

DAMIAN WILLIAMS  
United States Attorney for the  
Southern District of New York  
By: SAMUEL DOLINGER  
JACOB M. BERGMAN  
Assistant United States Attorneys  
86 Chambers Street, 3rd Floor  
New York, New York 10007  
Tel.: (212) 637-2677/2766  
samuel.dolinger@usdoj.gov  
jacob.bergman@usdoj.gov

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.*  
JANE DOE and THE STATE OF NEW YORK  
*ex rel.* JANE DOE,

Plaintiffs,

-v-

RIVERSPRING HEALTH HOLDING CORP.;  
ELDERSERVE HEALTH, INC., d/b/a  
RiverSpring at Home; RIVERSPRING  
HEALTH SENIOR LIVING, INC., d/b/a  
Hebrew Home at Riverdale; THE HEBREW  
HOME FOR THE AGED AT RIVERDALE;  
RIVERSPRING LICENSED HOME CARE  
SERVICES AGENCY, INC.; and  
RIVERSPRING SERVICES CORP.,

Defendants.

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

-v-

RIVERSPRING LIVING HOLDING CORP.  
and ELDERSERVE HEALTH, INC., d/b/a  
RIVERSPRING AT HOME,

Defendants.

17 Civ. 636 (PKC)

**COMPLAINT-IN-INTERVENTION  
OF THE UNITED STATES**

**JURY TRIAL DEMANDED**

Plaintiff the United States of America (the “United States” or “Government”), by its attorney, Damian Williams, the United States Attorney for the Southern District of New York, alleges for its Complaint-in-Intervention as follows:

### **PRELIMINARY STATEMENT**

1. The United States brings this Complaint-in-Intervention seeking damages and penalties against RiverSpring Living Holding Corp. and ElderServe Health, Inc., d/b/a RiverSpring at Home (“Defendants” or “RiverSpring”) under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, and the common law for unjust enrichment. As set forth more fully below, from January 1, 2012, through December 31, 2017, RiverSpring submitted or caused to be submitted false claims to Medicaid for monthly capitation payments for months during which Defendants did not provide community-based long-term care services to RiverSpring Managed Long-Term Care Plan members as required by the applicable contract between RiverSpring and the New York State Department of Health (“DOH”), or did not adequately maintain documentation of the provision of services to plan members.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the claims brought under the False Claims Act pursuant to 31 U.S.C. § 3730(a) and 28 U.S.C. §§ 1331, 1345, and over the Government’s common law claim pursuant to 28 U.S.C. § 1345.

3. This Court may exercise personal jurisdiction over Defendants pursuant to 31 U.S.C. § 3732(a), which provides for nationwide service of process. Moreover, Defendants are New York not-for-profit corporations that transact business in this district.

4. Venue is appropriate in this district pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. § 1391(b) and (c) because a substantial part of the events or omissions giving rise to the claims occurred in this district, and Defendants maintain offices in this district.

### **PARTIES**

5. Plaintiff is the United States of America and is suing on its own behalf and on behalf of the United States Department of Health and Human Services, and its component agency, the Centers for Medicare and Medicaid Services.

6. Defendant RiverSpring Living Holding Corp. is a New York not-for-profit corporation with a principal place of business in Bronx, New York. RiverSpring Living Holding Corp. is organized to provide administrative support to The Hebrew Home for the Aged at Riverdale and affiliated tax-exempt organizations pursuing related charitable missions.

7. Defendant ElderServe Health, Inc., d/b/a RiverSpring at Home, is a New York not-for-profit corporation that administers a Managed Long Term Care Plan (the “RiverSpring MLTCP”) for Medicaid beneficiaries under which it arranges for health and long-term care services on a capitated basis pursuant to a Managed Long Term Care Partial Capitation Model Contract, as has been amended and restated from time to time (the “MLTC Contract”), with the DOH.

8. Relator Galina Sidanov (“Relator”) is a healthcare compliance professional who conducted certain compliance audits of the RiverSpring MLTCP as a contractor. In January 2017, Relator filed an action pursuant to the False Claims Act alleging, among other things, that Defendants violated the False Claims Act by failing to disenroll patients from the RiverSpring MLTCP when they ceased to qualify for managed long-term care services, and failing to provide

certain required services to a number of patients enrolled in the RiverSpring MLTCP, but continuing to collect capitation payments for those patients.

## **RELEVANT BACKGROUND**

### **I. The False Claims Act**

9. The False Claims Act establishes treble damages liability to the United States for an individual who, or entity that, “knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval,” 31 U.S.C. § 3729(a)(1)(A); or “knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim,” 31 U.S.C. § 3729(a)(1)(B).

10. “Knowingly” is defined to include actual knowledge, reckless disregard and deliberate ignorance. 31 U.S.C. § 3729(b)(1). No proof of specific intent to defraud is required. *Id.*

11. In addition to treble damages, the False Claims Act also provides for assessment of a civil penalty for each violation or each false claim.

### **II. Medicaid and the Medicaid Managed Long-Term Care Program**

12. Pursuant to the provisions of Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq.*, the Medicaid program was established in 1965 as a joint federal and state program created to provide financial assistance to individuals with low incomes to enable them to receive medical care. Under Medicaid, each state establishes its own eligibility standards, benefit packages, payment rates, and program administration in accordance with certain federal statutory and regulatory requirements. The state directly pays the health care plans or providers for services rendered to Medicaid recipients, with the state obtaining the federal share of the Medicaid payment from accounts that draw on the United States Treasury. *See* 42 C.F.R. § 430.0 *et seq.*

13. In New York, Medicaid is administered at the state level by DOH. *See* N.Y. Pub. Health Law § 201(1)(v).

14. New York Medicaid regulations require plans and providers to “submit claims for payment only for services actually furnished and which were medically necessary or otherwise authorized under the Social Services Law when furnished and which were provided to eligible persons.” 18 N.Y.C.R.R. § 504.3(e).

15. Medicaid recipients in New York enroll in managed care plans administered by Managed Care Organizations that provide medical care and other services. Pursuant to Title XIX, Section 1932 of the Social Security Act, New York established a Medicaid managed long-term care program. Managed Care Organizations operate Managed Long-Term Care Plans (“MLTCPs”), like the RiverSpring MLTCP, and receive monthly capitation payments from Medicaid for each member enrolled in the MLTCP in exchange for arranging and providing community-based long-term care services, such as care management, skilled nursing services, physical therapy, speech therapy, occupational therapy, and preventive services. During the Relevant Period, the average monthly capitation payment for relevant RiverSpring MLTCP members was between \$4,000 and \$4,500.

16. The requirements for an MLTCP are set forth in the MLTC Contract. RiverSpring entered into MLTC Contracts with DOH.

17. Among other requirements, to be eligible for managed long-term care, a Medicaid beneficiary must be assessed as needing at least one of the community-based long-term care services listed in Article IV, section B, subsection 6 of the MLTC Contract (“Qualifying Services”) in effect at the time, for more than 120 days from the effective date of enrollment.

18. Qualifying Services include, but are not limited to, nursing services in the home, therapies in the home, home health aide services, personal care services in the home, and adult day health care. *See* 2017 Model MLTC Contract Art. IV(b)(6).

### **FACTUAL ALLEGATIONS**

19. In order to receive capitation payments from Medicaid for members of the RiverSpring MLTCP, RiverSpring was required to ensure that RiverSpring MLTCP members received Qualifying Services during their enrollment or otherwise remained appropriately enrolled in the RiverSpring MLTCP consistent with the MLTC Contract and DOH disenrollment practices.

20. During the period from January 1, 2012, through December 31, 2017, Defendants improperly collected monthly capitation payments for RiverSpring MLTCP members who did not receive Qualifying Services during the relevant months, or for whom RiverSpring did not adequately maintain documentation of the provision of such Qualifying Services.

21. In particular, in many instances during the Relevant Period, Defendants collected capitation payments for RiverSpring MLTCP members despite the fact that RiverSpring either did not provide, or did not adequately maintain documentation reflecting the provision of, Qualifying Services to these members for three or more consecutive months during their enrollment in the RiverSpring MLTCP.

22. For example, RiverSpring obtained monthly capitation payments for Member A, a Medicaid beneficiary who was enrolled in the RiverSpring MLTCP between January 2012 and August 2014. However, RiverSpring did not provide Qualifying Services to Member A, or did not adequately maintain documentation reflecting the provision of Qualifying Services to Member A, during periods of more than three consecutive months between February 2012 and

June 2012, and between January 2014 and June 2014. RiverSpring wrongfully obtained more than \$43,000 as a result of its receipt of capitation payments for Member A during these periods.

23. In certain additional instances during the Relevant Period, Defendants collected capitation payments for RiverSpring MLTCP members despite the fact that RiverSpring either did not provide, or did not adequately maintain documentation reflecting the provision of, Qualifying Services to these members during the entirety of their enrollment in the RiverSpring MLTCP.

24. For example, RiverSpring obtained monthly capitation payments for Member B, a Medicaid beneficiary enrolled in the RiverSpring MLTCP, between July 2013 and August 2014. However, RiverSpring did not provide Qualifying Services to Member B, or did not adequately maintain documentation reflecting the provision of Qualifying Services to Member B, during that period. RiverSpring wrongfully obtained more than \$53,000 as a result of its receipt of capitation payments for Member B during this period.

### **FIRST CLAIM**

#### **Violations of the False Claims Act: Presenting False Claims for Payment 31 U.S.C. § 3729(a)(1)(A)**

25. The United States incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

26. The United States seeks relief against Defendants under 31 U.S.C. § 3729(a)(1)(A).

27. As set forth above, Defendants knowingly, or acting with deliberate ignorance or reckless disregard for the truth, presented, or caused to be presented, false or fraudulent claims to Medicaid for capitation payments for RiverSpring MLTCP members who did not receive

Qualifying Services, or as to whom Defendants did not adequately maintain documentation of the provision of Qualifying Services, during relevant months between January 1, 2012, and December 31, 2017.

28. The Government made capitation payments to RiverSpring under the Medicaid program because of the false or fraudulent claims.

29. By reason of the false or fraudulent claims, the United States suffered damages and therefore is entitled to treble damages under the False Claims Act, to be determined at trial, and a civil penalty as required by law for each violation.

## **SECOND CLAIM**

### **Unjust Enrichment**

30. The United States incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

31. Through the acts set forth above, Defendants have received managed long-term care monthly capitation payments to which they were not entitled and therefore were unjustly enriched. The circumstances of these payments are such that, in equity and good conscience, Defendants should not retain those payments, the amount of which is to be determined at trial.

WHEREFORE, the United States respectfully requests that judgment be entered in its favor and against Defendants as follows:

- a. On the First Claim (False Claims Act violation), for a sum equal to treble damages and civil penalties to the maximum amount allowed by law;
- b. On the Second Claim (Unjust Enrichment), for a sum equal to the damages to be determined at trial, along with costs and interest; and
- c. Granting the United States such further relief as the Court may deem proper.



Dated: May 20, 2024  
New York, New York

DAMIAN WILLIAMS  
United States Attorney for the  
Southern District of New York

By: /s/ Samuel Dolinger  
SAMUEL DOLINGER  
JACOB M. BERGMAN  
Assistant United States Attorneys  
86 Chambers Street, 3rd Floor  
New York, New York 10007  
Tel.: (212) 637-2677/2766  
samuel.dolinger@usdoj.gov  
jacob.bergman@usdoj.gov