to "please complete the PHP referral form and fax to the specific programs the patient is interested in for review." *See* https://www.bournewood.com/partial-hospital-program/. The defendant's Adult PHP referral form allows the substance use recovery

patient to choose from one of the four PHPs the defendant runs, located in Brookline, Lowell, Dedham, and Woburn, respectively. *See* https://www.bournewood.com/wp-content/uploads/08-01-23-PHP_adolescent_referral-form_fillable-form.pdf (last accessed on Sept. 13, 2023). The defendant's Adolescent PHP referral form allows a patient and their guardian to choose from the Brookline and Lowell PHPs. *See* https://www.bournewood.com/wp-content/uploads/08-01-23-PHP_adolescent_referral-form_fillable-form.pdf (last accessed on Sept. 13, 2023).

VII. SOBER HOMES AND OTHER TEMPORARY HOUSING OPTIONS FOR SUBSTANCE USE RECOVERY PATIENTS

77. Some substance use recovery patients lack immediate access to housing after discharge from a detoxification facility or inpatient/residential treatment program.

78. Massachusetts has a number of resources available for substance use recovery patients in need of immediate housing including emergency housing assistance programs overseen by the EOHHS' Division of Housing Stabilization, *see* https://www.mass.gov/emergency-housing-assistance-programs (last accessed on Sept. 14, 2023), temporary transitional housing, and recovery residencies, sometimes referred to as halfway houses, that are licensed residential treatment programs. *See* https://massachusetts.staterehabs.org/sober-living (last accessed on Sept. 14, 2023).

79. Another option for substance use recovery patients is to reside in a sober home.

80. Typically, substance use recovery patients residing in a sober home will pay the sober home operator a daily rate for each day they reside in the sober home, and the sober home operator will collect the amount owed each day or at the end of each week. In exchange, the sober home provides—at minimum—a bed, access to a bathroom, and storage areas for food, clothing, and personal items. *See* https://mashsoberhousing.org/narr-quality/ (last accessed on

Sept. 14, 2023). Equally important, patients must agree to remain drug and alcohol free while residing in the sober home or be subject to removal. *Id.*

81. Prior to 2016, there were no standards in place governing the operation, upkeep, and habitability standards of a sober home in Massachusetts. This resulted in wide disparities in the living conditions and management of sober homes.

82. On or about July 2014, the Massachusetts Legislature granted voluntary certification to sober homes. The Massachusetts Alliance for Sober Housing ("MASH") began self-certifying sober homes in Massachusetts in 2016 using standards developed by the National Alliance for Recovery Residences. *See* https://mashsoberhousing.org/narr-quality/. Effective September 1, 2016, state agencies and their vendors could only refer clients to "alcohol and drug free housing" that voluntarily certified with MASH. *See* https://mashsoberhousing.org/certification/ma-sober-homes-law/ (last accessed on Sept. 3, 2023). A sober home, however, did not need to be certified to operate in Massachusetts.

83. MASH lists approximately 192 certified sober homes in Massachusetts. *See* https://mashsoberhousing.org/certified-residences/ (last accessed on Aug. 28, 2023).

FACTUAL ALLEGATIONS

I. OVERVIEW OF THE DEFENDANT'S KICKBACK SCHEME

84. The defendant sought to, and did, induce substance use recovery patients to enroll in and attend their PHP by offering to pay, and paying for, free sober housing during their attendance in the PHP.

85. The defendant paid for substance use recovery patients' housing by entering into affiliation agreements and sober living agreements with sober homes to purchase or hold beds for patients.

86. The defendant regularly advertised its free sober housing offer to referring social workers and clinicians at detoxification facilities and inpatient/residential treatment programs. The defendant knew that referring social workers met with substance use recovery patients soon-to-be discharged from the detoxification facility or inpatient/residential treatment program to present them with possible next treatment options, including PHPs, from which they could choose. Based on the patient's choice, and the available space and ability of the treatment option to treat the patient, the referring social worker referred the patient to that treatment option for evaluation.

87. Prior to 2018, sober homes were contractually required to "maintain the expectation" that the patients attend the defendant's PHP. Beginning with the Sober Living Agreement with Solutions Group, Inc. entered into on or about January 31, 2018, the defendant removed this language from agreements with sober homes entered into on or after that date. The defendant, however, continued to require substance use recovery patients to sign and initial a Partial Hospital Program with Sober Home agreement ("PHP with Sober Home agreement"), pursuant to which the patients needed to affirm their understanding that payment for the sober home was conditioned on their regular attendance of the defendant's PHP.

88. The defendant paid for these beds in order to drive substance use recovery patients to their PHP, instead of other treatment options. The defendant would not pay for the patient's sober housing unless the patient attended their PHP, because if the patient did not attend the PHP on a particular day, the defendant could not bill federal healthcare programs, including Medicare and Medicaid, for the provision of PHP services on that day.

89. The defendant knew that its offer to pay for sober housing would distinguish its PHP from other treatment options and entice substance use recovery patients, who lacked

immediate access to housing upon discharge from the detoxification facility or inpatient/residential treatment program, to attend the defendant's PHP.

90. The defendant believed that its provision of free sober housing was critical to sustaining and growing their daily census in the PHP. The defendant routinely calculated the cost of paying the daily rate at a sober home for each substance use recovery patient and determined that the revenue generated, and increased patient census, justified the cost of paying for sober housing. The defendant even continued to pay to house patients in particular sober homes despite receiving numerous complaints about serious health and safety concerns in those sober homes.

91. Between September 16, 2013, and October 31, 2022, the defendant paid to house approximately 3,331 substance use recovery patients in sober homes on the condition that the patients enroll in and attend the defendant's PHP. Of the 3,331 patients, 3,002 (or 90%) were enrolled in federal healthcare programs, including Medicare and Medicaid. The total number of sober home bed days the defendant paid for the approximately 3,002 patients enrolled in federal healthcare programs was approximately 53,109.

II. THE ORIGINS OF THE KICKBACK SCHEME

92. The defendant's PHP is one of approximately fifty intensive outpatient therapy programs in Massachusetts. *See* https://www.psychologytoday.com/us/treatment-rehab/massachusetts?category=intensive-outpatient-program (last accessed Sept. 14, 2023).

93. Prior to 2007, the defendant experienced difficulties with getting substance use recovery patients to attend the Brookline PHP regularly and on-time. If patients failed to show up or showed up late to treatment, the defendant was unable to bill insurers, including federal

healthcare programs, for the full services rendered. This resulted in lower census counts and reduced revenues for the defendant's PHP.

94. To attempt to address the situation, the defendant initially paid and provided substance use recovery patients with Massachusetts Bay Transportation Authority ("MBTA") subway passes and taxi vouchers in the hopes that defraying the cost of travel would increase the daily census of the PHP. The subway passes and taxi vouchers did not, however, solve the defendant's daily census problem. Patients continued to show up late, citing traffic and/or the inaccessibility or unreliability of the subway, to the extent they showed up to the defendant's PHP at all.

95. Due to the limited effectiveness of the subway passes and taxi vouchers, the defendant began to consider other options designed to ensure the attendance of substance use recovery patients at their PHPs. In or around July 2003, the defendant entered into a one-year affiliation agreement with a sober home, Twelve Step Education Program of New England ("Twelve Step").

96. In the affiliation agreement, Bournewood agreed to "purchase 2 sober beds" on the second floor of a sober home operated by Twelve Step at 171 Old Cambridge Road in Woburn, MA at the current resident rate of $18.60 per day. *Id.* If one of the beds the defendant "purchased" was occupied by a substance use recovery patient not enrolled in the defendant's PHP, Twelve Step was required to credit the daily rate back to the defendant. Bournewood also agreed to transport patients to and from the defendant's PHP and Twelve Steps daily. *Id.* In exchange, Twelve Step agreed to provide lunch at Bournewood's Woburn PHP to Twelve Step and non-Twelve Step substance use recovery patients attending the defendant's PHP. *Id.* One year later, Bournewood and Twelve Step entered into a new affiliation agreement effective July

1, 2004, that removed the provision regarding the purchase of beds, but retained the transportation and lunch provisions.

97. Beginning in 2007, the defendant entered into more agreements with sober homes that included promises to financially reimburse the sober homes for the beds used by substance use recovery patients attending the defendant's PHP.

98. The defendant agreed to pay for sober housing for substance use recovery patients, in large part, to sustain and increase the growth of the defendant's PHP patient census and to increase revenue by billing insurers, including federal healthcare programs, for the provision of PHP services.

III. THE REFERRAL OF PATIENTS TO THE DEFENDANT'S PHP AND THE INDUCEMENT OF SOBER HOUSING

99. Substance use recovery patients who enrolled in the defendant's PHP typically came via referral from detoxification facilities, inpatient/residential treatment programs, and through sober homes.

A. REFERRING FACILITIES

100. Most substance use recovery patients who enrolled in and attended the defendant's PHP were referred by social workers and clinicians affiliated and employed by detoxification facilities and inpatient/residential treatment programs. The defendant identified these detoxification facilities and inpatient/residential treatment programs as "referring facilities."

101. The defendant routinely contacted referring facilities about their PHP and advertised their offer of free sober housing. The defendant's Lead Intake Coordinator for Outpatient Services ("Lead Intake Coordinator") regularly communicated with referring facilities' social workers about the defendant's PHP and offer of free sober housing. In February

2022, the defendant's Director of Outpatient Services also emailed referring facilities to provide detailed information about the defendant's PHP, including that the Brookline PHP "offers sober housing, if clinically appropriate." The defendant knew that many substance use recovery patients did not have immediate access to housing upon discharge from the referring facility and would be enticed by the availability of free sober housing, even though access to housing only lasted for the time the patient was enrolled in and attending the defendant's PHP.

102. Once a substance use recovery patient achieved stabilization, i.e. successfully had undergone detoxification, a referring facility would begin working with the patient on a transition plan in conjunction with their discharge from the referring facility. The transition plan included setting out options to select the next best treatment step in the patient's recovery, and to determine from which treatment facility the patient would receive treatment. Clinicians at the referring facility offered guidance to the patient on which treatment option would be best.

103. Once the substance use recovery patient elected their treatment option selection (e.g., PHP, traditional outpatient therapy, etc.), the referring facility contacted facilities offering that treatment option to determine whether the treatment facility had space and availability to take on a new patient.

104. Referring facilities informed the substance use recovery patient which treatment facilities within the treatment option had the space and availability to take on a new patient. Presuming the patient elected to choose from a group of PHPs, the referring facility also provided relevant characteristics about each PHP to help the patient choose which one to enroll in and attend including the PHPs' location and proximity to the patient's family and work; the PHPs' length and timing; what benefits each PHP provided, including meals; and what

requirements each PHP imposed on patients including, for example, smoking limitations or mandated attendance. The patient then chose which PHP they wished to enroll in and attend.

105. Referring facilities also told substance use recovery patients about the defendant's offer of free sober housing when presenting relevant characteristics about the defendant's PHP for the patients' consideration. For patients without immediate access to housing upon discharge, the defendant's offer of free sober housing often proved to be compelling.

106. If a substance use recovery patient then chose the defendant's PHP, the referring facility worked with the patient to complete the defendant's "Adult Partial Hospitalization Program Referral" form. At the top of the form, the defendant asked the "referral source," i.e., the referring facility, and the patient to answer the question: "Is a sober home needed?" Both the patient and referral source are required to sign the form and "agree that the above information is accurate to the best of [their] knowledge…"

107. Between 2003 and 2017, the defendant's affiliation agreements with sober homes did not have a provision requiring that substance use recovery patients meet certain income requirements to obtain free sober housing. The affiliation agreements during this period only required that the defendant's payment of sober home bed fees be used on behalf of patients in the defendant's PHP.

108. Beginning in 2018, the defendant entered into sober living agreements with sober homes that included provisions limiting its payment of sober housing to substance use recovery patients "determined by [the defendant] to be indigent as documents [sic] by income at or below 200% of the Federal Poverty Level and [who] elect to live at a [sober home] while participating in [the defendant's PHP]." Below is an example of a provision from the defendant's Sober Living Agreement with Solutions Group, Inc.:

2.2 Payment of Rent. For Hospital patients who have been determined by the Hospital to be indigent as documents by income at or below 200% of the Federal Poverty Level and elect to live at a Solutions Group residence while participating in the Hospital's partial hospitalization program, the Hospital agrees to pay Solutions Group the rent and administrative fees set forth at Exhibit A. For all other Hospital patients who elect to live at a Solutions Group residence while participating in the Hospital's partial hospitalization program, the patient shall be responsible for payment of all fees to Solutions Group.

109. The defendant maintained a "Sober Housing Financial Assistance Policy" effective January 1, 2018. The policy stated that financial assistance, in the form of paying for sober housing, was available to substance use recovery "patients, or guarantors, with annual household income, during the past 12 months, below 200% of the Federal Poverty Guidelines [residents] or 100% of the Federal Poverty guidelines [non-residents] and whose liquid assets do not exceed $5,000 for an individual or $10,000 for a family." The defendant, however, excluded the following from a calculation of household income: "up to $100,000 for patients under 55, and $150,000 for patients over 55 in equity in a primary residence and up to $5,000 in cash savings per patient and $10,000 cash savings per family." The policy further stated that "if patient or guarantor is a homeowner, [the defendant] will require a copy of the most recent Mortgage Statement."

B. REFERRALS BY SOBER HOMES

110. Some substance use recovery patients who enrolled in and attended the defendant's PHP learned of the defendant's offer of free sober housing from other patients and sober home operators and expressly sought out the free sober housing without referral from a referral facility.

111. This occurred when a substance use recovery patient was unable to pay the daily rent at the sober home and would otherwise be homeless if not for the defendant's offer of free sober housing. The substance use recovery patient did not necessarily have an immediate medical

need for the defendant's PHP services but instead sought access to the free sober housing the defendant offered.

112. Some sober home operators coordinated with the defendant to enroll people into the defendant's PHP so that those people could obtain free sober housing.

113. For example, a former patient, testifying in the state's grand jury proceedings against David Perry[2], the sober home operator of RES, detailed that he was a six-month resident of RES and "didn't do the Bournwood (sic) thing" at first because he "was working." Six months later, however, when he and another resident "couldn't pay our rent, we also both did Bournwood (sic)." As he observed, "so that took care of a month of our rent."

IV. THE DEFENDANT'S CONDITIONED FREE SOBER HOUSING ON PARTICIPATION AND ATTENDANCE IN THE DEFENDANT'S PHP

114. After referral, the defendant evaluated the substance use recovery patient for admission to the defendant's PHP. The defendant also evaluated the patient for free sober housing if they requested it.

[2] On May 26, 2022, the Superior Court of Massachusetts issued an order pursuant to Massachusetts Rule of Criminal Procedure 5(d) releasing portions of the grand jury materials, including transcripts, in the proceedings against David Perry to the Medicaid Fraud Division of the Massachusetts Attorney General's Office, the United States Attorney's Office in the District of Massachusetts, and HHS-OIG, that were relevant to the investigation of the matters underlying this action. Portions of the materials unrelated to the defendant were redacted by the Massachusetts Attorney General's Office in compliance with the Superior Court's May 26, 2022, order. On September 14, 2023, the Superior Court of Massachusetts modified its order to authorize the Massachusetts Attorney General's Office and the United States Attorney's Office "to use the limited grand jury materials in a civil ligation, including in publicly accessible pleadings, such as a complaint, and in discovery." The portions of the transcripts referenced herein and throughout the governments' Complaint in Intervention are from the unredacted portions related to the defendant.

115. Between May 2007 and December 2017, the defendant's provision of free sober housing was governed by an internal policy entitled the "Sober Bed Free Care Policy." The policy was revised in July 2009, July 2011, and June 2014.

116. On or about January 2018, the defendant modified the policy to a "Sober Housing Financial Assistance Policy" with the purpose of establishing "a uniform policy and procedure for determining patient eligibility for [the defendant's] financial assistance in obtaining housing in a sober environment when stepping down from an inpatient level of care and transitioning to" the defendant's PHP. The primary difference between "Sober Bed Free Care Policy" and the "Sober Housing Financial Assistance Policy" was that the latter set an income-based requirement predicated on 200% of the 2017 Federal Poverty Guidelines.

117. The Sober Housing Financial Assistance Policy advised that the defendant was "committed to providing financial assistance to registered patients of [its] PHP Program who require an overnight bed in a sober living environment (typically not a covered service) in order to further their treatment." The financial assistance the defendant provided was for the "purpose of assisting a qualified patient in obtaining a sober bed while actively engaged in treatment in the" defendant's PHP.

118. Under the Sober Housing Financial Assistance Policy, a substance use recovery patient could be considered for the defendant's offer of free sober housing by meeting the following criteria: (1) the patient must be stepping down from an inpatient level of care; (2) the patient must be enrolled in the defendant's PHP; (3) the patient must be at or below 200% of the Federal Poverty line; and (4) the patient must submit a completed financial assistance application and provide supporting documentation. A patient did not need to complete a financial assistance

application or provide supporting documentation if they were able to demonstrate Medicaid-eligibility.

119. If the defendant approved the substance use recovery patient for free sober housing, the Sober Housing Financial Assistance Policy stated that the defendant would make payments to the "sober living facility selected by the patient" but payments would not be made "to the patient, a patient's family member or representative."

120. The defendant required substance use recovery patients receiving free sober housing to sign a "Partial Hospital Program with Sober House Agreement" ("PHP Sober House Agreement"). The defendant also requested that patients initial certain statements in the PHP Sober House Agreement including, most relevantly:

a. "I understand that if admitted to Bournewood Health Systems PHP, it is expected that I will attend programing Monday through Friday between 9am-2pm. Attendance is expected, and unexcused absences typically result in administrative discharge from the program."

b. "I understand that the average length of stay in PHP is about 2 weeks."

c. "**I understand that the cost of the sober house bed will only be covered by [the defendant] as long as I am admitted to the PHP program**. If I choose to stay in the sober house after discharge from the PHP, I am responsible for the daily/weekly cost of the bed."

(Emphasis added).

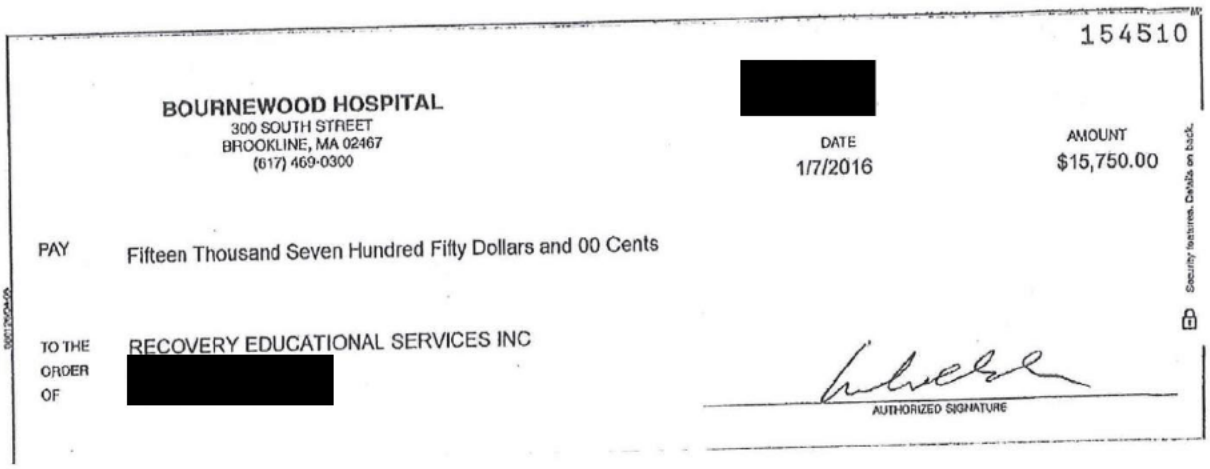
121. The defendant repeatedly advised substance use recovery patients that the defendant would only pay for the patient's sober housing if the patients attended the defendant's PHP. Patient JO told the state grand jury investigating RES' sober homeowner, David Perry,

that he understood that so long as he attended the defendant's PHP, the defendant would pay for his sober housing at RES.

122. The defendant maintained monthly charts that tracked attendance of the defendant's PHP by substance use recovery patients who received free sober housing from the defendant. The Lead Intake Coordinator and other of the defendant's employees notified the billing department daily which patients attended the defendant's PHP that day. The billing department utilized that information to seek and obtain reimbursement from federal healthcare programs, including Medicare and Medicaid, for the provision of PHP services.

123. At the end of each month, the Lead Intake Coordinator and other of the defendant's employees identified the days each substance use recovery patient attended the defendant's PHP and the sober home where the patient resided at in conjunction with the defendant's free sober housing offer and sent an e-mail to the defendant's Budget Officer relaying that information.

124. The Budget Officer then utilized the dates to determine the number of days the substance use recovery patient stayed in a sober home, multiplied that number by the negotiated per diem rate for the bed utilized by that patient, and paid the sober home with a monthly check. Below is an example of a monthly check, dated January 7, 2016, from the defendant to RES for housing patients:



154510

BOURNEWOOD HOSPITAL
300 SOUTH STREET
BROOKLINE, MA 02467
(617) 469-0300

[redacted]

DATE
1/7/2016

AMOUNT
$15,750.00

PAY Fifteen Thousand Seven Hundred Fifty Dollars and 00 Cents

TO THE ORDER OF RECOVERY EDUCATIONAL SERVICES INC [redacted]

AUTHORIZED SIGNATURE

Security features. Details on back.

125. Some sober homes sent the defendant monthly invoices seeking payment with detail regarding the patients' length of stay at the sober home while attending the defendant's PHP.

126. The defendant did not pay to house substance use recovery patients in sober homes on days that the patients failed to attend the program without an excused absence.

127. In a June 20, 2016, email, the defendant's then Director of Ambulatory and Social Services wrote to the defendant's Chief Executive Officer, Chief Medical Officer, Budget Officer, and an email group titled "AdultPHP" that he instructed Perry, RES' sober homeowner, that "Bournewood would not be paying for weekend sober house fees for patients who do not come for program on Monday."

128. The defendant discharged substance use recovery patients from the defendant's PHP who either completed the program, failed to regularly attend the defendant's PHP, left the PHP of their own choice, or engaged in conduct that resulted in their termination from the PHP. Once discharged, the defendant stopped paying to house that patient—even if that resulted in the patient being homeless.

129. Patient ML, who testified before the state grand jury in the proceedings brought against Perry, answered a question from a state prosecutor as to why he accepted a job at RES cleaning RES' sober houses. He responded that "the Bournewood program was ending and I had

no place to go. I would have been back on the streets, and I was offered that if I helped cleaning the houses, that would --- I would be able to cover my rent by doing that."

130. Patient HY testified in the same grand jury matter that he had "understood that when we got done with Bournwood (sic) if we couldn't afford to pay $160 a week we would have to – we would have to leave. Basically we would be homeless, back in the shelter or wherever I would be able to go."

131. Patient RG testified in the same grand jury matter that he and another man went to the defendant's PHP when they "really couldn't pay for rent."

V. THE DEFENDANT'S SOBER HOME AGREEMENTS

132. Between 2007 and 2022, the defendant entered into agreements with at least nine sober homes. Though the length and details differ slightly with each agreement, as explained further below, all of the contracts followed a similar general construct: the defendant agreed to pay to house substance use recovery patients in sober home beds so long as the substance use recovery patient enrolled in and attended the defendant's PHP.

A. New England Transitions

133. On or about October 11, 2007, Bournewood and New England Transitions ("NET"), a Medford-based sober home, entered into an affiliation agreement in which Bournewood agreed to "reimburse [NET] $560.00 per bed per month (4 weeks) for two [NET] sober beds available to clients referred by Bournewood's clinical staff" and "[r]eimburse [NET] a per diem rate of $20.00 for additional clients in need of such services when the two Bournewood beds are occupied." NET agreed to "[m]aintain the expectation that clients in Bournewood's designated beds regularly attend Bournewood's [PHP]" and provide Bournewood

with a "monthly invoice for charges plus number of days each Bournewood client occupied a designated sober bed."

134. Before the defendant entered into a contractual relationship with NET, Medford residents had publicly complained about "crowded living conditions, and what they called improper relationships among residents and sometimes staff at the homes." *See* https://www.wickedlocal.com/story/observer-advocate/2007/04/27/medford-protests-malden-based-sober/39121901007/ (last accessed on Sept. 4, 2023). Some family members alleged that their loved ones were continually exposed to drugs at NET. *Id.*

135. Between 2014 and 2017, the defendant housed approximately 3 patients covered by federal healthcare programs, including Medicare and Medicaid, at NET. The defendant paid for approximately 82 sober home bed days for the 3 patients at a total of approximately $2,870. The defendant received approximately $7,877.30 from federal healthcare programs for PHP services provided to the 3 patients.

136. In October 2012, William Maragioglio, the owner and operator of NET, pled guilty to violating the MAKS for accepting kickbacks from Calloway Laboratories to perform medically unnecessary urine drug screenings of NET residents for which reimbursement from Medicaid through MassHealth was sought. *See* https://www.hmpgloballearningnetwork.com/site/behavioral/article/execs-guilty-drug-test-kickback-scheme (last accessed on Sept. 4, 2023).

B. New Horizon House

137. On or about February 3, 2009, the defendant entered into an affiliation agreement with New Horizon House sober home ("New Horizon"), which had a principal address in

Quincy, but sober homes located throughout Massachusetts. Carl Smith owned and operated New Horizon.

138. According to the terms of the affiliation agreement, the defendant agreed to pay "$560 per bed per month (4 weeks) for two [New Horizon] sober beds available to clients referred by Bournewood's clinical staff" and "a per diem rate of $20 for additional clients in need of such services when the two Bournewood beds are occupied." New Horizon agreed to "[m]aintain the expectation that clients in Bournewood's designated beds regularly attended Bournewood's [PHP]."

139. In October 2011, Smith, New Horizon's owner and operator, was indicted by the Massachusetts Attorney General's Office for violating the MAKS by accepting kickbacks to conduct medically unnecessary urine drug testing on New Horizon residents reimbursed by Medicaid through MassHealth. In June 2015, Smith pled guilty and was sentenced to two years in the House of Corrections, suspended for two years with probation. *See* https://www.mass.gov/news/brookline-doctor-pleads-guilty-sentenced-to-jail-and-ordered-to-pay-93-million-for-running-medicaid-kickback-and-false-billing-scheme (last accessed on Sept. 4, 2023).

140. Between November 2013 and June 2015, the defendant paid to house approximately 5 patients covered by federal healthcare programs at New Horizon, paying for approximately 85 sober home bed days for a total of approximately $2,975. The defendant received $7,479.40 from federal healthcare programs, including Medicare and Medicaid, for the provision of PHP services for these 5 patients.

C. Steps to Solutions

141. Steps to Solutions is a sober home based in Dorchester, owned and operated by Peter McCarthy.

142. The government is unaware of any written agreement between the defendant and Steps to Solutions. Between September 2013 and March 2022, however, the defendant paid to house 487 substance use recovery patients covered by federal healthcare programs at Steps to Solutions. The defendant paid for 8,840 sober home bed days for a total of approximately $308,595. The defendant received approximately $1,162,646.76 from federal healthcare programs, including Medicare and Medicaid, for the provision of PHP services for these 487 patients.

143. In August 2021, the United States Attorney's Office in the District of Massachusetts ("USAO-MA") filed a civil complaint against McCarthy and Steps to Solutions, alleging that between 2012 and 2019—a period during which the defendant placed female substance use recovery patients at Steps to Solutions—McCarthy "subjected female tenants to sexual harassment and retaliation in violation of the Fair Housing Act." *See* https://www.justice.gov/usao-ma/victim-and-witness-assistance-program/us-v-peter-mccarthy-and-steps-solutions-inc (last accessed on Sept. 5, 2023).

144. The Bureau of Substance Addiction Services sent e-mail notifications on August 12, 2021, to various providers, including the defendant, announcing the allegations in the civil complaint brought against McCarthy and Steps to Solutions by the USAO-MA. The defendant's Chief Executive Officer forwarded the notification to the Director of Outpatient Services on August 12, 2021. The Direct of Outpatient Services responded to the e-mail by stating "Oh wow, I am so glad we cut ties with them." The Chief Executive Officer then responded "Phew."

145. Yet, the defendant paid to house at least one male patient at Steps to Solutions between March and April 2022 after learning of USAO-MA'scomplaint against McCarthy and Steps to Solutions. The patient was covered by a MassHealth MCE.

D. RES

146. On or around June 12, 2009, the defendant entered into an affiliation agreement with RES. The defendant initially agreed to pay RES "$720 per bed per month (30 days) for two [RES] sober beds available to clients referred by Bournewood's clinical staff" and to reimburse RES "a per diem rate of $24 for additional clients in need of such services when the two Bournewood beds are occupied." RES agreed to "[m]aintain the expectation that clients in Bournewood's designated beds regularly attend Bournewood's [PHP]." The agreement contains a hand notation that states, "updated 2013 to flat rate of $30 per diem for all clients."

147. On or around September 1, 2016, the defendant entered into a new affiliation agreement with RES, in which they agreed to reimburse RES "a per diem rate of $30 per night per client." RES once again agreed to "[m]aintain expectation that clients in Bournewood's designated beds regularly attend" the defendant's PHP.

148. RES contained approximately 40 beds, representing the largest sober home, as measured by the number of available beds, with which the defendant contracted.

149. Even prior to entering into the affiliation agreement with RES in 2009, the defendant housed approximately 43 patients covered by federal healthcare programs, including Medicare and Medicaid, at RES.

150. Between September 2013 and September 2021, the defendant paid to house approximately 1,158 substance use recovery patients covered by federal healthcare programs in RES. The defendant paid for approximately 20,676 sober home bed days for a total of

approximately $721,000. The defendant received approximately $2,796,729.20 from federal healthcare programs, including Medicare and Medicaid, for the provision of PHP services for these 1,158 patients.

151. In May 2018, Massachusetts indicted Perry, RES' owner and operator, on thirty-six counts including six counts of Sex for Fee; fifteen counts of evidence tampering; one count of distribution of a Class B substance (fentanyl); six counts of possession of illegal Class B, C, and E substances; and eight counts of conspiracy to distribute illegal drugs.

152. The defendant paid to house 29 patients covered by federal healthcare programs at RES after Perry's indictment.

153. During the state grand jury proceedings against Perry, the defendant's Lead Intake Coordinator testified. The Lead Intake Coordinator was responsible for vetting and placing substance use recovery patients in sober homes.

154. The Lead Intake Coordinator testified that "over the years," substance use recovery patients enrolled in the defendant's PHP and housed at RES complained of significant health and safety concerns. This included bed bug infestations; reports of patients' medication being stolen or missing; reports of drugs being sold at RES. "[T]here's been also reporting things to me that I cannot fully verify, but patients have come to me specifically saying that they've been – how do I say it – come on to by the director there or the owner there, Dave Perry and said 'Give me this and I'll let you stay there for free.'"

155. The Lead Intake Coordinator then recounted that "over a half dozen" substance use recovery patients a year over nearly ten years told hm that Perry sexually propositioned them. The patients were nearing discharge from the defendant's PHP and would therefore no longer have their sober home fees paid by the defendant. In total, the Lead Intake Coordinator

estimated that "50 or more" patients had told him of Perry's sexual advances over the nearly ten years the defendant had contracted with RES.

156. The Lead Intake Coordinator testified that he told each alleged victim to notify their respective Bournewood social worker. He also escalated these issues to his immediate supervisors: the defendant's Director for Ambulatory Services and the Chief Operating Officer. When the state prosecutor asked if anyone "higher up" did anything in response to the reports, the Lead Intake Coordinator stated "not positively, no, but there were periodic times when RES would be brought in, Dave [Perry] would be brought in to do a meeting to discuss issues." The Lead Intake Coordinator was not present at the meetings, however, and never heard what went on at the meetings.

157. The Lead Intake Coordinator also recounted an incident where Perry lied to the defendant about not knowing the whereabouts of a substance use recovery patient. The defendant learned later that same day that the patient had overdosed the night before at RES from upset patients who resided at RES.

158. The Lead Intake Coordinator also testified that the person Perry placed in charge of RES for approximately eight months prior to Perry's indictment by Massachusetts in May 2018 was "confrontational." The sober home manager bragged to the Lead Intake Coordinator that he would "physically throw patients through walls" when substance use recovery patients relapsed and became verbal and physical with him. The Lead Intake Coordinator advised that the appropriate response was to simply "kick[] them out," "make a phone call to the police and have them escorted off the property." Instead, the sober home manager would "get physical back," which the Lead Intake Coordinator advised "is not right."

159. When the state prosecutor asked the Lead Intake Coordinator if residing at RES had impacted the ability of the defendant's PHP substance use recovery patients to stay sober, he replied "[w]ith all that was going on there, yes."

160. The defendant's "higher ups" knew of the serious health and safety concerns associated with RES but continued to house substance use recovery patients at RES. In an email dated August 28, 2017, the defendant's Director of Support Services informed the defendant's Chief Financial Officer that a shipment of furniture, including six side chairs and two end tables would be of no use to the defendant's Chief Medical Officer. The Director of Support Services offered further that the Chief Operating Officer was "not interested in giving these to Dave Perry at RES. They would be trashed in a matter of weeks over there."

161. In late 2017, the defendant sought to contract with other sober homes because RES was unable to fully accommodate their needs. In an email dated December 15, 2017, the defendant's Chief Financial Officer sought outside guidance regarding the defendant's affiliation with another sober home "because the clinical team is not happy with how [RES] operate[s]."

162. Yet, the defendant did not cease sending substance use recovery patients to RES. In an email dated December 14, 2017, the Chief Operating Officer wrote to the Chief Financial Officer, the Budget Officer, and the Director of Outpatient Services about negotiations with the sober home, Solutions Group, Inc. The Chief Operating Officer observed that "[t]oday we have 10 patients at RES and they say the (sic) 'have a waiting list' so even if we wanted to accept more patients to our [PHP] we can't because Faith House (a sober home detailed later) and Steps to Solutions are also full."

163. Moreover, at least one of the defendant's executives sought to strengthen the relationship with RES. One month later, in an email dated January 11, 2018, the defendant's

Chief Executive Officer wrote to the defendant's Chief Operating Officer and Chief Financial Officer and asked how to approach Perry at an upcoming meeting about "tak[ing] over the leases on at least one if not more of the houses." Later that day, the Chief Operating Officer wrote back that counsel had advised the defendant to cease doing business with Perry and RES in light of the Massachusetts Attorney General's Office grand jury subpoena to the defendant.

164. In May 2018, after Perry's indictment, WBUR, a National Public Radio news station, interviewed the defendant's Chief Executive Officer about Massachusetts' indictment of Perry and the defendant's relationship with RES. *See* https://www.wbur.org/news/2018/05/21/sober-house-arrest (last accessed on September 5, 2023). The defendant's Chief Executive Officer was quoted as stating that the defendant's "main criteria for our working relationships with the sober homes is ensuring that there is a clean and sober environment" but she equally acknowledged that the defendant "had concerns [from] the patients that we were referring there that the environment was not supportive of their recovery." *Id.*

165. When asked why the defendant continued to house patients at RES, the defendant's Chief Executive Officer stated, "[w]e're not going to discharge people to the street…so we would rather discharge someone to a sober home whether they could continue to engage in treatment than to have them receive no ongoing treatment at all." *Id.*

166. In August 2019, sixteen months after Perry's indictment, the Chief Executive Officer and the Chief Operating Officer exchanged emails about the defendant's social workers' "concerns re: sober home." In an email dated August 5, 2019, the Chief Operating Officer recounted that she asked the defendant's social workers for a "summary of concerns." She then wrote that one concern from the social workers she was aware of is that "we say that because

they are homeless we put them in a sober home[,] but really we just want to fill the [PHP] and we don't care what goes on in the sober home because of how long we dealt with Dave Perry." The Chief Executive Officer then asked "[m]aybe I over-reacted, do you think we really need a meeting[]" with the social workers to address their concerns. The Chief Operating Officer responded "I think we should still meet. I think it would be a mistake not to as it could be perceived as not caring."

167. Despite receiving repeated concerns regarding the health and safety of substance use recovery patients housed at RES, the defendant continued to place patients at RES between June 2009 and June 2021, a span of nearly twelve years. The Lead Intake Coordinator testified to the state grand jury that he expressed a preference to the defendant to house patients in other sober homes besides RES because of better quality of care. He conceded, however, that the defendant continued to house patients at RES because it had more bed availability due to is size.

E. Faith House

168. On or about December 1, 2016, the defendant entered into an agreement with Milton Management, LLC, otherwise known as Faith House, which operated a series of sober homes in Dorchester, Roxbury, and Quincy. Faith House is owned and operated by Joseph Pizziferri.

169. Under the terms of the agreement, the defendant agreed to pay Faith House a per diem rate of $30 for substance use recovery patients housed at Faith House. Faith House agreed to "[m]aintain the expectation that clients in Bournewood's designated beds regularly attend" the defendant's PHP.

170. Prior to the agreement signed on or about December 1, 2016, the defendant paid to house 46 substance use recovery patients covered by federal healthcare programs at Faith

House between October 2013 and November 2016. The defendant paid for approximately 803 sober home bed days for a total of approximately $28,105. The defendant received approximately $104,976.78 from federal healthcare programs, including Medicare and Medicaid, for the provision of PHP services for these 46 patients.

171. Between December 2016 and March 2022, the defendant paid to house 78 substance use recovery patients covered by federal healthcare programs at Faith House. The defendant paid for approximately 1,175 sober home bed days for a total of approximately $41,125. The defendant received approximately $155,887.98 from federal healthcare programs, including Medicare and Medicaid, for the provision of PHP services for the 78 patients.

F. Solutions Group

172. On January 31, 2018, the defendant entered into a "Sober Living Agreement" with Solutions Group, Inc. ("Solutions"), a sober home in Dorchester operated by Thomas Lyons.

173. Under the terms of the Sober Living Agreement, the defendant agreed to pay Solutions a one-time administrative fee per qualifying patient of $100, and a rate of $25.80 per patient per night housed at Solutions. Unlike prior agreements with sober homes, this agreement contained a provision requiring a patient to qualify for free sober housing by evidencing indigency.

174. Between February 2018 and November 2019, the defendant paid to house approximately 126 substance use recovery patients covered by federal healthcare programs at Solutions. The defendant paid for approximately 2,041 sober home bed days for a total of approximately $71,435. The defendant received approximately $267,986.15 from federal

healthcare programs, including Medicare and Medicaid, for the provision of PHP services for these 126 patients.

175. Between February and April 2018, as the defendant looked to end their relationship with RES, the defendant observed a decline in census at their PHP. As of May 2018, the defendant's PHP census had improved. In an email exchange between the defendant'ss Chief Executive Officer and the Chief Operating Officer on May 3, 2018, the Chief Executive Officer observed that the "census was looking better," which the Chief Operating Officer attributed to Solutions "moving their longer term residents to their Quincy house, making room for our patients in their [Dorchester] house."

G. Angelos Development

176. On or about June 1, 2018, the defendant entered into a Sober Living Agreement with Angelos Development, LLC ("Angelos"), a sober home located in Medfield, and owned and operated by Boris Krants.

177. Under the terms of the Sober Living Agreement, the defendant agreed to pay Angelos a one-time administrative fee of $100 for each patient and a daily rate of $29.57 per qualifying patient per night per bed. A qualifying patient needed to meet income requirements and "elect to live at a residence of [Angelos] while participating" in the defendant's PHP.

178. Between February and November 2018, the defendant paid to house approximately 29 substance use recovery patients covered by federal healthcare programs in Angelos. The defendant paid for approximately 474 sober home bed days for a total of approximately $16,590. The defendant received approximately $55,355.79 from federal healthcare programs, including Medicare and Medicaid, for the provision of PHP services for these 29 patients.

H. North East Special Needs Housing

179. On or about August 1, 2018, the defendant entered into a Sober Living Agreement with North East Special Needs Housing, LLC ("NESNH"), a sober home located in Dorchester, owned and operated by Michael D. Jordan.

180. According to the terms of the agreement, the defendant agreed to pay the rent for qualifying substance use recovery patients enrolled in and attending their PHP. A qualifying patient needed to meet income requirements and "elect to live at [NESNH]" while participating in the defendant's PHP. Unlike prior agreements with sober homes, however, the defendant agreed to pay NESNH $900 a month for 6 exclusive beds for a monthly total of $5,400. The defendant agreed to pay NESNH in bi-monthly installments of $2,700.

181. On July 13, 2018, shortly before entering into the agreement with NESNH, the defendant's Chief Operating Officer had an email exchange with the defendant's Chief Executive Officer, Chief Financial Officer, and Director for Outpatient Services regarding the negotiations with NESNH. The Chief Operating Officer recounted that the defendant had proposed a "shared risk" payment model, but NESNH rejected the idea because NESNH had no issues filling its beds. The Chief Operating Officer wrote, "In other words, we need them more than they need us! Sad, but true."

182. The Chief Financial Officer responded that he was "not adverse to buying beds up front" because the defendant should be able to fill 4-6 beds without a lot of risk. He wrote that "the downside risk is minimal and the upside risk is significant with a census increase of 4-6 patients. I think we should move quickly if everyone agrees so we can capture as much of the upside this year and help us close the budget shortfall."

183. Between August 2018 and February 2019, the defendant paid to house approximately 32 substance use recovery patients covered by federal healthcare programs in NESNH. The defendant paid for approximately 530 sober home bed days for a total of approximately $18,550. The defendant received approximately $61,918.31 from federal healthcare programs, including Medicare and Medicaid, for the provision of PHP services for these 32 patients.

I. Brady's Place/A Vision From God

184. On or about October 26, 2018, the defendant entered into a Sober Living Agreement with A Vision from God, LLC, a sober home referred to as Brady's Place then based at 250 Seaver Street in Boston. The sober home, which relocated to Weymouth, is owned and operated by Daniel Cleggett.

185. Per the terms of the Sober Living Agreement, the defendant agreed to pay $900 per month per bed for 24 beds for the exclusive use by the defendant's male PHP substance use recovery patients beginning on November 1, 2018, and $900 per month per bed for an additional 6 beds for the exclusive use by the defendant's female PHP substance use recovery patients beginning on December 1, 2018. The defendant further agreed to pay an administrative fee of $75 per patient that resided in the sober home for more than 24 hours.

186. In an email exchange from December 15, 2018, the defendant's Chief Financial Officer responded to an inquiry from the Chief Financial Officer of the defendant's parent company, Alita, asking about a spike in rent reported in the November financials. The defendant's Chief Financial Officer answered that the spike in rent "is related to new pre-paid sober agreement for 24 beds (will increase to 30 beds in December) that start 11/1. **This will**

translate to higher program census in PHP which has been limited by lack of available sober beds prior to November." (Emphasis added).

187. Prior to the defendant entering into a Sober Living Agreement with Brady's Place, the Boston Globe and STAT news published a story on May 28, 2017, regarding Cleggett's alleged engagement in brokering of substance use recovery patients to recovery centers in Florida for a $1,500 fee per patient. *See* https://www.statnews.com/2017/05/28/addict-brokers-opioids/ (last accessed Sept. 5, 2023).

188. On August 13, 2019, the Boston Globe published a spotlight series article on Cleggett's activities and sober homes, that discussed allegations of overdose deaths at his sober homes and the discovery of a dead body in the backyard of one of his sober homes. *See* https://www.bostonglobe.com/metro/2019/08/03/bones-found-backyard-former-sober-home/CmMGTaOUswbyTwyvqOKkSJ/story.html (last accessed on Sept. 5, 2023). City of Boston officials alleged that Cleggett "crammed [clients] into overcrowded, unsafe rooms" in one sober home, and placed clients in another sober home "where clients say they were told by staff without medical licenses to stop taking psychiatric medications and instead, to pray. Two people under his company's watch have died." *Id.*

189. One week prior to the publication of this article, the defendant learned that the City of Boston had identified significant concerns at Brady's Place. In an email on August 6, 2019, the defendant's Chief Operating Officer wrote to the defendant's Chief Executive Officer, Chief Financial Officer, and Chief Medical Officer to relay a conversation that the defendant's Director of Outpatient Services had with the City of Boston's Assistant Commissioner of Inspection Services, John Meaney, about Brady's Place. The Director of Outpatient Services learned from Meaney that:

1. There are multiple citations
2. They corrected all emergency violations immediately (fire alarms, etc.)
3. There was some over- crowding so they made them get rid of some beds immediately
4. The basement where the females are housed is illegal (we may lose our female beds)
5. There MASH certification is pending.
6. Danny, the owner, has been nothing but cooperative and responsive

190. The defendant initially terminated their Sober Living Agreement with Brady's Place on August 19, 2019, effective September 30, 2019.

191. Yet, on or about November 1, 2019, the defendant entered into a new Sober Living Agreement with Brady's Place. Under the terms of the new Sober Living Agreement, the defendant agreed to pay $30 per night per bed for each of the defendant's PHP substance use recovery patients and a $75 administrative fee for each patient that remains in the defendant's PHP (and thus in the sober home) for over 24 hours.

192. Prior to the first Sober Living Agreement dated October 26, 2018, the defendant paid to house 71 substance use recovery patients covered by federal healthcare programs at Brady's Place between October 2013 and October 2018. The defendant paid for approximately 468 sober home bed days for a total of approximately $16,380. The defendant received approximately $50,554.11 from federal healthcare programs, including Medicare and Medicaid, for the provision of PHP services to the 71 patients.

193. Between November 2018 and May 2022, the defendant paid to house approximately 1,023 substance use recovery patients covered by federal healthcare programs in Brady's Place. The defendant paid for 17,928 sober home bed days for a total of $627,015. The defendant received approximately $2,838,369.25 from federal healthcare programs, including Medicare and Medicaid, for the provision of PHP services for these 1,023 patients.

194. On May 23, 2023, the United States Attorney's Office announced a 37-count indictment against Cleggett and his sober home manager. The indictment alleges, in part, that

Cleggett, his sober home manager, and a sober home client "entered into a conspiracy to defraud a New York-based family trust that was paying for the client's room and board at Brady's Place, located in Quincy." *See* https://www.justice.gov/usao-ma/pr/operator-sober-homes-and-associate-arrested-fraud-schemes-involving-sober-home-client (last accessed on Sept. 13, 2023). More specifically, the government alleges that Cleggett and his sober home manager "overcharged the family trust for room and board by up to $12,500 per month by submitting false and fraudulent invoices to the family trust." *Id.* Cleggett and the sober home manager allegedly would then issue "refund checks" to the sober home client in furtherance of the fraud scheme. *Id.*

VI. THE DEFENDANT PAID KICKBACKS IN ORDER TO INCREASE THE PHP'S CENSUS AND REVENUE

195. The defendant paid remuneration in the form of free sober housing to induce substance use recovery patients to not only enroll in the defendant's PHP, but to regularly attend and remain with the defendant's PHP. In doing so, the defendant understood that the inducement would increase their PHP census and permit greater billing for PHP services rendered, thereby driving revenue.

196. The defendant expressly tied the payment of sober home fees to enrollment and regular attendance of their PHP. Substance use recovery patients that received free sober housing from the defendant were required to sign a PHP with Sober House Agreement in which they expressly acknowledged by printing their initials on the agreement that "the cost of the sober house bed will only be covered by [the defendant] as long as I am admitted to the PHP program."

197. In a June 20, 2016, email, the defendant's then Director of Ambulatory and Social Services wrote to the defendant's Chief Executive Officer, Chief Medicaid Officer, and Budget

Officer that he instructed Perry, RES' owner, that "Bournewood would not be paying for weekend sober house fees for patients who do not come for program on Monday."

198. In May 2018, the defendant's Chief Operating Officer acknowledged in an email to the Chief Executive Officer that an improvement in the census was due to a sober home's bed availability in Dorchester.

199. In July 2018, the defendant's Chief Operating Officer had an email exchange with the defendant's Chief Executive Officer, Chief Financial Officer, and Director for Outpatient Services acknowledging the import of sober homes to the defendant's bottom line by writing, "In other words, we need them more than they need us! Sad, but true."

200. The Chief Financial Officer responded to that same email that he was "not adverse to buying beds up front" because the defendant should be able to fill 4-6 beds without a lot of risk. He wrote that "the downside risk is minimal and the upside risk is significant with a census increase of 4-6 patients. I think we should move quickly if everyone agrees so we can capture as much of the upside this year and help us close the budget shortfall."

201. In an email on December 15, 2018, the defendant's Chief Financial Officer responded to an inquiry from the Chief Financial Officer of the defendant's parent company, Alita, asking about a spike in rent reported in the November financials. The defendant's Chief Financial Officer answered that the spike in rent "is related to new pre-paid sober agreement for 24 beds (will increase to 30 beds in December) that start 11/1. **This will translate to higher program census in PHP which has been limited by lack of available sober beds prior to November**." (Emphasis added).

202. In a February 20, 2020, email exchange between the defendant's Director of Outpatient Services, Chief Operating Officer, and Chief Financial Officer regarding the

defendant's Woburn PHP, the Chief Financial Officer asked if a seeming recent increase in sober bed utilization in Woburn "is allowing us to expand our census?" The defendant's Director of Outpatient Services responded that "[I]ncreased used of the sober will definitely allow us to expand our census."

203. The defendant's payment of sober home fees was driven by the understanding that the defendant's revenues would benefit by being able to bill insurers, including federal healthcare programs, for PHP services rendered to substance use recovery patients.

204. On April 1, 2020, the defendant's Chief Operating Officer expressed her view, in an email to the defendant's Chief Financial Officer, Director of Outpatient Services and other internal employees, that the defendant should not reimburse lunches paid for by sober homes for three days during which the defendant's PHP was closed due to the Covid-19 pandemic because "[w]e weren't able to bill for anything on those 3 days."

205. One day later, the Chief Financial Officer emailed the Chief Operating Officer and the Director of Outpatient Services to express his view that sober homes should not be billing the defendant for sober home fees for March 24, 2020, and March 25, 2020, because the defendant's PHP was closed. The Chief Operating Officer responded that she was "on the fence," regarding that decision.

206. The defendant also continued to place substance use recovery patients at RES and other sober homes despite having knowledge of significant health and safety concerns at those sober homes. The defendant's Chief Executive Officer acknowledged as much in an interview with WBUR in May 2018 in which she conceded that the defendant "had concerns [from] the patients that we were referring [to RES] that the environment was not supportive of their recovery" but nevertheless continued to send patients to RES because the defendant contended

they're "not going to discharge people to the street…so we would rather discharge someone to a sober home whether they could continue to engage in treatment than to have them receive no ongoing treatment at all." The defendant, however, did discharge patients to the street after they completed the defendant's PHP and the defendant was no longer able to bill insurers, including federal healthcare programs, for PHP services.

207. The Lead Intake Coordinator told the state grand jury proceeding against Perry that he did not want to place substance use recovery patients at RES due to safety and quality concerns but continued to do so because RES had the beds to take patients. When the state prosecutor asked the Lead Intake Coordinator if residing at RES had impacted the ability of the defendant's PHP patients to stay sober, he replied "[w]ith all that was going on there, yes."

208. The defendant's own social workers voiced concerns that the defendant's executives prioritized the business over the safety of the substance use recovery patients through the kickback scheme. As the Chief Operating Officer acknowledged in an email to the Chief Executive Officer, social workers have raised the concern that "we say that because they are homeless we put them in a sober home but really we just want to fill the program and we don't care what goes on in the sober home because of how long we dealt with Dave Perry."

VII. THE DEFENDANT'S KNOWLEDGE OF PROHIBITIONS AGAINST PAYING KICKBACKS

209. The defendant was well aware of its obligations not to violate the AKS. For example, the defendant signed a Certification Statement in conjunction with its Medicare Enrollment Application, Form CMS-855B, in which it "agreed to abide by the Medicare laws, regulations and program instructions" and affirmed its understanding that "payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations and program instructions (including, but not limited to, the Federal Anti-

Kickback Statute, 42 U.S.C. section 1320a-7b(b)." Moreover, each time the defendant submitted a claim for reimbursement from Medicare, it certified that it had "familiarized [itself] with all applicable laws, regulations, and program instructions, which are available from the [MAC];" and that the claim "complie[d] with all applicable Medicare and/or Medicaid laws, regulations, and program instructions for payment including but not limited to the Federal anti-kickback statute. . . ."

210. As a MassHealth provider, the defendant also signed a provider contract with MassHealth and EOHHS, the state agency that oversees MassHealth. The provider contract requires the provider to agree "to comply with all state and federal statutes, rules, and regulations applicable to the Provider's participation in MassHealth." This includes but is not limited to the AKS, MAKS and the "All Provider" regulations at 130 C.M.R. §§ 450.000 *et seq.*

211. Providers who sign agreements and contracts with Medicare and Medicaid, respectively, are required, as a matter of law, to familiarize themselves with the legal requirements, standards, and procedures of those programs. *See Massachusetts v. Mylan Laboratories*, 608 F.Supp.2d 127, 154 (D. Mass. Dec. 3, 2008) (citing *Heckler v. Community Health Servs.*, 467 U.S. 51, 63-65 (1984)).

212. The defendant also understood the importance of not violating the AKS. For instance, the defendant required their employees to familiarize themselves with applicable federal and state laws, including most relevantly, the AKS and the FCA.

213. The defendant also created and implemented an employee compliance program specifically identifying the AKS and advising employees against violating it. For example, in the defendant's compliance program manual—which it provided to all employees—Section I,

Paragraph 8 sets out portions of the language of the AKS and the prohibition against the solicitation and receipt of kickbacks:

> 8. Anti-Kickback
>
> Knowingly and willfully:
>
> a. Soliciting or receiving any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind either:
>
> 1. In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a federal healthcare program;
>
> 2. In return for purchasing, leasing, ordering, or arranging for or recommending, purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a federal healthcare program.

214. In 2018, Congress passed the Eliminating Kickbacks in Recovery Act ("EKRA"), a statute analogous to the AKS that directly prohibited the payment of kickbacks for referrals to recovery homes, clinical treatment facilities, or laboratories. Effective October 24, 2018, EKRA criminalized the knowing and willful "pay[ing] or offer[ing] [of] any remuneration (including kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind, in exchange for an individual using the services of that recovery home, clinical treatment facility, or laboratory." *See* 18 U.S.C. § 220(a)(2)(B). EKRA also prohibited the payment of remuneration "to induce a referral of an individual to a recovery home, clinical treatment facility, or laboratory." 18 U.S.C. § 220(a)(2)(A). For purposes of EKRA, the defendant's PHP is a "clinical treatment facility" because it is a "medical setting, other than a hospital, that provides . . . outpatient treatment and care . . . pursuant to licensure or certification under State law." 18

U.S.C. § 220(e)(2). All of the sober homes that the defendant contracted with fall under the meaning of "recovery home" defined as a "shared living environment that is, or purports to be, free from alcohol and illicit drug use and centered on peer support and connection to services that promote sustained recovery from substance use disorders."

215. The defendant's compliance program manual requires that all employees be cognizant of all applicable federal and state laws that may impact the defendant's billing of claims to all federal healthcare programs, including Medicare and Medicaid.

Employees must be cognizant of all applicable federal and state laws and regulations that apply to and effect Bournewood Hospital's documentation, coding, billing, and competitive practices, as well as the day-to-day activities of the hospital and its employees and agents. Each employee who is materially involved in any of the hospital's documentation, coding, billing, or competitive practices has an obligation to familiarize himself or herself with all such applicable laws and regulations and to adhere at all times to the requirements thereof. Where any question or uncertainty regarding these requirements exists, it is incumbent on, and the obligation of, each employee to seek guidance from their supervisor and/or the Compliance Officer.

216. The compliance program manual also prohibits employees from engaging or participating in the submission of false claims.

In particular, and without limitation, this policy prohibits Bournewood Hospital and each of its employees from directly or indirectly engaging or participating in the following:

b. False Claims

For a medical or other item or service and such person knows or should know the claim is false or fraudulent.

217. Despite having in place these compliance policies warning about the AKS and prohibiting any remuneration to patients in a federal healthcare program, the defendant did exactly the opposite and provided remuneration in the form of free housing payments to patients in federal healthcare programs. In other words, the defendant's compliance policies concerning

the AKS were the proverbial "window dressing"— suggesting compliance with the law to those unfamiliar with the defendant's actual business practices described in this Complaint.

218. What is more, the defendant specifically discussed that their practice of paying for patients' sober home housing could violate the law but continued to do it. For example, on or around January 2018, when the defendant modified their internal policy concerning providing free sober home housing to patients, an employee making edits to the policy questioned whether certain provisions violated the "Beneficiary Inducement provision of the [Civil Monetary Penalties ("CMP")] law," which is a federal law similar to the AKS that penalizes those offering illegal remuneration to beneficiaries.

219. In particular, the CMP provides "for the imposition of [civil monetary penalties] against any person who offers or transfers remuneration to a Medicare or State health care program beneficiary that the person knows or should know is likely to influence the beneficiary's selection of a particular provider, practitioner, or supplier…." *See* https://oig.hhs.gov/documents/compliance/836/factsheet-rule-beneficiary-inducements.pdf (last accessed on Sept. 5, 2023).

220. The employee making the edit raised a concern as to when "patients are identified" for free sober housing and "when in the process of their enrollment in the PHP program this conversation occurs?" The employee went on to state that, "[t]o avoid the Beneficiary Inducement restrictions, the patient needs to have already selected Bournewood's PHP program so this process cannot occur as part of a pre-admission procedures (sic) but could occur after Bournewood has been selected (e.g., maybe at registration/intake/first day of scheduled treatment)." Despite the employee identifying this concern, the defendant continued

to induce, and attempt to induce, patients to attend the defendant's PHP with offers of free housing.

VIII. MEDICARE CLAIMS SUBMISSIONS

221. The defendant submitted claims for payment and received payment from Medicare for substance use recovery patients that received free housing at the above-mentioned sober homes. An example of claims submitted to Medicare for such patients during the Relevant Period is attached as Exhibit 1.

222. The defendant misrepresented their compliance with the AKS as part of its submission of claims to Medicare for payment. Medicare would not have paid these claims had it known of these violations.

223. To date, the defendant has not repaid any overpayments to Medicare stemming from the fact that it was not in compliance with federal laws and regulations concerning the Medicare program.

224. Compliance was an express precondition of payment with Medicare; every submission of a claim implicitly represents compliance with relevant statutes, and even undisclosed violations of the AKS render these claims false or fraudulent. Had Medicare known of the statutory violations detailed herein, it would not have paid the claims submitted by the defendant that were tainted by illegal kickbacks.

IX. MEDICAID CLAIMS SUBMISSIONS

225. The defendant submitted claims for Medicaid payment and received Medicaid payment from MassHealth and MassHealth MCEs for patients that received free housing at the above-mentioned sober homes, including, for example, Patients JO, ML, HY, and RG. An

example of claims submitted to Medicaid and MassHealth MCEs during the Relevant Period is attached as Exhibit 1.

226. The defendant misrepresented their compliance with the AKS and the MAKS as part of its submission of claims for Medicaid payment. The Massachusetts Medicaid Program would not have paid these claims had it known of these violations.

227. To date, the defendant has not repaid any overpayments to Medicare, MassHealth or MassHealth MCEs stemming from the fact that it had not been in compliance with state and federal laws and regulations concerning the Massachusetts Medicaid Program.

228. Compliance was an express precondition of payment by the Massachusetts Medicaid Program; every submission of a claim implicitly represents compliance with relevant statutes, and even undisclosed violations of the AKS and the MAKS render these claims false or fraudulent. Had the Massachusetts Medicaid Program known of the regulatory and statutory violations detailed herein, it would not have paid the claims submitted by the defendant that were tainted by the illegal kickbacks.

COUNT I
False Claims Act, 31 U.S.C. § 3729(a)(1)(A)
Presenting False Claims for Payment

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

230. The defendant knowingly submitted claims for payment to federal healthcare programs for the provision of partial hospital program services that were false, fraudulent, and not payable, because the defendant knowingly and willfully offered and paid remuneration in the form of free sober housing in violation of the AKS to induce substance use recovery patients to

enroll in or attend the defendant's PHP, for which payment was made in whole or in part by federal healthcare programs including Medicare and Medicaid.

231. By virtue of these false or fraudulent claims, the United States suffered damages in an amount to be determined at trial.

COUNT II
False Claims Act, 31 U.S.C. § 3729(a)(1)(B)
Use of False Statements

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

233. The defendant knowingly made or used, or caused to be made or used, false records or statements material to false or fraudulent claims submitted to the United States, and the United States' payment of those claims was a reasonable and foreseeable consequence of the defendant's statements and actions.

234. These false records and statements included false certifications on provider enrollment forms and false and misleading representations on claim forms that the claims to federal healthcare programs for partial hospital program services complied with the AKS, when in fact those claims violated the AKS.

235. The defendant made or used, or caused to be made or used, such false records or statements with actual knowledge of their falsity, or with reckless disregard, or deliberate ignorance of whether they were false or fraudulent.

236. By virtue of these false or fraudulent claims, the United States suffered damages in an amount to be determined at trial.

COUNT III
False Claims Act, 31 U.S.C. § 3729(a)(1)(C)
Conspiracy to Submit False Claims

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

238. The defendant entered into an unlawful agreement to cause the presentation of false or fraudulent claims to the United States and performed acts in furtherance of this conspiracy. The defendant entered into agreements with sober homes through which the defendant agreed to pay for the sober housing of substance use recovery patients in violation of the AKS to induce the substance use recovery patients to enroll in and attend the defendant's PHP, for which payment was made in whole or in part by federal healthcare programs including Medicare and Medicaid. Furthermore, the defendant used and directed the use of personnel and assets to effectuate those unlawful payments.

239. By virtue of the resulting false or fraudulent claims, the United States suffered damages in an amount to be determined at trial.

COUNT IV
Unjust Enrichment – United States

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

241. This is a claim for the recovery of monies by which the defendant has been unjustly enriched.

242. By directly or indirectly obtaining from the United States, through federal healthcare programs, funds to which they were not entitled, the defendant was unjustly enriched, and is liable to account and pay such amounts, or the proceeds therefrom, which are to be determined at trial.

COUNT V
Payment by Mistake – United States

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

244. This is a claim for the recovery of monies the United States paid directly or indirectly to the defendant as a result of mistaken understandings of fact.

245. The United States' mistaken understandings of fact were material to its decisions to pay claims the defendant submitted to federal healthcare programs for partial hospital program services.

246. The United States, acting in reasonable reliance on the truthfulness of the claims to federal healthcare programs for partial hospital program services, paid monies directly or indirectly to the defendant to which they were not entitled. Thus, the United States is entitled to recoup such monies, in an amount to be determined at trial.

COUNT VI
Massachusetts False Claims Act, M.G.L. c. 12, § 5B(a)(1)
Presenting False Claims for Payment

247. Massachusetts incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

248. During the Relevant Period, the defendant violated the MAKS when it knowingly and willfully offered and paid indirect remuneration in the form of free sober housing in violation of the MAKS to induce substance use recovery patients to enroll in and participate in the defendant's PHP for which payment was made in whole or in part by Medicaid. As a result of these violations, the defendant, either with actual knowledge, deliberate ignorance, or reckless disregard, knowingly submitted or caused to be submitted false or fraudulent claims for services in violation of M.G.L. c. 12, § 5B(a)(1).

249. These claims were false as they were for services not eligible for reimbursement because the defendant misrepresented compliance with applicable state and federal laws and regulations that are conditions of payment. These misrepresentations were material as that term is defined in the MFCA and interpreted by the courts.

250. By virtue of these false or fraudulent claims, Massachusetts suffered actual damages in an amount to be determined at trial and is entitled to treble damages plus monetary civil penalties.

COUNT VII
Massachusetts False Claims Act, M.G.L. c. 12, § 5B(a)(2)
Use of False Record or Statement

251. Massachusetts incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

252. During the Relevant Period, the defendant knowingly made, used, or caused to be made or used, false records or statements material to false or fraudulent claims submitted to Medicaid, and Medicaid's payment of those claims was a reasonable and foreseeable consequence of the defendant's statements and actions.

253. These false records and statements included false certifications or provider enrollment forms and false and misleading representations on claim forms that the Medicaid claims for PHP services complied with federal and state laws, when in fact those claims violated the MAKS.

254. The defendant made or used, or caused to made or used, such false records or statements with actual knowledge of their falsity, or with reckless disregard, or deliberate ignorance of whether they were false or fraudulent.

255. By virtue of these false or fraudulent claims, Massachusetts suffered actual damages in an amount to be determined at trial and is entitled to treble damages plus civil monetary penalties.

COUNT VIII
Massachusetts False Claims Act, M. G. L. c. 12, § 5B(a)(3)
Conspiracy

256. Massachusetts incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

257. During the Relevant Period, the defendant entered into an unlawful agreement to cause the presentation of false or fraudulent claims to Massachusetts and performed acts in furtherance of this conspiracy. The defendant entered into agreements with sober homes through which the defendant agreed to pay for the sober housing of substance use recovery patients in violation of the MAKS to induce the substance use recovery patients to enroll in or attend the defendant's PHP for which payment was made in whole or in part by Medicaid. Furthermore, the defendant used and directed the use of its personnel and assets to effectuate those unlawful payments.

258. By virtue of the resulting false or fraudulent claims, Massachusetts and Medicaid suffered actual damages in an amount to be determined at trial and is entitled to treble damages plus civil monetary penalties.

COUNT IX
False Claims in Violation of Massachusetts Medicaid False Claims Act, M.G.L. c. 118E, §§ 40,44

259. Massachusetts incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

260. During the Relevant Period, the defendant failed to comply with applicable state and federal anti-kickback statutes. The Massachusetts Medicaid program was unaware of the noncompliance. As a result of this noncompliance, the defendant, either with actual knowledge or in willfull blindness, knowingly and willfully made or caused to be made false claims for services to the Massachusetts Medicaid Program in violation of M.G.L. c. 118E, § 40.

261. These claims were false as they were for services not eligible for reimbursement because the defendant misrepresented compliance with applicable state and federal laws and regulations that are conditions for payment. These misrepresentations were material as that term is defined in the MFCA and interpreted by the courts.

262. By virtue of these false or fraudulent claims the defendant submitted or caused to be submitted, Massachusetts and Medicaid suffered actual damages in an amount to be determined at trial and is entitled to treble damages plus the cost of investigation and litigation, in accordance with M.G.L c. 118E, § 44.

COUNT X
Recovery of Overpayment, 130 C.M.R. §§ 450.237, 450.260(A), 450.260(I)

263. Massachusetts incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

264. During the Relevant Period, the defendant failed to comply with applicable state and federal anti-kickback statutes in violation of the MAKS. The Massachusetts Medicaid Program was unaware of the noncompliance. As a result of this noncompliance, the defendant, either with actual knowledge or in willful blindness, knowingly and willfully made or caused to be made false claims for services to the Massachusetts Medicaid Program in violation of M.G.L. c. 118E, § 40.

265. These claims were false as they were for services not eligible for reimbursement because the defendant misrepresented compliance with applicable state and federal laws and regulations that are conditions of payment. The defendant submitted claims for services while the defendant were not in compliance with the applicable state and federal statutes. The Massachusetts Medicaid Program paid those claims.

266. By virtue of the defendant's submission of claims while in violation of the AKS and MAKS, the Massachusetts Medicaid Program made overpayments to the defendant.

267. The defendant is liable to repay Massachusetts the amount received from these overpayments in an amount to be determined at trial.

COUNT XI
Unjust Enrichment – Massachusetts

268. Massachusetts incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

269. This is a claim for the recovery of monies by which the defendant has been unjustly enriched. If the defendant had not impliedly mispresented compliance with state and federal laws, the Massachusetts Medicaid Program would not have paid for the claims submitted for PHP services. By retaining monies received from the submission of claims that were reimbursed by the Medicaid program, the defendant has retained money that is the property of Massachusetts and to which the defendant is not entitled.

270. It is unfair and unequitable for the defendant to retain revenue from payments from the Massachusetts Medicaid Program that the defendant obtained by violating state law, federal law, and provider contracts for each MassHealth member the defendant billed following the defendant's offer to provide and payment for sober housing for enrolling in and attending the defendant's PHP.

271. By directly or indirectly obtaining from Massachusetts, through Medicaid, funds to which they were not entitled, the defendant was unjustly enriched, and is liable to account and pay such amounts, or the proceeds therefrom, which are to be determined at trial.

COUNT XII
Breach of Contract – Massachusetts

272. Massachusetts incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

273. The defendant breached its Massachusetts Medicaid Program provider contracts during the Relevant Period by submitting illegitimate claims for payment to Massachusetts Medicaid Program for services provided that did not comply with federal and state law, specifically the AKS and MAKS.

274. During the Relevant Period, the defendant breached its Massachusetts Medicaid Program provider contracts by failing to comply with all state and federal laws, regulations, and rules applicable to participation in the Massachusetts Medicaid Program and submitting claims for payment that were based on claims for services not in compliance with all state and federal laws, regulations, and rules applicable to the Massachusetts Medicaid Program.

275. Each illegitimate claim submitted by the defendant that was not in compliance with the Massachusetts Medicaid Programs' rules and regulations constitutes a breach of the defendant's provider contracts.

276. By failing to comply with all applicable state and federal laws, regulations, and rules applicable to the Massachusetts Medicaid Programs, the defendant materially breached their Massachusetts Medicaid Program provider contract.

277. As a result of the defendant's breach of its provider contracts, Massachusetts and Medicaid has been significantly damaged.

PRAYER FOR RELIEF

The United States requests that judgment be entered in its favor and against the defendant as follows:

(a) On Counts I, II, and III (False Claims Act), for treble the United States' damages, together with the maximum civil penalties allowed by law;

(b) On Count IV (Unjust Enrichment), in the amount the defendant was unjustly enriched;

(c) On Count V (Payment by Mistake), in the amount the defendant illegally obtained and retained; and

(d) For pre- and post-judgment interest, costs, and other such relief as the Court may deem appropriate.

Massachusetts requests that judgment be entered in its favor and against the defendant as follows:

(a) On Counts VI, VII, and VIII (Massachusetts False Claims Act), for the amount of Massachusetts' damages, trebled as required by law, plus the costs of investigation and litigation, including the costs of experts, and civil penalties as required by M.G.L. c. 12, § 5B, together with such other relief as may be just and proper;

(b) On Count IX (Medicaid False Claims Act), for the amount of Massachusetts' damages, trebled as required by law, plus the costs of investigation and litigation, including the costs of experts together with such relief as may be just and proper;

(c) On Count X (Recovery of Overpayment), for the amount of Massachusetts' damages, as is proved at trial, and costs;

(d) On Count XI (Unjust Enrichment), in the amount the defendant was unjustly enriched, as is proved as trial, and costs;

(e) On Count XII (Breach of Contract), for the amount of Massachusetts' damages, as is proved at trial, and interest at the statutory rate of 12% per annum pursuant to M.G.L. c. 231, § 6C, from the date of each breach of contract, together with such relief as may be just and proper;

(f) For pre- and post-judgment interest, costs, and other such relief as the Court may deem appropriate.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, the United States and Massachusetts request a trial by jury.

Respectfully submitted,

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Dated: October 2, 2023

CERTIFICATE OF SERVICE

I certify that, on October 2, 2023, that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

By: /s/ *Steven T. Sharobem*
Steven T. Sharobem
Assistant United States Attorney