

## Eli's Rehab Report

### Industry Note: Look for These Red Flags in Therapy Reporting & Documentation

If you use a contractor to provide therapy to your residents, beware that the contractor's billing misdeeds can get you into hot water, too. Here's how a contract therapy provider's alleged false claims to Medicare impacted more than 1,000 skilled nursing facilities (SNFs).

**RehabCare Group Inc.** and **RehabCare Group East Inc.** operate as **RehabCare** under **Kindred Healthcare Inc.**, providing contract therapy services to SNFs. RehabCare is the largest therapy provider in the United States, contracting with more than 1,000 SNFs in 44 states.

RehabCare has recently come under fire for allegedly violating the False Claims Act by knowingly causing SNFs to submit false claims to Medicare for rehab therapy services that were not reasonable, necessary or skilled, or that never occurred, according to a Jan. 12 announcement by the **U.S. Department of Justice (DOJ)**.

The DOJ release rattles off a laundry list of scams to game the Medicare system and maximize therapy reimbursement for RehabCare and four nursing homes.

"RehabCare and its nursing facility customers engaged in a systematic and broad-ranging scheme to increase profits by delivering, or purporting to deliver, therapy in a manner that was focused on increasing Medicare reimbursement rather than on the clinical needs of patients," says U.S. Attorney **Carmen M. Ortiz** for the District of Massachusetts in the DOJ release.

The DOJ charged that "RehabCare's policies and practices, including setting unrealistic financial goals and scheduling therapy to achieve the highest reimbursement level regardless of the clinical needs of its patients, resulted in RehabCare providing unreasonable and unnecessary services to Medicare patients and led its SNF customers to submit artificially and improperly inflated bills to Medicare that included those services."

**Watch out:** RehabCare entered into a settlement agreement with the DOJ that included a \$125-million payout. But the DOJ didn't stop with RehabCare — it went after the SNF clients as well. Among other SNFs involved in the case, the DOJ announced the following most recent settlements:

- \$3.9 million with **Wingate Healthcare Inc.** and 16 of its facilities in Massachusetts and New York;
- \$2.2 million with THI of Pennsylvania at **Broomall LLC** and THI of Texas at **Fort Worth LLC**;
- \$1.375 million with **Essex Group Management** and two of its Massachusetts facilities; and
- \$750,000 with Frederick County, Maryland, which formerly operated the **Citizens Care SNF**.

The DOJ claims that RehabCare had a variety of schemes aimed at defrauding Medicare. If you use a contractor for therapy services, look for these red flags from the RehabCare charges:

1. Presumptively placing patients in the highest therapy reimbursement level, rather than relying on individualized evaluations to determine the level of care according to the patient's clinical needs;
2. Boosting the amount of reported therapy during "assessment reference periods," thereby causing and enabling SNFs to bill Medicare at the highest therapy reimbursement level;
3. Scheduling therapy and reporting therapy provided to patients even after the patients' treating therapists recommended discharging them from therapy;

4. Arbitrarily shifting the number of planned therapy minutes among different therapy disciplines to achieve targeted therapy reimbursement levels, regardless of the clinical need for the therapy;
5. Providing significantly higher amounts of therapy at the very end of a therapy measurement period not due to medical necessity but rather to reach the minimum time threshold for the highest therapy reimbursement level;
6. Inflating initial reimbursement levels by reporting time spent on initial evaluations as therapy time rather than evaluation time;
7. Reporting that skilled therapy had been provided to patients when the patients were asleep or otherwise unable to undergo or benefit from skilled therapy (such as when a patient transitioned to palliative or end-of-life care); and
8. Reporting estimated or rounded minutes instead of reporting the actual minutes of therapy provided.

**Link:** To read the DOJ announcement, go to [www.justice.gov/opa/pr/nation-s-largest-nursing-home-therapy-provider-kindredrehabcare-pay-125-million-resolve-false](https://www.justice.gov/opa/pr/nation-s-largest-nursing-home-therapy-provider-kindredrehabcare-pay-125-million-resolve-false).