

THE PARTIES

3. Plaintiffs, the State of Illinois, bring this action on behalf of the Illinois Department of Healthcare and Family Services (hereafter "DHF") f/k/a the Illinois Department of Public Aid which administers the Grants to States for Medical Assistance Programs for the State of Illinois pursuant to Title XIX of that Act, 42 U.S.C. §1396 et seq. (hereafter "Medicaid").

4. Relator Donald Raymer is a registered nurse. He has worked at U of C since 1993. From September 1995- June 2001, he worked as a charge nurse in the Neonatal Intensive Care Unit (NICU) and Neonatal Intermediate Care Nursery (IMN/IMC). Through his employment at U of C, Mr. Raymer acquired direct personal knowledge of the defendants' fraudulent practices under the Illinois Medicaid program.

5. Relator Michael Grosche is also a registered nurse. He has worked at U of C NICU and IMN/IMC part time and full time since July 1999. Through his employment at U of C, Mr. Grosche acquired direct personal knowledge of the defendants' fraudulent practices under the Illinois Medicaid program.

6. The Defendant is an Illinois corporation with its principal place of business in the Northern District of Illinois, and which operates as a provider of medical care under the Illinois Medicaid program.

GENERAL ALLEGATIONS

The Medicaid Program

7. The Medicaid program is a federally assisted grant program which enables states to provide medical assistance and related services to needy individuals. The Centers for Medicare and Medicaid Services ("CMS") administers Medicaid on the federal level; however,

within broad federal rules, each state decides who is eligible for Medicaid, the services covered, payment levels for services, and administrative procedure. The State of Illinois, through, DHF, pays providers directly for services provided, with the state obtaining the federal share of payment from accounts which draw on funds of the United States Treasury. 42 C.F.R. § 430.

Neonatal Care Units

8. U of C operates a 155-bed acute care hospital and major tertiary referral center located at 5721 S. Maryland, Chicago, Illinois. That hospital annually admits more than 4,700 patients from the Chicago area, the Midwest and the world. Children are treated in a branch of the hospital known as Wyler's Children's Hospital. Many of those patients are covered under the Medicaid program.

9. From at least 1997 to June 7, 2005, U of C, on a continuing basis, electronically billed DHF for services to Medicaid patients provided in its facility. As a result of the electronic billing, DHF authorized the Illinois Comptroller to make payments to U of C.

10. U of C has three levels of care for newborns: (a) the newborn nursery for the care of babies born without any complications; (b) the Intermediate Level II Nursery/Intensive Care Unit ("IMN/ICN") for babies with relatively minor health problems, such as minor respiratory and nutritional problems and jaundice; and (c) the Level III Neonatal Intensive Care Unit/ICN ("NICU") for the care of premature and critically ill newborns. Between 1997 and 2004, there were between 36 and 47 Level III beds and 17 Level II beds in 5 rooms on 2 different floors. The current facility has 47 Level III beds and 18 Level II beds.

11. Babies admitted to the NICU are in critical medical condition. They are typically premature with very low birth weights and suffer complications including respiratory distress,

cardiac anomalies, birth asphyxia, sepsis, congenital anomalies, hypoglycemia, and seizures. As a result of these conditions, many of the babies have underdeveloped immune systems, invasive tubes, catheters and surgical wounds. These babies are admitted to the NICU because they require constant supervision and care, additional medical equipment and protection from infection.

12. The NICU and IMN/IMC were run as a single department within U of C, sharing staff, equipment and supplies. All of the allegations in this complaint apply to both units.

Licensing Requirements, Bed Space Requirements and Care Standards

13. As a condition of payment from DHF, a hospital must be licensed by the Illinois Department of Public Health (IDPH) and must certify that it has complied with all State laws and regulations. As a condition of that license, the design of the hospital, including any significant alterations, must be approved by the Illinois Health Facilities Planning Board (IHFPB) and the IDPH. Regulations state that a hospital's license applies "only to the number of beds and the clinical services operating at the time the license was issued. If a new clinical service is to be initiated, or an existing service expanded or discontinued, the approval of the Department must first be obtained." 77 Ill. Admin. Code 250.120(g)(2).

14. IDPH requires that each infant in an intermediate or intensive care nursery be separated by 4-6 feet and recommends each bed space be 80-100 square feet. 77 Ill. Admin. Code sec. 250.1830(e). The American Academy of Pediatrics' Guidelines (AAP) recommends at least 150 square feet of floor space for each baby in a NICU or IMN/IMC and requires that each bed be separated by at least 6 feet. In addition, the AAP requires that each infant bed station be equipped with 16-20 electrical outlets, 3-4 oxygen outlets, 3-4 compressed air outlets and 3-4 suction outlets.

15. The Illinois Administrative Code contains hospital licensing requirements which provide in part that, "each licensed hospital providing maternity and perinatal services shall comply with the perinatal care standards promulgated by the Department (Regionalized Perinatal Care, 77 Ill. Adm. Code 640)." 77 Ill. Adm. Code 250.1820 (b)(3). The Regionalized Perinatal Care standards incorporate, inter alia, the 1988 version of the Guidelines for Perinatal Care, promulgated by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists (ACOG). 77 Ill. Adm. Code 640.25(c)(2).

16. A licensed hospital is also required to "enforce its occupancy control measures in an effort to avoid over utilization of its facilities and services and control its admission and discharge of patients so that occupancy does not at any time exceed capacity, except in the event of an unusual emergency and then only as a temporary measure." 77 Ill. Admin. Code 250.230(a) and (b).

17. Regulations for maternity and neonatal services require that hospitals "have well-organized maternity and neonatal services adequately supervised by qualified personnel with the necessary space, facilities, equipment and personnel to perform or make available maternity and neonatal services commensurate with the needs of the population in the hospital service area." 77 Ill. Admin. Code 250.1820(a)(2)(d)(1)f.

18. Regulations for Perinatal Centers require that a hospital seeking to provide perinatal services "shall declare by means of a letter of intent to the Department that it seeks designation as a facility for the delivery of general perinatal care (Level I) or intermediate perinatal care (Level II or Level II with Extended capabilities) or intensive care (Level III) in one

of the Regional Perinatal Networks of the Illinois Perinatal Health Care Program.” 77 Ill. Admin. Code 640.50.

19. In addition “All designations shall be reviewed by the Department every three years or when the Department may deem necessary to assure that the designated facilities continue to comply with the requirements of the perinatal plan. Circumstances which may influence the Department to review a facility’s designation other than every three years could include . . . 1) When a hospital wanted to expand or reduce services.” 77 Ill. Admin. Code 640.50(j).

20. In its public reporting and required reporting to IDPH, U of C consistently reported having a 17-bed Level II unit. In its Certificate of Need (CON) application for the new children’s hospital, U of C stated that this unit “affords little room for the parents with most of the space taken up by the bassinet [singular], monitors, IV poles, heating lamp and other bedside equipment.” CON application, page 281, attachment MOD-3. Attached hereto and incorporated herein as Exhibit “A.”

21. As a condition of payment from DHF for Medicaid-covered patients, U of C was required to certify compliance with all Medicaid and IDPH regulations. These regulations govern, among other things, the capacity requirements for the neonatal units, space and distance requirements for patients in the units and infection control requirements. Under 89 Ill. Admin Code 148.50(a), DHF will only pay for covered services which are provided in compliance with hospital licensing standards.

U of C's Policy and Practice of Double-bunking Babies in the NICU

22. Despite the fragile physical conditions of patients in the neonatal units, U of C routinely engaged in a practice of "double-bunking" such babies. In such instances, two or more radiant warmers, isolettes or open cribs containing ill babies are placed in a bed space designed and licensed for the care of a single infant. Each space is equipped with one monitor and a single space for bedside supplies. Old monitors were taken from hospital storage for use on the additional baby placed within the single space. Double-bunked babies are forced to share "set ups," including medical air, vacuum and oxygen sources, bedside supplies, and needle and biohazard receptacles.

23. An example of double-bunking is documented in Exhibit "B" attached and incorporated hereto. This document, a U of C 'NICU Staffing/Shift Report' for January 22, 2003, identifies double-bunking by listing two babies as sharing the same bed number. (Patient names redacted). In some instances, the double-bunking is indicated by the presence of an 'A' or 'B' after the bed number. This example shows all-day double-bunking in Room 1, Bed 24; Room 2, Beds 4 and 5; and Room 5, Bed 5. In addition, a number of babies were double-bunked during a portion of the day.

24. With two babies in a single bed space, it was virtually impossible to separate each baby's equipment, medications, soiled lines, etc. Soiled diapers were often placed on a shared desk or table. Care providers often used the wrong patient's ambu bag, oxygen mask, pacifier, thermometer or other equipment. Because of their close proximity, nurses and doctors moved from one baby to the next without stopping to wash their hands or employ other required sanitary and hygienic practices.

25. At U of C, medically hazardous mistakes occurred due to double-bunking. For example, medical charts of double-bunked babies were intermingled and orders carried out on the wrong babies; breastmilk and unlabeled ambu bags (self-inflating bags used for resuscitation) were inadvertently used on the wrong babies and in emergency situations ambu bags were sometimes taken from one baby and used on another because the shared bed space lacked adequate space and equipment for two.

26. The double-bunking also impaired the ability of care givers to access the babies when, in emergencies, more than one care giver is needed. This resulted in situations in which double-bunked babies had to be physically removed from a bed space and moved elsewhere before care givers could work on the baby needing emergency medical attention.

27. U of C routinely double-bunked babies in close proximity despite the existence of surgical wounds, suspected infections and other acute medical conditions presenting risk to both babies.

28. Double-bunking was routine at U of C until June 7, 2005. U of C implemented the double-bunking policy so that it could admit a higher volume of patients, instead of referring these patients to other medical facilities. While U of C was required to accept transfers or admit patients experiencing unusual emergencies on a temporary basis, it even "double-bunked" when multiple bed spaces were available so that it could claim open bed spaces available for additional patients.

29. In addition to the inherent dangers of double-bunking itself, the practice of double-bunking often resulted in understaffing. While the AAP requires patient care in a NICU at a ratio of 1:1 or 1:2, the ratios at U of C as a result of double-bunking was regularly 1:3 or 1:4.

30. The NICU and IMN/IMC nursing staff, including Relators Raymer and Grosche, complained to U of C management repeatedly about the double-bunking practice, lack of infection control, and severe understaffing. U of C management refused to end the practice of double-bunking babies, citing internal budget cuts as the reason for keeping this practice in place.

Concealment of Double-bunking Policy

31. U of C deviated from its “double-bunking” policy when the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or IDPH conducted on-site inspections. Before an expected visit from JCAHO, the NICU and IMN/IMC were decompressed such that double-bunked babies were moved into individual bed spaces. After the inspection, the practice of double-bunking resumed. When IDPH was on site, U of C staff was required to temporarily decompress the department prior to IDPH’s arrival on the unit.

Inpatient Hospital Reimbursement Under the Illinois Medicaid Program

32. For reimbursement purposes, U of C is specially designated as a Children’s Hospital and is reimbursed on a per diem basis for the babies in its care. In addition, when the cost of a particular patient’s care exceeds covered charges under DHF’s formula, U of C receives additional funds termed “cost outliers”.

33. The State of Illinois, through DHF, also reimburses U of C additional amounts for treating a high volume of Medicaid patients in the form of disproportionate share adjustment payments (DSH) and Medicaid High Volume Adjustments (MHVA).

34. DHF’s reimbursement to the U of C Hospital for each baby in the NICU or IMN/ICN exceeded \$1,500 per day.

How U of C's Double-bunking Policy Overcharges Medicaid

35. Under Medicaid, providers may submit claims only for services that are “of a quality which meets professionally recognized standards of health care.” 42 U.S.C. § 1320c-5 (a)(2).

36. By concealing its double-bunking policy from IDPH and JAHCO, but then submitting claims to DHF for payment for the care of these same babies, U of C intentionally deceives the State of Illinois and receives payment from Medicaid for which it is not entitled.

37. In 2001, there were at least 1,275 patient days of double-bunking at U of C. At least 537 of these patient days were paid for by Medicaid.

38. The Illinois Medicaid program, unaware of the falsity of the claims, paid the claims submitted by U of C in connection with the care of double-bunked babies despite the failure to comply with the rules and regulations of the State of Illinois and DHF.

39. U of C knowingly and intentionally submitted false claims for payment in connection with its double-bunking described in this Complaint from at least 1997.

Defendant's Agreement for Participation in the Illinois Medical Assistance Program

40. In 1992, defendant entered into an Agreement for Participation in the Illinois Medical Assistance Program (Attached as Exhibit “C”) and agreed to the following provisions as a prerequisite to enrolling in and receiving payment from the Medicaid program:

- 1. The Provider agrees, on a continuing basis, to comply with all current and future program policy provisions as set forth in the applicable Department of Public Aid Medical Assistance Program handbooks.*
- 2. The Provider agrees on a continuing basis, to comply with applicable licensing standards as contained in State laws or regulations.*

41. Under Medicaid program rules, U of C was required to sign and maintain in its records, a "Billing Certification" for each voucher approved by the Illinois Department of Aid.

Those certifications (Attached as Exhibit "D") include the following language:

I acknowledge that I am familiar with pertinent Illinois Department of Public Aid Policies and Procedures as set forth in the Illinois Medical Assistance Handbook. With that knowledge, I certify that: The billing information listed on the remittance advices (voucher) identified below is true, accurate and complete; the services as described on the remittance advice were provided; and I understand payment is made from State and Federal funds and any falsification or concealment of a material fact may be grounds for prosecution or other appropriate legal action.

42. Medicaid rules also require that providers submit yearly 'cost reports' (Attached as Exhibit "E") and certify compliance with program rules as a condition of payment. As part of those reports, an officer of U of C signed certifications that the information in those reports was true, and also, *"I further certify that I am familiar with the laws and regulations regarding the provision of health care services and that the services identified in this cost report were provided in compliance with such laws and regulations."*

43. Conditioning payment upon compliance with the regulations alleged herein is set forth in the Illinois Medical Assistance Provider Handbook (which is made available to each provider enrolled in the program). Chapter 100 (attached as Exhibit "F") states in pertinent part:

For consideration of payment by the Department under any of its authorized programs, covered services must be provided to an eligible participant by a medical provider enrolled for participation in the Illinois Medical Assistance Program. Services provided must be in full compliance with applicable federal and state laws, Department Administrative Rules (89 Ill. Adm. Code Chapter 101), the general provisions contained in

Chapter 100, General Policies and Procedures, and the policy and procedures contained in Chapter A-200 in the Handbook that applies specifically to medical providers.

COUNT I

Illinois Whistleblower Reward and Protection Act

44. The State of Illinois repeats and realleges paragraphs 1 – 43 above as if fully set forth herein.

45. 740 ILCS 175/3(a) provides that any person who performs the following act or acts is liable for presenting false claims:

(1) Knowingly presents, or causes to be presented, to an officer or employee of the State or a member of the Guard a false or fraudulent claim for payment or approval.

(2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the State.

The act provides for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages the State sustains and for the costs of a civil action brought to recover any such penalties or damages.

46. By committing the acts alleged above, the defendant violated 740 ILCS 175/3(a) by repeatedly, willfully and intentionally presenting false claims for reimbursement and false cost reports to the DHF for babies covered by the Medicaid program that were double-bunked in the defendant's NICU and IMN/ICN from at least January 1997 to June 7, 2005.

47. The State of Illinois, by and through DHF, unaware of the falsity of said claims, paid the claims submitted in connection with the double-bunked babies at U of C.

48. Had the State of Illinois known that the defendant submitted claims for the double-bunked babies in defendants' NICU and IMN/IMC, it would not have paid those claims.

49. As a condition of payment defendant expressly certified to DHF that they would, on a continuing basis, comply with the current rules and regulations for NICU facilities, Federal requirements specified in Title XIX of the Social Security Act and its implementing regulations, and the policies and procedures of DHF and IDPH.

50. As a condition of payment, U of C expressly certified billing information was true, accurate and complete and that the services as described in the billing were in compliance with State and Federal law.

51. Claims submitted by the Defendant for double-bunked babies were not covered services reimbursable by DHF and, therefore, were false claims.

52. In submitting claims to DHF for double-bunked babies at U of C, defendant knowingly concealed that the services provided to those babies did not comply with current rules and regulations for neonatal care facilities, the federal requirements specified in Title XIX and its regulations and/or the policies and procedures of DHF.

53. As a result of U of C's violations of 740 ILCS 175/3(a), the State of Illinois has been damaged in an amount in excess of eight million dollars, exclusive of interest.

WHEREFORE The State of Illinois respectfully requests this Court enter judgement in favor of the State of Illinois and against the defendant as follows:

- A) Three times the amount of actual damages the State of Illinois sustained as a result of defendant's fraudulent practices;
- B) A civil penalty of not less than \$5,000 and not more than \$10,000 for each false claim defendant submitted to the State of Illinois; and
- C) Reasonable expenses, including attorneys' fees and costs.

COUNT II
Violation of the Illinois Public Assistance Fraud Act

54. The State of Illinois repeats and realleges paragraphs 1 – 43 above as if fully set forth herein.

55. Under 305 ILCS § 8A-7(b) it is unlawful for any person or corporation to “willfully, by means of a false statement or representation, or by concealment of any material fact” to obtain, or attempt to obtain benefits or payments under the Public Aid Code to which he or it is not entitled, or in greater amounts than he or it is entitled. Civil penalties include: prejudgement interest; three times the amount of excess payments; and \$2,000 for each claim submitted.

56. Defendant falsely certified to DHF that it provided services to certain babies in its NICU and IMN/ICN that were in compliance with Federal and State law and State licensing requirements, when in fact those babies had been double-bunked in violation of Federal and State Law and State Licensing requirements.

57. The Defendant actively concealed from state regulators the fact that they were double-bunking babies in the NICU and IMN/ICN.

WHEREFORE, the State of Illinois respectfully requests this Court to enter judgment in favor of the State of Illinois and against the Defendant as follows:

- A) Three times the amount of actual damages sustained by the State of Illinois as a result of the Defendant’s fraudulent practices;
- B) The sum of \$2,000 for each claim submitted to DHF for double-bunked babies;
- C) Interest at the maximum legal rate from the date up which payment was made by the State of Illinois on each claim submitted do DHF for double-bunked babies.

COUNT III
Common Law Fraud

58. The State of Illinois repeats and realleges paragraphs 1 – 43 above as if fully set forth herein.

59. From at least January 1997 through June 7, 2005, the defendant engaged in a pattern and practice whereby they prepared, certified, and submitted claims when they knew, or should have known, that these claims were false, and submitted these false claims intending to induce Medicaid to rely on them to pay for services.

60. In reliance on the veracity of the claims submitted, the State of Illinois paid these false or fraudulent Medicaid claims.

61. By reason of these payments, the State of Illinois has been damaged in an amount to be established at trial, exclusive of interest and costs.

WHEREFORE The State of Illinois respectfully requests this Court enter judgement in favor of the State of Illinois and against the defendants, jointly and severally, as follows:

- A) The amount of actual damages the State of Illinois sustained as a result of defendant's fraudulent practices;
- B) Punitive Damages
- C) Prejudgment interest; and
- D) Reasonable expenses.

COUNT IV
Payment by Mistake of Fact

62. The State of Illinois repeats and realleges each allegation set forth above in paragraphs 1 through 43 above as if fully set forth herein.

63. The State of Illinois made payments on the claims submitted by the defendant under the erroneous belief that the claims for payment were based upon representations that were factually accurate and that represented allowable services.

64. This erroneous belief was material to the payments made by the State of Illinois to the defendant.

65. Because of these mistakes of fact, the defendant received monies to which they are not entitled.

WHEREFORE The State of Illinois respectfully requests this Court enter judgement in favor of the State of Illinois and against the defendant as follows:

- A) The amount of actual damages the State of Illinois sustained as a result of defendant's fraudulent practices;
- B) Prejudgment interest; and
- C) Reasonable expenses.

COUNT V
Injunction

66. The State of Illinois repeats and realleges paragraphs 1 – 43 above as if fully set forth herein.

67. If the Defendant continues with its practice of double-bunking babies in the NICU and IMN/ICN, all of the babies within the unit are threatened with irreparable harm and injury.

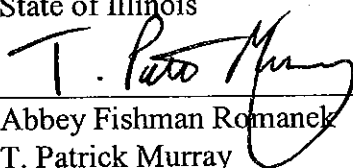
68. Plaintiff has demonstrated that the Defendant's practice of double-bunking babies in the NICU and IMN/ICN is a clear violation of Federal and State law and State licensing requirements, that a significant public interest is involved and therefore, are likely to succeed on the merits at trial.

WHEREFORE, the Plaintiffs request this honorable Court to permanently enjoin the Defendant from continuing the unlawful practice of double-bunking babies in its NICU and IMN/ICN.

Respectfully submitted,

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