



NH-MD-001-002

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(SOUTHERN DIVISION)

UNITED STATES OF AMERICA :

Plaintiff, :

v. : Civil Action No.

GREENBELT NURSING & :  
REHABILITATION CENTER :  
7010 GREENBELT ROAD :  
GREENBELT, MARYLAND 20770 :

NORTHERN HEALTH :  
FACILITIES, INC. :  
105 WEST MICHIGAN STREET :  
MILWAUKEE, WISCONSIN 53203 :

and :

EXTENDICARE HEALTH :  
SERVICES, INC. :  
105 WEST MICHIGAN STREET :  
MILWAUKEE, WISCONSIN 53203 :

and :

EXTENDICARE HOLDINGS, INC. :  
105 WEST MICHIGAN STREET :  
MILWAUKEE, WISCONSIN 53203 :

and :

EXTENDICARE HEALTH :  
FACILITIES, INC. :  
105 WEST MICHIGAN STREET :  
MILWAUKEE, WISCONSIN 53203 :

and :

6. The Nursing Home Reform Act mandates that nursing facilities such as Greenbelt comply with federal requirements relating to the provision of services. 42 U.S.C. § 1396r(b). Specifically, in terms of the quality of life for residents of nursing facilities, the Act states that **“a nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.”** 42 U.S.C. § 1396r(b)(1)(A).

7. The Nursing Home Reform Act further mandates that a nursing facility **“provide services and activities to attain or maintain the highest practical physical, mental and psychological well-being of each resident in accordance with a written plan of care which -- (A) describes the medical, nursing, and psychological needs of the residents and how such needs will be met; ...”** 42 U.S.C. § 1396r(b)(2)(A).

8. The Nursing Home Reform Act imposes a duty upon the nursing facility to fulfill the resident's care plans by providing, or arranging for the provision of, among other things, nursing and related services and medically-related social services that attain or maintain the highest practical physical, mental, and psychological well-being of each resident, as well as pharmaceutical services, therapy services and dietary services to meet the nutritional and special dietary needs of each resident. 42 U.S.C. § 1396r(4)(A)(I-iv).

9. The Medicare Program is a health insurance program for individuals 65 years and older, certain disabled individuals under age 65, and people of any age who have

permanent kidney failure. The Medicare statute is codified at 42 U.S.C. § 1395 (Title XVIII of the Social Security Act, 42 U.S.C. § 483.1 et seq.).

10. The Medicaid Program is a joint federal-state program funded under Title XIX of the Social Security Act. The Maryland Department of Mental Health & Hygiene (“MDHMH”) administers the Medicaid Program in Maryland. Its subagency, the Licensing and Certification Administration, oversees participation requirements in addition to State licensing regulations. As a prerequisite to enrollment as a provider in the Medicaid Program, long-term care facilities are required to enter into provider agreements and agree to, among other things, comply with federal and State provider participation requirements as a condition of federal and State funding.

11. The Social Security Act mandates that long term care nursing facilities that participate in the Medicare and Medicaid Programs, meet certain specific requirements in order to qualify for such participation. These requirements are set forth at 42 C.F.R. § 483.1 et seq. and “serve as the basis for survey activities for the purpose of determining whether a facility meets the requirements of participation in Medicare and Medicaid. 42 U.S.C. § 483.1. Compliance with these requirements are a condition of federal funding and mandate that a facility will provide basic services enumerated in 42 C.F.R. § 483.1 et seq., including quality of care necessary “to attain or maintain the highest practicable physical, mental, and psychosocial well being...” 42 C.F.R. § 483.25.

12. The Nursing Home Reform Act also mandates that the State shall be responsible for certifying, in accordance with surveys conducted by the State, the compliance of nursing facilities. The Secretary of the MDHMH is responsible for certifying the compliance of State nursing facilities with the requirements of the requirements of the Nursing Home Reform Act. 42 U.S.C. § 1396r(g)(1)(A).

### **THE GREENBELT SURVEYS**

13. On or about January 20, 21, 22, 23, and 26, 1998, the MDHMH, through the Licensing and Certification Administration, conducted an annual survey (the "January Survey") at Greenbelt to determine if the facility was in compliance with Federal participation requirements for nursing homes participating in the Medicare and/or Medicaid Programs. The January Survey found that Greenbelt was not in substantial compliance with Federal and State participation requirements and noted deficiencies involving substandard care.

14. On or about February 6, 1998, the MDHMH advised Greenbelt that the facility's noncompliance constituted substandard quality of care as defined at § 488.301, §§ 1819(g)(5)(C) and 1919(g)(5)(C) of the Social Security Act, and 42 C.F.R. 488.325(h) .

15. As a result of its noncompliance, the MDHMH advised Greenbelt of its obligations to submit a plan of correction with 10 days and that the facility had three months to achieve substantial compliance within three months of the last survey date, April 26, 1998.

16. Greenbelt Nursing Center subsequently advised the MDHMH that it was in substantial compliance as of March 26, 1998.

17. On or about April 8, 9, 10, and 24, 1998, the MDHMH revisited Greenbelt and conducted another survey (the "April Survey") to verify that the facility had, as it certified, achieved and maintained compliance with the deficiencies cited in the January Survey.

18. On or about May 4, 1998, the MDHMH advised Greenbelt that, contrary to its certification, the facility was not in substantial compliance with the requirements for participation. As a result of its noncompliance, the MDHMH again advised Greenbelt Nursing Center of its obligations to submit a plan of correction with 10 days and that the facility had until July 26, 1998 to achieve substantial compliance. MDHMH proposed significant daily fines in connection with the survey deficiencies.

19. On or about May 13, 1998, the federal agency charge with regulatory oversight of long term care facilities, the Health Care Financing Administration ("HCFA"), advised Greenbelt that, as a result of its numerous deficiencies noted in the January and April Surveys and its subsequent failure to achieve substantial compliance, Greenbelt no longer met the requirements for participation as a provider of services under the Medicare and Medicaid Programs. As a result of the January and April Surveys' findings, HCFA advised Greenbelt that payments for all new admissions to the facility would be denied effective June 4, 1998. HCFA also advised Greenbelt Nursing Center that if it remained out

of compliance, its provider agreement would be terminated on July 26, 1998. Pursuant to its lawful authority and based upon the recommendations of MDHMH, HCFA also imposed a civil money penalty ("CMP") in the amount of \$700.00 per day effective January 26, 1998 and continuing up until the date the facility made the necessary corrections to achieve substantial compliance with the participation requirements.

20. On or about June 4, 5, 8, 9, and 10, 1998, the MDHMH conducted a second revisit at Greenbelt and found that the facility was still not in substantial compliance with participation requirements and that the facility was continuing to provide substandard quality of care. The MDHMH advised the facility on or about June 26, 1998 that it was recommending to HCFA that the CMP be increased to \$1,200.00 per day effective June 10, 1998 to reflect continued noncompliance. The MDHMH also advised Greenbelt that it would recommend to the Director of the Maryland Medical Assistance Policy Administration that the facility's provider agreement be terminated effective July 26, 1998 if compliance was not achieved prior to that date.

21. On or about July 14 through 17, 1998, the MDHMH revisited Greenbelt and noted continued deficiencies.

22. On or about July 24, 1998, Greenbelt certified that it was in substantial compliance with participation requirements by submitting to MDHMH a certification of compliance together with a substantial plan of correction. Greenbelt supported its

certification of compliance with numerous written presentations of new policies and protocols to address the deficiencies cited by MDHMH.

23. As a result of Greenbelt's certification of compliance and representations regarding a plan of correction, on or about July 29, 1998, the MDHMH advised Greenbelt that it would recommend to HCFA that the contemplated termination action be rescinded based on the Greenbelt's July 24, 1998 certification that it had achieved compliance. HCFA accepted the recommendation to withdraw the termination action and accepted Greenbelt's waiver of appeal of the civil monetary penalty action. The fine due under the administrative action was discounted 35% due to the waiver of appeal rights and amounts to approximately \$80,000.

24. After the July 1998 certification of compliance by Greenbelt, an investigation undertaken by the United States Attorney's Office and the Department of Health and Human Services, Office of Inspector General (OIG), into Greenbelt's systemic noncompliance with participation requirements continued. On August 17, 1998, the Office of Inspector General served a subpoena on Greenbelt and invoked its inspection authority. At the request of the U.S. Attorney's Office, and pursuant to statutory federal and State authority, MDHMH state surveyors also conducted an interim site visit to verify compliance. A HCFA surveyor participated in the interim site visit in a monitoring capacity.

25. The August 17, 1998 site visit at Greenbelt revealed evidence that Greenbelt was not in compliance with program requirements as represented in July 1998 and that there continue to exist serious care deficiencies that have the potential for actual harm. The results of the DOJ-OIG investigation has established that Greenbelt's July 24, 1998 certification was false, that the facility remained out of compliance despite certification to the contrary, and that the care provided at the facility continued the evidence a systemic denial of care.

### **SUMMARY OF CARE DEFICIENCIES**

26. The nature of the care deficiencies identified by MDHMH through the survey process and by the government through its investigation involve numerous and systemic instances of inadequate medical care resulting in actual harm to residents or having the potential for actual harm. Most of the care deficiencies involve a failure of medical staff to intervene in the changing medical condition of residents, failure to notify physicians timely of medical issues, the failure of physicians or the facility Medical Director to respond to nursing staff requests for physician and other medical assistance, failure to administer and monitor medications properly, failure to assess nutritional needs of residents and to provide appropriate wound care. The government's investigation identifies other areas of concern regarding the excessive use of contract employees, employee training and morale issues that affect the delivery of services to the residents, communication with attending physicians and other health care providers. Additional concerns have been raised regarding



complete and accurate documentation in the medical records and the overall morale of staff and residents.

27. The August 17, 1998 inspection uncovered continued instances of the failure to provide basic levels of medical care to the residents of the facility, including, but not limited to: the inappropriate administration of medication dosage; delay in notifying a physician for eight (8) hours of change in resident's condition; failure to administer hypertension medication for a week; failure to identify that a resident was receiving two different and inconsistent antibiotics; delay of over three (3) weeks in scheduling an ophthalmology consultation for a resident with soreness and redness in both eyes; and, delay in notifying a physician of change of condition of a resident with stasis ulcers, who was admitted to the hospital for treatment. The deficiencies found on August 17, 1998 are the same type and nature of those deficiencies identified in prior surveys.

28. The United States contends that Greenbelt's submission of claims for payment to the federally-funded Medicare and Medicaid programs from at least January 1998 to August 1998, violated the False Claims Act, in that the claims submitted falsely represented compliance with all conditions for payment guaranteed under the Nursing Home Reform Act. The United States specifically contends that the July 1998 certification of compliance to avoid federal funding termination constitutes a claim for payment to the United States in reckless disregard or deliberate ignorance of the truth or falsity of the claims

and statements made to obtain payment from the United States and constitutes a violation of the False Claims Act. The government's investigation is ongoing.

**COUNT I**  
**PRELIMINARY INJUNCTIVE RELIEF**

29. The United States realleges and incorporates by reference the above paragraphs as though fully set forth herein.

30. Defendants have failed, and continue to fail, to provide the care guaranteed by law to the residents of Greenbelt in contravention of State and Federal laws and regulations.

31. Defendants have submitted, or caused to be submitted, false certifications representing that the Greenbelt is in compliance with participation requirements when in fact the facility is not in compliance.

32. As a direct and proximate cause of Defendants' failure to provide adequate care to the residents of Greenbelt and its false certifications regarding compliance, the residents' health, safety, and well-being continue to be in serious jeopardy with real and actual potential for serious harm.

33. The residents of Greenbelt Nursing Home will suffer immediate, irreparable harm in the absence of the entry of a preliminary injunction and there exists no adequate remedy at law.

**COUNT II**  
**FALSE CLAIMS ACT, 31 U.S.C. § 3729**

34. The United States realleges and incorporates by reference the above paragraphs as though fully set forth herein.

35. Defendants have submitted or caused to be submitted, false certifications regarding their compliance with State and Federal law and regulations in order to improperly obtain continued Medicare and Medicaid funding.

36. Defendants have submitted or caused to be submitted false claims for services rendered to the residents of Greenbelt Nursing Center in deliberate ignorance and/or reckless disregard of the truth of those claims in violation of the False Claims Act, 31 U.S.C. § 3729 et. seq.

37. As a direct and proximate cause of Defendants' fraudulent conduct, the United States has suffered, and continues to suffer, monetary and nonmonetary harm.

**WHEREFORE**, the United States requests that this Honorable Court:

A. Enter judgment in favor of the United States on Counts I and II and against Defendants, jointly and severally;

B. Enjoin Defendants from further jeopardizing the health, safety, and well-being of the residents of Greenbelt ;

C. Enter an Order that will adequately protect the health, safety, and well-being of the residents of Greenbelt;

D. Appoint a temporary manager to oversee the medical and financial operations of the Greenbelt ;

E. Appoint a monitor to oversee compliance with the terms of the Court's Order protecting the health, safety, and well-being of the residents of Greenbelt ;

F. Award monetary damages in an amount equal to the number of false or fraudulent claims that will be proven at trial, multiplied as provided for under 31 U.S.C. § 3729(a);

G. Enter an award in the amount of three times the total amount of damages sustained by the United States because of the acts complained of in this action;

H. Impose a penalty of no less than \$5,000 and no more than \$10,000 for each false claim submitted to the United States by Greenbelt;

I. Award such other and further relief as this the nature of this action may require.

Respectfully submitted,

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**DEMAND FOR JURY TRIAL**

The United States hereby demands a trial by jury in this action.

Kathleen McDermott  
Kathleen McDermott  
Assistant United States Attorney