

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

**STATE OF FLORIDA,
OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS,**

Plaintiff,

vs.

**Case No.
Jury Trial Demanded**

**VIDYA BHOOLAI, an individual,
and RISING SUN MANOR, INC.,
a Florida for-profit corporation,**

Defendants.

_____ /

COMPLAINT

_____ Plaintiff, STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS, files this complaint against Defendants, VIDYA BHOOLAI, an individual, and RISING SUN MANOR, INC., a Florida for profit corporation, and alleges:

I. INTRODUCTION

1. This is a civil action to recover damages, fines and penalties in excess of \$502,316.91 from Defendants, VIDYA BHOOLAI and RISING SUN MANOR, INC., jointly and severally, for submitting false claims or causing false claims to be submitted to the State of Florida's Medicaid program, payment by mistake and unjust enrichment during the period September 1, 2000 through September 15, 2004.

2. The State of Florida seeks recovery under the Florida False Claims Act, §§ 68.081-.092, Florida Statutes, and the principles of common law.

3. This Court has jurisdiction of the causes of action set forth herein pursuant to the provisions of §§ 68.083 and 26.012, Florida Statutes, and venue is proper in Leon County pursuant

to §§ 47.011, and 68.083, Florida Statutes.

II. PARTIES

4. Plaintiff, STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS (hereinafter “the State”) is Florida’s chief legal office. The Office of the Attorney General is acting through its Medicaid Fraud Control Unit (“MFCU”), which is federally mandated to “conduct[] a statewide program for the investigation and prosecution of violations of all applicable State laws regarding any and all aspects of fraud” in the Medicaid program. See 42 U.S.C. § 1396b(q)(3). The Attorney General is authorized to seek the remedies sought in this Complaint pursuant to § 409.920(8)(d), Florida Statutes.

5. Defendant, VIDYA BHOOLAI, is an individual residing in the State of Florida. VIDYA BHOOLAI (“BHOOLAI”) is the owner, president, secretary, and treasurer of RISING SUN MANOR, INC. (“RISING SUN”).

6. Defendant, RISING SUN is a Florida for-profit corporation that provides assisted living services to Medicaid recipients. On or about September 12, 2001, VIDYA BHOOLAI (then VIDYA AVILES) signed a Medicaid Provider Agreement on behalf of RISING SUN to become an authorized Medicaid provider. On or about October 7, 2002, VIDYA BHOOLAI, as President/Owner of RISING SUN MANOR, INCORPORATED, signed an Electronic Claims Settlement Agreement allowing for electronic reimbursement of Florida Medicaid claims. RISING SUN was assigned Medicaid Provider Number 141261200. During the time period involved in this Complaint, RISING SUN MANOR, INCORPORATED operated in Volusia County, Florida. See Exhibits 1 and 2.

7. Defendant, RISING SUN, is the alter ego of BHOOLAI. BHOOLAI used the

corporation and its assets for her personal benefit as well as to perpetrate a fraud on the Florida Medicaid program. For ease of reference, the two Defendants will be referred to as “BHOOLAI”.

III. THE FLORIDA MEDICAID PROGRAM

8. The Medicaid Program, enacted under title XIX of the Social Security Act of 1965, 42 U.S.C. §§ 1396, et seq., provides funding for medical care for indigent individuals. The Medicaid program is a joint federal-state program in which the United States provides approximately one-half of the funding, and the state provides the remaining one-half. See 42 U.S.C. § 1396b.

9. The Florida Legislature has designated the Florida Agency for Health Care Administration (“AHCA”) as the single-state agency authorized to make payments under the Medicaid program. See § 409.902, Florida Statute. A private corporation under contract with AHCA acts as the “fiscal intermediary” and is authorized to receive and process Medicaid claims on behalf of AHCA. To receive reimbursement for providing medical services to a Medicaid recipient, a Medicaid provider, electronically or by paper, transmits a claim requesting payment to the intermediary located in Leon County, Florida. Payment is received via electronic or paper warrant.

10. As a condition of receiving federal money to help fund the Medicaid program, each state is required by federal law (with narrow exceptions not relevant here) to operate a Medicaid Fraud Control Unit (“MFCU”). See 42 U.S.C. § 1396a(61). Each MFCU must “conduct[] a statewide program for the investigation and prosecution of violations of all applicable State laws regarding any and all aspects of fraud” in the Medicaid program. See 42 U.S.C. § 1396b(q)(3); see also § 409.920(7), Florida Statute. In the State of Florida, the MFCU is primarily responsible for the investigation and control of Medicaid fraud. See § 409.910(17)(b), Florida Statute.

11. Investigators with the MFCU have access to several databases relating to the Florida Medicaid program, including the Florida Medicaid Management Information System (“FMMIS”) and the Florida Rapid Entry to Enhanced Data Online for Medicaid System (“FREEDOM”). FMMIS contains all Medicaid provider and recipient identification information, recipient eligibility, provider eligibility, and provides access to all Medicaid billing under provider and recipient numbers for the previous 18 months. FREEDOM provides all provider billing information and payments made on behalf of recipients for the previous five (5) years.

IV. FACTS

12. The State of Florida, acting through its MFCU, conducted an investigation of the Medicaid billing practices of BHOOLAI. The MFCU’s investigation revealed that BHOOLAI billed and was paid by the Medicaid program for services that were never provided by BHOOLAI.

13. RISING SUN is an Assisted Living Facility (ALF) located at 700 Daytona Avenue, Holly Hill, Volusia County, Florida. RISING SUN is an ALF that provides assistive care services. All assistive care service providers enrolled in the Medicaid program must comply with the provisions of the Florida Medicaid Assistive Care Services and Assisted Living for the Elderly Waiver Coverage and Limitations Handbook, July 2001, which is incorporated by reference and available from the Medicaid fiscal agent. See Fla. Admin. Code r. 59G-4.025(2) (2004).

14. VIDYA BHOOLAI was, at all times relevant to this Complaint, also the owner Radiant Star, a licensed ALF. Radiant Star is located at 834 N. Halifax Drive, Daytona Beach, Volusia County, Florida. BHOOLAI never applied for a Medicaid Provider Number for Radiant Star and Radiant Star was never issued a Medicaid Provider Number while BHOOLAI owned Radiant Star. Whenever Medicaid recipients were provided assistive care services at Radiant Star,

BHOO LAI billed the Medicaid program for those services using RISING SUN MANOR, INCORPORATED's Medicaid Provider Number.

15. BHOO LAI agreed to abide by all federal and state statutes, rules, regulations and manuals governing the Florida Medicaid program by signing the Provider Agreement and the Florida Agency for Health Care Administration Electronic Claims Submission Agreement.

16. Assistive care services are defined as an array of services provided on a daily basis to Medicaid-eligible individuals by or through ALFs. Assistive care services may include health support, assistance with activities of daily living, assistance with instrumental activities of daily living and assistance with self-administration of medication. See Florida Medicaid Assistive Care Services and Assisted Living for the Elderly Waiver Coverage and Limitations Handbook, at page 2-5 (July 2001).

17. An ALF is defined as any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding twenty-four (24) hours to one or more adults who are not relatives of the owner or administrator. See §400.402(6), Florida Statute.

18. Assistive care service components are reimbursed at a single per diem rate of \$9.28. Assistive care service providers are encouraged to bill at the end of each calendar month. Claims for less than one calendar month will be paid as billed. See Florida Medicaid Assistive Care Services and Assisted Living for the Elderly Waiver Coverage and Limitations Handbook, at pages 3-2 and page A-1 (July 2001).

19. Reimbursement for assistive care services are made only for days the recipient is eligible for and is receiving services in the facility. Reimbursement will not be made when the

recipient is absent for 24 hours or more. In such cases, reimbursement will be made for the day the resident returns, but not the date the resident leaves. See Florida Medicaid Assistive Care Services and Assisted Living for the Elderly Waiver Coverage and Limitations Handbook, at page 3-3 (July 2001).

20. The reimbursement rate for assistive care services, identified by the Medicaid program as procedure code W9659 (recently changed to T1020), is \$9.28 for each day the recipient receives service in the ALF.

21. In order to determine the amount of fraudulent billing, MFCU conducted a statistical sampling of all assistive care services claims billed to the Medicaid program by BHOOLAI. During the period September 1, 2000, through September 15, 2004, BHOOLAI billed the Medicaid program for assistive care services allegedly provided to a total of eighty-five (85) Medicaid recipients.

22. From the eighty-five (85) Medicaid recipients for whom BHOOLAI billed the Medicaid program during the period of review, a cluster sample (the "sample") of thirty (30) recipients was drawn. For the thirty (30) Medicaid recipients in the sample, BHOOLAI submitted five hundred thirty three (533) claims and was paid \$110,088.64 by the Medicaid program for those claims.

23. The MFCU determined that of the five hundred thirty three (533) claims in the sample, three hundred fifty six (356) of the claims were fraudulent because no services were provided for these claims. The fraudulent billing by BHOOLAI for the thirty (30) Medicaid recipients of the sample totaled \$72,829.44. The sample was extended to the entire population of claims for the period using an appropriate and generally accepted statistical formula. The minimum

overpayment due to fraudulent billing by BHOOLAI, calculated at the 95% confidence level, totaled \$167,438.97 for the period under review.

24. The billing sample demonstrates that BHOOLAI routinely billed the Medicaid program for services that were not provided. For example, BHOOLAI submitted twenty-nine (29) claims with the Medicaid program from July 12, 2002 to July 8, 2004 for assistive care services allegedly provided to Medicaid Recipient(MR) #9092 between June 1, 2002 and July 7, 2004. BHOOLAI did not provide assistive care services to MR #9092 as MR #9092 was residing with a family member and not in RISING SUN or Radiant Star ALFs from June 1, 2002 and July 7, 2004. MFCU's investigation revealed that BHOOLAI received an overpayment of \$3,201.60. See Exhibit 3.

25. In another example, BHOOLAI submitted eleven (11) claims with the Medicaid program on September 24, 2003 for assistive care services allegedly provided to MR #4960 between October 1, 2002 to August 3, 2003. BHOOLAI did not provide assistive care services to MR #4960 as MR #4960 was residing in another facility and not in RISING SUN or Radiant Star ALFs from October 1, 2002 to August 1, 2003. MFCU's investigation revealed that BHOOLAI received an overpayment of \$3,108.80. See Exhibit 3.

26. In another example, BHOOLAI submitted twenty-three (23) claims with the Medicaid program between December 2, 2002 to July 15, 2004 for assistive care services allegedly provided to MR #3855 between November 1, 2002 to July 14, 2004. BHOOLAI did not provide assistive care services to MR #3855 as MR #3855 was residing in another facility and not in RISING SUN or Radiant Star ALFs from November 1, 2002 to July 14, 2004. MFCU's investigation revealed that BHOOLAI received an overpayment of \$2,978.88. See Exhibit 3.

27. The specifics of the analysis regarding the remainder of the thirty (30) Medicaid recipients in the sample is omitted for the sake of brevity. A spreadsheet listing the specific analysis for the thirty (30) Medicaid recipients of the sample is attached to this Complaint. See Exhibit 3.

28. Extrapolating the sample overpayment of \$72,829.44 to the total population yielded a total overpayment for the population of \$167,438.97. This \$167,438.97 represents the single damages suffered by the Medicaid Program. See Exhibit 4.

29. As a Medicaid provider, BHOOLAI had “an affirmative duty to supervise the provision of, and be responsible for, goods and services claimed to have been provided, to supervise and be responsible for preparation and submission of the claim, and to present a claim that is true and accurate” See § 409.913(7)(a) and (e), Florida Statutes; see also Florida Medicaid Provider General Handbook, at page 5-4.

30. Each time BHOOLAI billed the Medicaid program or its designated intermediary, BHOOLAI represented to the State of Florida that they had complied with all federal and state laws governing the relevant program.

31. BHOOLAI electronically or otherwise presented, or caused to be presented, claims for payment to the Medicaid program. Any provider who utilizes the electronic funds transfer system is certifying with each of the electronic claim(s) for which the provider is being paid that it is in compliance with all federal and state laws and the provisions found on the back of the paper claim form, which states, in pertinent part: “I certify that the services listed above were medically indicated and necessary to the health of this patient and were personally furnished by me or my employee under by personal direction.”

32. The back of the paper claim form also contains the following language, “NOTICE: This is to certify that the forgoing information is true, accurate and complete. I understand that payment and satisfaction of this claim will be from Federal and State funds, and that any false claims, statement or documents, or concealment of a material fact, may be prosecuted under applicable Federal or State laws.”

33. BHOOLAI at all relevant times received prior notification from the Florida Medicaid program of appropriate billing criteria and practices and received copies of all relevant Medicaid provider manuals and updates thereto. Contained within those manuals are criteria for billing products and services to the Medicaid program.

34. BHOOLAI ignored the billing criteria, policies and regulations set forth by the Florida Medicaid program and knowingly engaged in a pattern of billing the Medicaid program for services that were never provided.

35. As a result of the false or fraudulent claims BHOOLAI presented or caused to be presented, the Medicaid program suffered at least \$167,438.97 in actual damages.

COUNT I
VIOLATION OF THE FLORIDA FALSE CLAIMS ACT
§§ 68.081-.092, FLORIDA STATUTES

36. The State of Florida realleges and incorporates by reference paragraphs 1 through 35 as though fully set forth herein.

37. BHOOLAI knowingly presented, or caused to be presented, false or fraudulent claims for payment to the Florida Medicaid program.

38. As a result of BHOOLAI’s conduct set forth in this Count, the State of Florida suffered actual damages in excess of \$167,438.97.

COUNT II
PAYMENT BY MISTAKE OF FACT

39. This is an action brought by the State of Florida against Defendant BHOOLAI pursuant to common law for payment by mistake.

40. The State of Florida realleges and incorporates by reference paragraphs 1 through 35 as though fully set forth herein.

41. Had the Florida Medicaid Program known that BHOOLAI had improperly billed the Florida Medicaid program for services that were never provided, the Florida Medicaid program would not have paid BHOOLAI for the submitted claims.

42. As a result of BHOOLAI's conduct set forth in this Count, the State of Florida suffered actual damages in excess of \$167,438.97.

COUNT III
UNJUST ENRICHMENT

43. This is an action brought by the State of Florida against Defendant BHOOLAI pursuant to common law for unjust enrichment.

44. The State of Florida realleges and incorporates by reference paragraphs 1 through 35 as though fully set forth herein.

45. As a result of the conduct described herein, BHOOLAI was paid Medicaid funds to which they were not entitled.

46. As a consequence of the acts set forth above, BHOOLAI was unjustly enriched at the expense of the State of Florida in an amount in excess of \$167,438.97.

47. In equity and good conscience, BHOOLAI should not be permitted to retain monies wrongfully received from the State of Florida.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands that judgment be entered in favor of the State of Florida against BHOOLAI, as follows:

- a. On Count I, for treble the amount of the State of Florida's actual damages plus civil penalties of \$10,000.00 for each false claim submitted; for reasonable attorney's fees and costs of this civil action; and for such other and further relief as the Court deems just and equitable;
- b. On Counts II and III, return of all funds paid by the Florida Medicaid Program or its intermediary from BHOOLAI as a result of the improper billing submissions, prejudgment interest, costs, and for such other and further relief as the Court deems just and equitable; and
- c. On all counts, for such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

The STATE OF FLORIDA respectfully demands trial by jury of all issues so triable.

Respectfully submitted this _____ day of _____, 2005.

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

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