

U.S. Renal Care pays \$7.3 million to settle billing fraud case brought by nurse-whistleblower

BALTIMORE, May 21, 2013 /PRNewswire/ -- U.S. Renal Care has agreed to pay \$7.3 million to the federal government to settle a whistleblower lawsuit brought by a nurse that alleged a company U.S. Renal Care acquired, Dialysis Corporation of America (DCA), overcharged Medicare for years for an anemia drug used to treat dialysis patients.

The "qui tam" (whistleblower) lawsuit alleged that DCA was billing Medicare and other government healthcare programs for more Epogen than was actually used. The Department of Justice investigated the allegations and joined the lawsuit, which was under seal and not made public until today.

Epogen is used to increase the red blood cell counts of kidney dialysis patients, many of whom are anemic. It is packaged in small vials. To administer the drug, healthcare staff withdraw Epogen from the vials using syringes and inject it into patients' blood during the dialysis process.

When a drug in liquid form is packaged in a vial for withdrawal with a syringe, a small volume of the drug typically adheres to the inside of the packaging, making it impossible to withdraw the full amount of the drug from the vial with standard syringes. To ensure that providers can withdraw the purchased amount of the drug from the vial, the manufacturer, Amgen, fills the vials with approximately 11 percent more Epogen than is stated on the label. That extra 11 percent is called "overfill." The manufacturer doesn't charge extra for the overfill because it can't be recovered using standard syringes, so the overfill is thrown away along with the vials.

DCA allegedly billed Medicare for not just the Epogen the patients received but also for the overfill that remained in the vials, even though DCA used standard syringes and did nothing to ensure that it was actually withdrawing and administering any overfill. At one point, reimbursement for Epogen use accounted for more than 25 percent of DCA's medical-services revenue.

"Since the patients didn't receive the overfill, DCA shouldn't have billed Medicare for that amount," said Stephen S. Hasegawa, a whistleblower attorney with Phillips & Cohen LLP, which represents the whistleblower.

The qui tam lawsuit was filed in 2008 in federal district court in Baltimore, Maryland, by Laura Davis, a registered nurse who worked at one of DCA's dialysis centers in Georgia. DCA operated more than 35 outpatient dialysis facilities and was acquired in 2010 by U.S. Renal Care, based in Plano, Texas.

"Laura Davis raised concerns about DCA's billing practices for Epogen internally, but no one listened to her," Hasegawa said. "They thought she was a little strange to care that

the government was being overcharged. She is very glad that the government cared and has recovered these overcharges for taxpayers."

Hasegawa expressed appreciation for the government attorneys who worked on the case, particularly Roann Nichols, assistant U.S. attorney for the District of Maryland, and Arthur Di Dio, trial attorney for the U.S. Department of Justice.

"Roann Nichols and Arthur Di Dio did excellent work," Hasegawa said. "This case shows how taxpayers benefit when government attorneys work closely with whistleblowers and their lawyers to stop fraud and recover government funds."

The False Claims Act allows private citizens to sue companies that are defrauding the government as a way to recover funds on the government's behalf. The law rewards whistleblowers with 15 percent to 25 percent of the recovery when the government joins the whistleblower lawsuit.

Case citation: U.S. *ex rel.* Laura Davis v. Dialysis Corp. of America Inc., case no. 1:08-cv-02829 (D. Md.)

About Phillips & Cohen LLP

Phillips & Cohen LLP represents whistleblowers in qui tam cases as well as in claims filed with the whistleblower reward programs at the IRS, the Securities and Exchange Commission and the Commodity Futures Trading Commission. For its work on whistleblower cases, Phillips & Cohen was selected for the National Law Journal's elite "Plaintiffs' Hot List" for 2004, 2007, 2009, 2010 and 2012. For more information, see www.phillipsandcohen.com. [Twitter@Fraudmatters](https://twitter.com/Fraudmatters).

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