

HOME HEALTH

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and at the Kitty Askins Hospice Center in Goldsboro, has grown since it was started as a home health agency in 1981 by two Wayne County doctors. Now, with 10 offices and 1,300 employees, the agency serves 48 counties in the Piedmont and coastal regions of the state.

On a national level, investigations of Medicare and Medicaid fraud and abuse have been widely reported. The federal government's investigation of Columbia/HCA Healthcare Corp., the nation's largest health care company, for example, has revealed a systematic plot to defraud Medicare, the *Washington Post* reported Oct. 7.

On Sept. 5, the U.S. Court of Appeals for the 4th Circuit in Richmond, Va., upheld two earlier findings that the search warrant used by federal and state agents to seize the nonprofit agency's records in January 1995 was groundless.

Judges for the 4th Circuit agreed that the agents' investigation was filled with information that was "stale," false, inaccurate or wrongly attributed; facts were omitted or construed in a way that was misleading or displayed reckless disregard for the truth; and prior hearings had shown "multiple misstatements and apparent games-

manship on the government's part."

Much of the information, however, was "consistent with an innocent though imperfect system of maintaining millions of records."

Home Health and Hospice was investigated for Medicaid fraud in 1989, says Withrow, but no evidence of fraud or abuse was found. The government's second round of investigations began immediately thereafter, she says.

William Berlin, a financial investigator with the state's Medicaid Investigations Unit, says the most recent investigation was launched because his office had received complaints that Home Health and Hospice was improperly billing Medicaid.

Court records show that the agency was suspected of falsifying patient records to meet billing standards, billing for services to a dead patient and providing unauthorized services.

There are absolutely no grounds for those accusations, Withrow says.

"I'm not saying we haven't made mistakes — we're human — but there's no truth to the charges of fraud and abuse. This agency stands for zero tolerance of that."

Now, lawyers for the agency are weighing their legal options and considering whether to sue the agents, the government or both, on grounds that the investigation violated the agency's constitutional rights to a lawful search

and seizure.

On Jan. 19, 1995, agents from the FBI, IRS and the state Attorney General's Office arrived with a search warrant at each of the agency's eight offices throughout eastern North Carolina and seized all medical and billing records, about 5 million documents in all, which were held for more than a year.

The agents, armed with guns, handcuffs and badges, did not immediately show the warrant to employees at the time, says Tim Finan, the agency's corporate attorney, and employees were told they could not go to the bathroom or use the phone during the search. That's unusual and not in accordance with justice department regulations to present a search warrant expeditiously, says Finan.

"I think the government ought to ask itself if they want these kinds of agents working for them," he says.

Norman Acker, an assistant U.S. attorney with the case, declined to comment.

Prosecuting attorneys have not appealed the decision of the 4th Circuit, says Finan, but the next step would be to take the case to the U.S. Supreme Court. And, he says, given the third strongly worded decision against the government — which was unanimous among the three circuit judges — that is highly unlikely.

In August 1995, Home Health and

Hospice challenged the lawfulness of the January search and petitioned for the return of the records and for a hearing to challenge the affidavit for the search warrant. The hearing in U.S. District Court took place in November 1995.

In his opinion released April 4, 1996, Judge Alexander Denson — who had signed the original search warrant — found a "preponderance of evidence" that information contained in the warrant was false and that certain omissions were "such that their inclusion would have given an impression contrary to that given by the information actually contained in the affidavit."

Denson concluded that the warrant wasn't substantiated by probable cause that a crime had been committed, and he ordered the government to return the agency's records.

The government didn't immediately release the records and appealed the decision to U.S. District Judge Malcolm Howard, who in July 1996 upheld the lower court's finding and ordered the records returned.

While the government was in possession of the agency's records, nurses had to rely on their memory, call supervising physicians to repeat care instructions or travel to Raleigh to make copies of records they needed, which involved getting permission and an escort from the government, Withrow says.

"That was one of the most difficult situations," she says. "It compromised patient care." Withrow says not having patients' records meant that nurses didn't have any way of knowing a patient's history, doctor's orders, lab results or information about patients' medication. Withrow says there were no serious incidents as a result of the missing records.

The government appealed Howard's ruling, but on Sept. 5, 1997, the appellate court found that the government had failed to substantiate its search warrant with enough evidence to support probable cause that Home Health and Hospice had committed a crime.

"It's ironic," says Finan, the agency's attorney. "If [the government's] goal is to harass the company just because it's big and successful, it will just wind up costing the government more because people will still need those services. As a taxpayer, that's pretty offensive."

And, says Finan, the financial loss-

CHRONOLOGY OF LEGAL BATTLE

January 1995: Agents from the FBI, IRS and state attorney general's office search the eight offices of Home Health and Hospice Inc. and seize all operating and medical records.

August 1995: Home Health and Hospice files a motion challenging the search's lawfulness and petitions for return of its records.

April 1996: U.S. District Court judge rules against government, finding information in the search warrant false and misleading. The government appeals.

July 1996: U.S. District Court upholds April finding and orders government to return agency's records. The government appeals.

September 1997: U.S. Court of Appeals affirms decision of the U.S. District Court.

es that Home Health and Hospice has incurred as a result of the investigation are more substantial because it is a nonprofit. That's money that just won't be used in the community, he says.

The agency is totally supported by third-party reimbursements from private insurance companies that go toward funding the \$40 million annual budget, says Withrow.

Recouping those losses and the damage done to the agency's reputation, she says, will take some time.

"We're going to continue to do what we do best — provide good quality care to our patients."

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