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## CARESOURCE, OHIO MEDICAID MANAGED CARE PROVIDER, PAYS \$26 MILLION AND ENTERS INTO INTEGRITY AGREEMENT TO RESOLVE FALSE CLAIMS ACT LAWSUIT

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CINCINNATI, JANUARY 31, 2011: The United States Department of Justice and Ohio Attorney General Mike DeWine announced today that Dayton-based CareSource, the largest Medicaid managed care organization in Ohio and one of the largest such companies nationwide, has agreed to pay \$26,000,000 to settle a False Claims Act whistleblower lawsuit brought by former employees Laura Rupert and Robin Herzog.

Rupert, of Tampa, Florida, and Herzog, of Dayton, Ohio, were Licensed Practical Nurses who worked for CareSource assessing the medical and psychiatric needs of Children with Special Health Care Needs, or "CSHCN." The Department of Justice joins Ms. Herzog and Ms. Rupert, who filed their case in Columbus federal court in 2006, in alleging that, in the words of the Settlement Agreement, "during the period January 1, 2001 through December 31, 2006," CareSource "knowingly failed to provide required screening, assessment, case management services, data submissions, data reconciliations, and other case management-related requirements for child enrollees with special health

care needs and for adults. In addition, Defendants subsequently submitted false data to the State of Ohio so that it appeared they were providing these required services, thereby allowing Defendants to fraudulently retain the incentive portion of the capitation payments, and avoid penalties."

In the Settlement Agreement released by the Department of Justice today, CareSource acknowledged that the claim of the United States is valued at \$59 million. The United States and Ohio agreed to the reduced settlement amount CareSource demonstrated that paying the full amount could compromise its ability to provide services to Ohio's Medicaid population.

The case was brought in November 2006 under the *qui tam* provisions of the False Claims Act, sometimes called the "Lincoln Law," which allows private citizens to bring suit against government contractors like CareSource and recover a portion of the proceeds in the event of success.

Both women highlighted that in addition to the settlement, CareSource has entered into a Corporate Integrity Agreement with the Department of Health and Human Services which requires the company to vigorously monitor its compliance with federal and state law and submit to enhanced scrutiny for a five-year period. "We first talked to lawyers because we were being required to sign off on documents we knew were not true," said Herzog, who noted that both women felt that their nursing licenses were jeopardized because they were ordered to submit false information to the State of Ohio. Rupert noted that "I told the company's lawyer in August 2005 that we were made to submit data to the State of Ohio falsely showing that kids had been assessed for special needs. The settlement agreement shows that the false data continued to be turned in until at least the end of 2006," said Rupert. Herzog and Rupert hope that their case will serve as a warning shot to Medicaid contractors across the country.

Pam Brecht, who along with Brian Kenney spearheaded the litigation for Kenney & McCafferty, added "the federal False Claims Act empowers whistleblowers like Rupert and Herzog to bring private resources to bear to put an end to fraud, waste, and abuse in state and federal programs." Rick Morgan of Morgan Verkamp applauded the close working relationship of the combined federal-state investigative team, and expressed appreciation for the extensive use the team made of resources provided by Kenney & McCafferty's Brian Kenney and Pamela C. Brecht and Morgan Verkamp's Mary Jones. "Both firms have represented whistleblowers for more than 15 years, and we have rarely been more closely involved in a False Claims Act investigation," said Morgan.

The federal enforcement effort is spearheaded by Assistant United States Attorney and Civil Enforcement Coordinator Andrew M. Malek of Columbus and U.S. Department of Justice Civil Fraud Trial Attorney Eva U. Gunsekera of Washington, with investigative support provided by Department of Justice Health Fraud Auditor Brooke Whittaker, Special Agent Eric Howe of the HHS Office of Inspector General, and agents of the Defense Criminal Investigative Service, Office of Inspector General. The Corporate Integrity Agreement was negotiated by Assistant Inspector General for Legal Affairs Greg Demske of the Department of Health and Human Services Office of Inspector General.

The State of Ohio's enforcement team is led by Health Care Fraud Section Chief Keesha Mitchell, Director of the Ohio Medicaid Fraud Control Unit ("MFCU"), and Assistant Section Chief Jordan Finegold, both of the Office of Attorney General Mike DeWine, were supported by Medicaid fraud investigators Sabrina B. Long and Greg Haines.

Details of the Settlement: CareSource has agreed to pay the United States \$15,761,200 and the State of Ohio \$11,820,900 under the False Claims Act, plus interest. This division of the \$26 million total reflects the 60%/40% division of expenditures under the Ohio Medicaid program. These payments will be made over a period of three years. This "ability to pay" settlement reflects a substantial compromise by the United States of its claims against CareSource, and CareSource has agreed that if the terms of the settlement are not fulfilled, "the Government has a valid claim against Defendants in the amount of \$59,000,000, plus penalties."

The False Claims Act was enacted by Congress at the request of President Lincoln, who signed it into law on March 2, 1863. The Act was strengthened in 1986 by President Reagan, who signed legislation championed by Senator Charles Grassley R. (IA) and Congressman Howard Berman (D. CA.). The Act was further strengthened in 2009, with amendments again sponsored by Grassley and Berman signed into law by President Obama. The False Claims Act is the government's primary tool against fraud by its contractors, as evidenced by the recovery of more than \$2.5 billion in False Claims Act damages in 2010 and more than \$26 billion since 1986. Although 25 states and several cities and counties have enacted their own False Claims Acts, the Ohio Legislature has rejected repeated attempts to encourage our citizens to report fraud against the State by enacting an Ohio False Claims Act.

*Kenney & McCafferty, PC. has a nationwide False Claims Act practice that has recovered more than \$3 billion for the government in qui tam lawsuits which exposed a broad array of fraud matters including pharmaceutical, health care, defense, tax, and General Service Administration fraud. Our team includes former federal prosecutors, former IRS agents, and experienced trial counsel. Our attorneys have consistently received the highest rankings in Martindale Hubbell and been recognized as Philadelphia Superlawyers. Inquiries may be directed to Brian Kenney or Pamela Brecht at (800) 533-1015, e-mail [bkenney@kenneymccafferty.com](mailto:bkenney@kenneymccafferty.com) or [pcbrecht@comcast.net](mailto:pcbrecht@comcast.net). Information about the firm is online at <http://www.quitam-lawyer.com>.*

*Morgan Verkamp LLC is a Martindale-Hubbell A V-rated Cincinnati law firm with a nationwide False Claims Act practice. Partners Frederick M. Morgan, Jr. and Jennifer M. Verkamp were 2010 Whistleblower Lawyers of the Year, as recognized by their peers in the nation's principal whistleblower support organization, Taxpayers Against Fraud. Inquiries may be directed to Rick Morgan at (513) 651-4400, e-mail [rick.morgan@morganverkamp.com](mailto:rick.morgan@morganverkamp.com). Information about the firm is online at <http://www.morganverkamp.com>.*