THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA Ex. Rel. Janet Halpin and Shawn Fahey as co-relators,	)
Plaintiffs	) Civ. Action No. 11-12139-RGS
v.	) FILED UNDER SEAL) PURSUANT TO 31 U.S.C.) SECTION 3730(b)(2)
Kindred Healthcare Inc. and Wingate Healthcare, Inc. Defendants	) DO NOT PLACE IN PRESS) BOX OR IN PACER

SECOND AMENDED FALSE CLAIMS ACT COMPLAINT AND DEMAND FOR JURY TRIAL
(LEAVE TO FILE GRANTED ON 2.12.2015)

INTRODUCTION

Plaintiff, the United States of America, by Janet Halpin and Shawn Fahey, as co-relators, ("Relator Halpin" and "Relator Fahey") bring this action under the False Claims Act, as amended, 31 U.S.C. Sections 31 U.S.C. 3729 et seq ("FCA").

1. This is an action by the Relators Janet Halpin and Shawn Fahey on behalf of the United States of America to recover penalties and damages arising from a fraudulent billing scheme in which the defendants, Kindred Healthcare Inc. and RehabCare Group Inc. (hereinafter "Defendant Kindred/RehabCare") and Wingate Healthcare Inc., (hereinafter "Defendant Wingate,") or otherwise sometimes both referred to as "The Defendants." The Defendants willfully, fraudulently and deliberately overcharged or caused overcharges to be submitted to the United States Government for rehabilitation services provided to Medicare A patients, for a period of time at least from 2005 to June 2013. Additionally, as to Defendant Kindred-RehabCare , this nation-wide systematic

scheme of fraud is ongoing. The Defendants knowingly, fraudulently and purposefully billed or caused fraudulent bills to be submitted to Medicare for rehabilitation services provided to patients, which services were excessive and unrelated to the individual patient needs and purposefully designed to maximize the Defendants' reimbursements from Medicare in order to boost their corporate profits. In addition, the Defendant Kindred/RehabCare punished those employees who did not meet the strictly enforced productivity quotas, which also resulted in excessive treatments rendered to patients unrelated to their medical needs and which resulted in fraudulent bills to Medicare, even in the cases of some patients who could not physically tolerate the overly rigorous treatment schedules.

2. This complaint is based upon non-public information regarding the Defendant Kindred/RehabCare and Defendant Wingate relating to therapy services scheduling and billing practices, which were and are company-wide for both Defendants and which are designed to obtain the highest levels of Medicare reimbursement without consideration of medical necessity or need. The purposeful and knowing actions of both Defendants violated, among other laws, 42 U.S.C. Section 1395y(a)(1)(A) which provides that *no Medicare payment may be made for items and services that "are not reasonable and necessary for the diagnosis or treatment of illness or injury..."*

3. As required by 31 U.S.C. sec. 3730(b)(2), Relators Halpin and Fahey have provided to the Attorney General of the United States and to the United States Attorney for the District of Massachusetts, s statement of all material evidence and information related to the complaint, with specific and detailed information concerning the defendant Kindred/RehabCare and defendant Wingate. The disclosures are supported

by material evidence known to the relators resulting from their observations and information learned during their work for or with Defendant Kindred/RehabCare and in the case of Relator Halpin when she worked at a Wingate facility.

JURSIDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 31 U.S.C. sections 3732(a) and (b) and is brought under 31 U.S.C. section 3730.

5. Venue is proper in this district pursuant to 31 U.S.C. section 3732(a) because The Defendants are located in this district and transact business in this district and the Defendants committed a number of acts proscribed by 31 U.S.C. Section 3729 in this district.

PARTIES

Relator Halpin

6. Relator Halpin is a licensed physical therapist and resident of Amesbury Massachusetts who was employed by the Defendant RehabCare (Kindred/RehabCare), from 2008 until 2010 as a per diem physical therapist. In 2010, she was promoted to Rehabilitation Manager by the company and assigned to work at Defendant Wingate's Skilled Nursing Residence in Haverhill Ma. Relator Halpin worked for the Defendant RehabCare (Kindred/RehabCare), as Rehab Manager through the acquisition of RehabCare by Kindred in 2011(Kindred/RehabCare) and continued working for defendant Kindred/RehabCare on until March 2013.

Relator Fahey

7. Relator Fahey is a licensed occupational therapist who was employed by

RehabCare (Kindred/RehabCare), from June 23, 2010 to April 10, 2011 at The Edgewood Retirement Community ("Edgewood"), a skilled nursing residence located in Haverhill, Massachusetts. She is a resident of New Hampshire.

Defendant Kindred/RehabCare

8. Defendant Kindred/RehabCare: At all times relevant, Kindred Healthcare Inc.(hereinafter "Kindred"), is and has been a corporation formed under the laws of Delaware with its principal place of business in Louisville Kentucky. It provided skilled rehabilitations services, including physical, occupational and speech therapy to patients at skilled nursing facilities ("SNF's") and assisted and independent living facilities around the country.

At all times relevant, RehabCare Group Inc. (hereinafter "RehabCare"), is and has been a corporation formed under the laws of Delaware with its principal place of business in St. Louis Missouri, providing rehabilitation skilled nursing facilities, out-patient facilities and in over 2000 hospitals in 46 states. On June 1, 2011, RehabCare was acquired on by Kindred and per the terms of the Merger Agreement between Kindred and RehabCare, RehabCare merged into Kindred. When this happened, the separate corporate existence of RehabCare ceased. For all purposes hereto, the Defendant Kindred and RehabCare shall be referred to as Kindred/RehabCare.

Defendant Wingate

9. At all times relevant, the Defendant Wingate HealthCare Inc.(hereinafter "Wingate") is and has been a corporation formed under the laws of Delaware, registered in Massachusetts where it operates and manages nursing facilities and assisted living facilities in Massachusetts and New York. Wingate owns and operates a facility in

Haverhill Massachusetts, where Relator Halpin worked. Wingate At Haverhill has capacity for 127 residents using approximately 146 beds. Defendant Wingate contracts with Defendant Kindred/RehabCare for the services of Speech Therapists, Occupational Therapists and Physical Therapists for Medicare A and B patients.

10. The fraudulent practices engaged by Defendants Kindred/RehabCare and Defendant Wingate are company-wide within each of the defendants' operations. Defendant Kindred/RehabCare's fraudulent practices are engaged in all of its facilities throughout the United States and the company fraud described herein has been ongoing for several years and continues to be ongoing. This fraud resulting in fraudulent submissions of invoices to Medicare has cost the government millions of dollars which should not have been paid to the defendant.

MEDICARE PAYMENT FOR SERVICES

11. The Medicare and Medicaid Programs are large medical assistance programs involving billions of dollars in Government spending to health care providers each year. As alleged, the defendant submitted or caused to be submitted false or improper claims for treatment of Medicare beneficiaries under the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. Sections 1395, et seq. in violation of the False Claims Act.

12. The False Claims Act imposes liability on any person who knowingly presents or causes to be presented a false or fraudulent claim for payment or approval to the federal government. 31 U.S.C. Section 3729(a)(1).

13. As one of its functions, the United States Department of Health and Human Services (HHS), through the Healthcare Financing Administration (HCFA), administers the Medicare Program.

14. Medicare reimburses hospitals and other medical providers in two ways. First, Medicare Part A funds healthcare facilities that care for Medicare patients. Second, Medicare Part B pays providers for "identifiable personal" care for Medicare patients.

15. Physical, occupational and speech therapy for skilled nursing facility patients are covered services under the Medicare program but Medicare coverage guidelines state that the therapy "must be reasonable and necessary for the treatment of the patient's condition: this includes the requirement that the *amount, frequency, and duration* of the services must be reasonable." CMS Skilled Nursing Facility Manual Section 214.3A1 Furthermore, The Social Security Act Provides that ***no Medicare payment may be made for items and services that "are not reasonable and necessary for the diagnosis or treatment of illness or injury***..."42 U.S.C. Section 1395y (a)(1)(A). To lawfully bill Medicare for services, documentation regarding such services *must adequately establish reasonableness and medical necessity*. Congress has conditioned payment for many Medicare items and services on a certification signed by a physician attesting that the item or service is medically necessary. The Defendant **Kindred/RehabCare's own Code of Conduct states that the False Claims Act applies to Medicare and Medicaid program reimbursements and prohibit, among other things "billing for unnecessary services."**

FACTS COMMON TO ALL COUNTS

Billing for Medically Unnecessary Services – Setting Schedules For Highest Levels of Reimbursement

Defendant Kindred/RehabCare

16. As part if her duties as the Rehabilitation Manager at Wingate Haverhill,

Relator Halpin oversaw the schedules of patient treatments by the speech therapists, occupational therapists and physical therapists employed by Defendant Kindred/RehabCare. The Kindred/RehabCare guidelines, utilization rates systems and quotas incorporate a "carrot and stick" approach to assure strict adherence to schedules which were set with total disregard to patient medical necessity.

17. Defendant Kindred/RehabCare has a company-wide mandate that 60-70% of the patients receiving therapies should be scheduled to reach the "Ultra High" level of Medicare reimbursement, the highest Resource Utilization Group("RUG") Medicare reimbursement level. This company mandate is tightly controlled via the scheduling of patient therapies both in terms of the numbers of sessions per week as well as the minutes per session. To reach the 60-70% goal means that of ten patients 6-7 must meet the Rehab level of Ultra High or 720 minutes during the ARD "look back" period. These mandates are enforced rigorously by the Defendant Kindred/RehabCare via close real time computer monitoring of schedules; by regional administrators and also via daily email and telephonic communications with Rehab Managers in each facility by Regional Managers employed by the company. For example in an email sent from the Defendant's Director of Operations to an operations area in January 2011 said "Remember KPI goals for the whole region Part A 1.1. RUG distrib RU 60-70%..."

18. The Assessment Reference Date (ARD) is the date that signifies the end of the "look back" period used by Medicare to determine the patient's level of care for purposes of reimbursement. Medicare has established levels for reimbursement as follows: ***Ultra High 720 + Minutes 2 Disciplines; 1 Discipline at a minimum 5 Days; 144 min/day. Very High 500+ Minutes; Minimum 1 Discipline 5 Days 100 min/day;***

High 325+Minutes; Minimum 1 Discipline 5 Days; 65 min/day; Medium 150+ minutes 5 Days across 3 Disciplines; 30 min .day; Low 45+ minutes; 45 minutes total + 2 nursing rehab functions for at least 6 days; 45 min/week. Defendant Kindred/RehabCare sets patient schedules for either Ultra High (UH); Very High (VH) or High (H) and Medicare is billed for these levels based on the number of treatments and the minutes per treatment even though they are not based on patient medical need.

19. By instruction, Relator Halpin set schedules by taking the treatment frequency set by the evaluating therapist employed by the Defendant Kindred/RehabCare and then inputting sufficient minutes in each treatment during the week to meet the RUGs levels during and only during the ARD look back periods.

Patient "evaluations" and Setting Number of Therapies For Profit Not Medical Need

20. The Defendant Kindred/RehabCare requires that patients be evaluated immediately for therapy treatments by one of the Kindred/RehabCare therapists. In addition, Kindred/RehabCare mandates Rehab Managers to immediately review each patient's therapy schedule and to determine the number of minutes for each treatment session.

21. Before patients arrive at the various facilities serviced by Defendant Kindred/RehabCare, emails are sent from the medical facility to Kindred /RehabCare Rehab Managers, alerting them that a new patient will be arriving. On the day of arrival, the patient is required to be evaluated by a Kindred/RehabCare Therapist. 100% of all patients evaluated are expected to receive therapy. In addition, invariably, Kindred/RehabCare patients are automatically scheduled for five days a week of therapy and often with more than one type of therapy per day. This schedule for the

number of days for therapy is set regardless of patient medical necessity. The therapists know that Med A patients require therapy five days per week in order for it to be "billable."

22. During the period of time that Relator Fahey was employed by the Defendant Kindred/RehabCare, she too observed that all of the patient schedules were set so that they would reach one of three highest Medicare RUGs reimbursement levels, Ultra, Very High or High. Relator Fahey observed that it was automatic that each and every Medicare A patient would be scheduled for therapies five times per week. In addition, she observed that the number of minutes per session was set to assure that the schedule would result in reimbursement at the highest levels during the "look back period" for Medicare. That is the period when it is determined what Medicare reimbursement rates would be set. Often the scheduled minutes were very long, over 80 minutes per session and Relator Fahey was told that this was because the company had to make up minutes lost when a patient had refused therapy sessions.

Ramping Down Schedules After The "Look Back Period" To Increase Profits

23. The Defendant Kindred/RehabCare engaged and implemented a set of highly structured rules, procedures, quotas and productivity rates. In addition the Defendant Kindred/RehabCare uses a computerized monitoring program to help control the therapy schedules for highest profits. After the reimbursement rates are established during the look back period, when that period is over, the therapy schedules are then ramped down significantly to reduce the Defendant Kindred/RehabCare's labor burden thereby increasing profits. The reimbursement payments during this "ramp-down" period remained at the higher levels set during the look back period, because of the way

Medicare payments are reimbursed. The result is that millions of dollars in fraudulent bills were caused to be issued to Medicare, were received by Medicare and paid by Medicare.

24. Relator Halpin observed specific examples of the look back spiking and post look back period ramping down on the following patients:

a) Patient "C.C.": MedA. Look back period set 2/5/11 784 Ultra. 2/12 reductions begin to Very High (601,631,554,509,505 and 424) by 2/17 patient is at High.

b) Patient "M.B.": MedA. Look back period set 12/17/2010 721 Ultra. The next day dropped to 661 Very High; 12/21/2010 611; 12/23 557 and by 12/24 at 429 which is Medium.

c) Patient "M.B." MedA. Look back period set 4/13/2011 767 Ultra. 4/15/2011 700 Very High; 4/17/2011 677; 4/19/2011 434 High.

d) Patient "E.B." Med A. Look back period started 9/02/2011 802 Ultra. 9/09/2011 612 Very High; 9/13/2011 192 Low; 9/15/2011 Medium and by the next look back period day 9/19/2011, she is back to Ultra at 763.

e) Patient "M.B." MedA. Look back period started 4/13/2011 at 764 Ultra. By 4/18/2011 she is at 28 Low; 4/19/2011 169 low and by 4/27/2011 the next lookback date she is back up to Ultra with 770.

f) Patient "V.B." MedA. Look back period starts 11/24/2010 at 773 Ultra. The next day 11/25/2010 he is down to 688 Very High and by 11/28/2011 down to 590 Medium and by 12/01/2010 229 Medium.

g) Patient "E.B." MedA. Look back 7/30/2011 349 High. 8/01/2011 346 Medium. 8/06/2011 185 Medium.

h) Patient "S.B." MedA. Look Back 4/27/2011 734 Ultra. 4/29/2011 634 very High. By 5/6/2011 438 Medium.

i) Patient "C.C." MedA. Look Back 11/29/2011 721 Ultra. 11/20/2011 626 Very High and by 12/08/2011 566 Medium.

j) Patient "D.C." MedA. Look Back 4/24/2011 770 Ultra; 4/26/2011 655 High and by 4/28/2011 354 Medium.

25. Relator Halpin estimates that she has set schedules of hundreds of patients at Kindred/Rehabcare since becoming Rehab Manager in 2008 in which the look back reimbursement rates were set at Ultra and just after the look back period was dropped down significantly to increase company profits.

26. The Defendant Kindred/RehabCare's therapists and Rehab Managers knew, as they were told by the Defendant Kindred/RehabCare, that they had to meet schedules of patients for therapy 5-6 days per week at the high number of minutes in order to make company quotas.

27. After the daily schedules of therapy were set, Relator Halpin then scheduled the number of minutes per therapy session that would meet the Defendant's requirements including having 60-70% of the team's patients in the RU RUG level, the highest Medicare reimbursement level. The scheduling was *unrelated* to the patient medical needs. However, in circumstances where patients could not physically tolerate the scheduled therapies, she lowered the minutes, occurrences for which she was criticized and which became the basis for the Defendant's retaliation against Relator Halpin including her eventual termination.

28. Kindred/RehabCare specifically defines the productivity of its therapists as their total *billable* minutes divided by the total time the therapist is in the building. The company also mandates that when a therapist drops below the required productivity of 85% (patient billable to Medicare), then they are not allowed to stay in the building, *they must leave*. As a practical matter, this means that they are sent home and are not paid for time not in the building.

29. In order to maintain their health insurance benefits, the Defendant Kindred/RehabCare's therapists must work at a facility for a minimum of 24 hours per week. As stated, because company rules do not allow therapists to remain at a facility when they are not actually treating patients, this means they must always have patients to treat to maintain their hours. As a result of this "Catch-22," all patients are initially scheduled for five days a week of therapy with more than one type of therapy per day, at the highest levels, in order to protect the therapist's jobs by assuring a sufficient pool of patients with scheduled therapies to fill therapist's time. These schedules are set regardless of patient medical necessity. The therapists are paid on an hourly basis without holiday pay or over time, which means that the only way therapists make extra money is through the bonus system.

Trolling For Patients

30. Defendant Kindred/RehabCare's therapists who run low on patients to treat are at risk for loss of benefits and ultimately their job. As part of the Kindred/RehabCare protocols, the therapists are required to "troll" facilities for patients who had not previously been ordered medically to receive therapy services. Trolling was not done for reasons of medical necessity of the patients, but rather to boost and maintain company

profits and provide an injection of new patients into the system. The Defendant Kindred/RehabCare calls the trolling process "Part B Identification." For example, in one email, the Defendant's Operations Manager stated "PD has done a stellar job of identifying patients to pick up..." Trolling involves therapists walking around the facilities and asking nurses if any patients are having trouble walking, eating or speaking. If a nurse responds affirmatively, the therapist does an immediate evaluation.

31. Relator Fahey observed that Kindred/RehabCare patients would generally arrive from the hospital with "OT/PT" work orders already in their medical records. The relator or other therapists would then evaluate the patients the same day or the next day in order to write "clarification orders". The patients were all scheduled for five days per week of therapy sessions. Relator Fahey observed that there were patients who did not need five days and in fact some who should not have been there at all. As an example, many of the Med B would be scheduled for just 3 days per week.

32. Unless a patient was unable to do the therapy due to a physical limitation, the Defendant Kindred/RehabCare therapists are required to pressure the patients to complete each therapy session that was assigned to them.

Computer Programming Patient Schedules Based on Profit Not Medical Necessity

33. Defendant Kindred/RehabCare uses a computer software program which is designed to automatically reconfigure patient treatment schedules to maximize company profits. For example, the computer program used by the Defendant was programmed to notice immediately when the planned minutes did not match directly with company utilization rates. More specifically, the computer program called "Planner3" automatically changed planned minutes if under-delivery occurred. For example, where

a therapist felt a session was completed, stopping the therapy five minutes early, the computer automatically added the five minutes on to the next day's session. This program is used on a company-wide basis and patient therapy schedule alterations by computer has been a daily occurrence for at least two years.

34. The Defendant Kindred/RehabCare Planner3 also automatically changes planned minutes if "under delivery" occurs and the patient is in the look back period. For example, if PT planned 60 minutes and provided 50 the following day, 10 additional minutes will have been added to the PT planned minutes. This is done without regard to patient need. This is alsodone despite the fact that there are many reasons why a full 60 minutes would not be appropriate, including the physical intolerances of individual patients. A computer should not be deciding how long the patient treatment should last, as patient medical needs must be determined individually by medical personnel.

Company wide utilization rates for therapist productivity fueling the fraud

35. The Defendant Kindred/RehabCare has established a "utilization rates" system which is a productivity measure strictly enforced nation wide. Failure by an employee to heed the Defendant's quotas sometimes resulted in termination. Utilization rates are used to determine how tightly the daily minutes are managed to attain the "capped" number of minutes of the anticipated RUG levels.

36. The company utilization rate (UR) is determined by taking the total number of "capped" Medicare minutes by levels (720 Ultra; 500+ Very High; 325+ High; 150+ or 45+) divided that by the minutes of therapy actually delivered to the patients. For example 720 minutes capped (Ultra) (the maximum that will be paid) divided by 795 actual minutes spent with the patients would equal a 91% utilization rate.

All employees are required to keep track of the time in therapy and to know their UR. The company-wide UR budget goal is 1.1.

37. As a practical matter only way a department or division could possibly meet the established company budget goal of 1.1 utilization rate, is to restrict the number of minutes the patient receives therapy after the "look back" period, while still receiving the full reimbursement rate calculated during that period as the minutes were much higher. This means the company received full reimbursement at the highest levels but provided less labor as the sessions were reduced.

38. The Defendant Kindred/RehabCare's utilization rates and quotas are a systemic part of the Defendant's Medicare fraud as they result in treatment schedules unrelated to medical need and excessive and which are designed solely for profit.

Bonus Structures Rewarding High Therapy Schedules Not Based on Medical Need

39. Defendant Kindred/RehabCare's bonus structure pays full time therapists a bonus based on a percentage of their salaries if they meet company utilization rates and productivity requirements.

40. The bonus is solely dependant on the therapist's percentage of productivity as previously described herein. The Defendant Kindred/RehabCare incentive program is called The "PatientPlus Incentive Plan". Bonuses under this plan are calculated as a percentage, based on volume of qualifying patient care time (PCT) plus other billable time (OBT), divided by the total number of hours on site, less travel time, cross over time and student supervisory time. To qualify for the bonus, a therapist must fall within the following ranges:

THERAPIST PRODUCTIVITY BONUS

87%-89%	3%
90%-92%	4%
93%-100%	5%

41. Relators Halpin and Fahey observed that as a practical matter, the incentive plan resulted in over-scheduling of treatments because the therapists need to increase their treatment billable time in order to make the bonuses. This is especially the case because patients miss appointments for various reasons and this down time would work against the therapists obtaining any bonus. In context, the Defendant Kindred/RehabCare's scheduling structure is designed to extract the most profits from Medicare, not based on the patient's medical necessity as required by law. The Defendant Kindred/RehabCare also used the bonus program to incentivize higher amounts of therapy sessions resulting in greater profits, all unrelated to patient needs.

Discouraging Grouping of Patients

42. In October 2011, Medicare changed its billing rules for patients who received treatments in group settings. The rules stated that providers were no longer able to bill the patient separately when treated in groups, but rather had to bill by dividing the group by the number of patients that comprised the group. For example four patients would allow for billing only 25% for one patient. When that change occurred, the defendant Kindred/RehabCare sent out company-wide notification that grouping patients was to be discouraged. This determination was not related in any way to patient needs but rather it was solely to maximize profits. An August 19, 2011 email from a Supervisor employed by the Defendant Kindred/RehabCare said "…next, as you all know, the message was clear that group is no longer the "push" but a reality that we should

minimize or eliminate. I would like you all to make every attempt to implement this going forward in anticipation of Oct. 1."

Defendants Kindred/RehabCare and Wingate

Forged Physician Signatures

43. After the patients were evaluated for care by a therapist at the facility where Relator Halpin worked, the therapists' plan of care required a written signature by the patient's physician, the medical director or a Nurse Practitioner.

44. On or about February 2011, Relator Halpin learned that the medical evaluations written by the therapists were not being signed by a physician or Nurse Practitioner, but rather the initials of the Medical Director were being signed by a Licensed Practical Nurse. That nurse, employed by Defendant Wingate , told Relator Halpin that the medical director of the facility had given her permission to sign his name. That means that evaluations were not reviewed by a patient's physician, Medical Director or Practical Nurse to determine medical necessity or to verify any medical needs as required by law.

45. The certification on the therapy evaluation form reads: "I certify that I have reviewed this plan of treatment and that these services are medically necessary. Physician signature and date."

46. The Defendants Kindred/RehabCare and Wingate submitted or caused others to submit false claims to the government. Each claim submitted contained the following certification:

> Submission of this claim constituted certification that the billing Information as shown on the face hereof is true, accurate and complete. That the submitter did not knowingly or recklessly disregard or misrepresent or conceal material facts.

47. At all times relevant to the Complaint, Defendants Kindred/RehabCare and Wingate knowingly submitted or caused to be submitted false or fraudulent claims to Medicare that were (1) falsely inflated or "upcoded" and knowingly provided an inflated amount of therapy services not justified by the patient's medical condition but rather intended to secure greater payments from Medicare.

Fraudulently Extending Patient Stays Solely For Profit and Not Medical Need—Staggering Discharges

48. At all times relevant in the Complaint, Defendants Kindred/RehabCare and Wingate knowingly and purposefully extended patient stays and delayed patient discharge dates, in order to increase profits. This resulted in unnecessary treatments for the patients and costs to Medicare, which were billed or caused to be billed by the Defendants. The Defendants' preferences were and still are, not to discharge groups of patients on the same day, even where they no longer require therapy, but rather to stagger patient discharges so as to maximize and income from charges to Medicare.

49. As an example, one Defendant Kindred/RehabCare supervisor stated to Relator Halpin in an email, "If you are not staggering discharges, you should be. All disciplines are not meeting goals on the same day. This will help your utilization." This is just one example of how patient treatment and even the completion date of patient treatments are not determined by the medical necessity of the patients but rather maximizing company profits.

As another example, in an email dated September 6, 2011, Relator Halpin's Supervisor Carla Degregorio-Wolfe forwarded her an email from Kevin McDowell, R.N., the Regional Medicare/MDS Coordinator for the Defendant Wingate. Nurse McDowell

appended a Monthly report which stated: "Missed opportunities for the month. H___ (initial of patient's last name) ARD of 8.25.11 should have been a RMB (rehab medium) due to not having 5 days of therapy and only a LC1(nursing category lower reimbursement rate)...Mrs. H should have received treatment on Sunday..." The Relator Halpin explained to Mr. McDowell that the patient had cancer and was ill and wanted to go home and as a result refused treatment on Sunday.

50. Relator Halpin also observed that the Defendant Wingate as well as the Defendant Kindred/RehabCare consistently extended patient stays beyond the period of their medical needs. Relator Halpin attended a number of Medicare Meetings with Defendant Wingate management, in which she was informed that she should stagger discharges of patients so as not to offset the Medicare census. For example, in one Medicare meetings at Wingate taking place on December 13, 2011, Relator Halpin was told by Mr. McDowell that "Between now and Monday you have 8-10 discharges of people coming off Medicare. This is going to kill your Medicare census. You have at least 4 discharges, can't you spread them out? " At the same meeting, Peter Lorigan, a Wingate administrator, explained how one patient wanted to leave last week but he was pushed out (extended) another week.

False Billings For Services Not Rendered and Wrongful Termination of Relator Fahey

52. An Assistant Physical Therapist employed by Defendant Kindred/RehabCare in North Andover Massachusetts, known to Relator Fahey by his first name "David", repeatedly and over at least two years, billed time to Medicare patients he was not treating. Relator Fahey and another therapist brought this to the

attention of Relator Fahey's supervisor but nothing was done. The fraudulent billing continued and the employee was not punished or terminated.

53. On April 10, 2011, shortly after complaining to Ms. Murray about David, Relator Fahey was called in and told that she was being terminated from her employment at RehabCare.

Retaliation and Wrongful Termination of Relator Halpin

54. During the course of her employment with the Defendant Kindred/RehabCare, relator Halpin attempted to match the level of treatment rendered to the patient medical needs. This was a difficult and daily task as the Defendant Kindred/RehabCare because her supervisors were constantly pressing for increased treatment minutes in order to reach the highest reimbursement levels.

55. The daily stress upon Relator Halpin increased over time in 2012 and early 2013 as the company efforts on meeting quotas and increasing minutes increased.

56. In her position, Relator Halpin felt compelled to try to halt her employer's pressures to place patients into the highest levels of treatment regardless of their medical conditions or needs, for the patients' well being.

57. Relator Halpin's supervisors sent frequent emails and called her when the numbers of minutes on patients went down. In addition, at Medicare meetings, the Relator was asked on a weekly basis as to why certain patient treatment numbers were so low.

58. When a patient was unable to physically endure increased therapy minutes, Relator Halpin tried to adjust the minutes down. Frequently she was

reprimanded for doing so and was pressured to instruct the therapists to increase the minutes.

59. On various occasions, when the therapy minutes were too low in the eyes of the Defendant's supervisors, Relator Halpin was asked why she didn't come in on weekends to provide more therapy.

60. These pressures increased in the first few months of 2013.

61. On March 7, 2013, Relator Halpin received a call from James Herdlin of Human Resources in which he informed her that she was terminated effective immediately. Relator Halpin inquired as to the reason for the termination and stated that he could not state the reasons for her termination.

.Count I: FALSE CLAIMS ACT VIOLATION KINDRED/REHABCARE

62. The Relators restate and incorporated by reference all paragraphs above as if fully set forth herein.

63. Defendant Kindred/RehabCare knowingly presented or caused to be presented, directly or indirectly, false and fraudulent claims for payment or approval to the United States, including claims for payment for services rendered to patients that were not medically necessary and for services falsely inflated during the period 2005 to 2013 as the therapy services rendered were not in relation to the patient's medical needs, as is required under law.

64. The Defendant knowingly presented or caused to be presented, directly or indirectly, false and fraudulent claims for payment for services which were excessive and/or therapy services which were not scheduled based on the medical needs of patients but rather on company profits. The Defendant manipulated Medicare's system of

reimbursements to obtain compensation at high levels, while in fact were providing patient therapy at lower levels to reduce labor costs and increase profits.

The Defendant set its therapist to troll for new patients who had not been diagnosed as needing therapy services. But for the Defendant patient trolling, a large number of patients nation-wide would never have received therapies from the defendant.

The Defendant engaged in the use of a system wide computer system which was programmed to alter the patient therapy schedules to increase company profits instead of creating patient schedules for medical need, as the law requires.

The Defendant created productivity quotas and bonus incentives to increase patient therapy schedules.

All of this was knowing and willful and resulted in express false certifications and fraudulent billing to Medicare for at least six years from between 2005 to the present date and is ongoing at this writing. All of this violated various statutes and regulations including the Social Security Act.

65. The other wrongdoings described herein are not limited to the facilities where the Relators in this case worked, but rather are company-wide practices. Relator Halpin knows this through the emails she receives and weekly "Medicare meetings" which she attends in which company representatives from outside her facility attend via videoconference. She also knows that these practices are company wide because she is familiar with and uses daily, the company computer systems and knows that these systems are used company wide. By virtue of the false and fraudulent claims presented or caused to be presented by the defendant, the United States suffered damages.

WHEREFORE, Relators Halpin and Fahey request this Court to enter judgment against defendant Kindred/RehabCare as follows:

a. That the U.S. be awarded damages in the amount of three times the damages sustained by the U.S. because of the false claims and fraud alleged within this Complaint.

b. That civil penalties of $11,000 be imposed for each and every false claim that defendant presented to the U.S. or caused to be presented;

c. That pre and post judgment interest be awarded, along with reasonable attorneys fees costs and expenses;

d. That the relators be awarded the maximum amount allowed under law;

e. That the Court award further relief as it deems proper and allowed by law

COUNT II: RETALIATION IN VIOLATION OF 31 U.S.C. SECTION 3730(h) by DEFENDANT KINDRED/REHABCARE AGAINST RELATORS HALPIN AND FAHEY

66. Relators re-allege all paragraphs above as if set forth herein.

67. In April, 2011, shortly after Relator Shawn Fahey complained about a a co-employee who was not providing therapy services while still billing for his time, the defendant terminated Relator Fahey's employment. This termination was a violation of 31 U.S.C. Sec 3730(h).

68. As a direct and proximate result of this unlawful termination,

Relator Fahey has suffered lost income, emotional pain and mental anguish together with serious economic hardship including lost wages and special damages.

69. During the period 2011-March 5, 2013, Relator Halpin was harassed and reprimanded in her employment by her supervisors as a result of her lawful acts done in furtherance of this action, including complaining to her supervisors and others regarding the wrongful and illegal activities of the company as hereinbefore described and this harassment and Relator Halpin's ultimate termination were in violation of 31 U.S.C. Section 3730(h)

70. As a direct and proximate result of this unlawful and discriminatory harassment and termination, by the defendant through its employees, Relator Halpin has suffered lost income,emotional pain and mental anguish together with serious economic hardship including lost wages and special damages and also her career pathway has been damaged and set off track which will result in further economic harm in the forseeable future.

WHEREFORE, the Relators Halpin and Fahey request this Court to enter judgment against defendants as follows:

1. Two times the amount of back pay, interest on the back pay,

2. compensation for any special damages sustained as a result of the retaliation, including special damages, litigation costs and reasonable attorneys' fees.

COUNT III: FALSE CLAIMS ACT VIOLATION DEFENDANT WINGATE

71. The Relators restate and incorporated by reference all paragraphs 1-76 above as if fully set forth herein.

72. Defendant Wingate knowingly presented or caused to be

presented, directly or indirectly, false and fraudulent claims for payment or approval to the United States, including claims for payment for services rendered to patients that were not medically necessary and for services falsely inflated during the period 2005 to 2013 as the therapy services rendered were not in relation to the patient's medical needs, as is required under law.

73. The Defendant Wingate knowingly presented or caused to be presented, directly or indirectly, false and fraudulent claims for payment on services which were excessive and/or therapy services which were not scheduled based on the medical needs of patients but rather on company profits. The Defendant manipulated Medicare's system of reimbursements to obtain compensation at high levels while in fact were providing patient therapy at lower levels to reduce labor costs and increase profits. The Defendant set its therapist to troll for new patients who had not been diagnosed as needing therapy services and but the patient trolling would not have received therapies from the defendant. The Defendant improperly extended patient stays beyond the time which related to their medical necessity. The Defendant improperly assisted Defendant Kindred/RehabCare in "trolling for new patients" regardless of their medical necessity and without a physician's order stating that they needed rehabilitation therapies. The Defendant allowed a non-qualified individual to sign therapy evaluations for the Medical Director in violation of law. All of this was knowing and willful and resulted in express false certifications and fraudulent billing to Medicare for at least six years from between 2005 to the present date and is ongoing at this writing. All of this violated various statutes and regulations including the Social Security Act.

WHEREFORE, Relators Halpin and Fahey request this Court to enter judgment against defendant Wingate as follows:

a. That the U.S. be awarded damages in the amount of three times the damages sustained by the U.S. because of the false claims and fraud alleged within this Complaint.

b. That civil penalties of $11,000 be imposed for each and every false claim that defendant presented to the U.S. or caused to be presented;

c. That pre and post judgment interest be awarded, along with reasonable attorneys fees costs and expenses;

d. That the Relators be awarded the maximum amount allowed under law;

e. That the Court award further relief as it deems proper.

JURY TRIAL DEMAND

Relators, on behalf of themselves and the United States demand jury trial on all claims alleged herein.

THE PLAINTIFFS DEMANDS JURY TRIAL ON ALL COUNTS

Respectfully submitted,

THE RELATORS Janet Halpin and Shawn Fahey By their Counsel,

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