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## Testimony

Before the Subcommittee on Health and Environment and the  
Subcommittee on Oversight and Investigations, Committee on  
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# MEDICARE

## Allegations Against ABC Home Health Care

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Messrs. Chairmen and Members of the Subcommittees:

We are happy to be here today to discuss specific allegations regarding ABC Home Health Care (now known as First American Health Care) and its participation in the Medicare home health care program. ABC is the largest privately held home health care provider in the United States, and Medicare reimbursement represents approximately 95 per cent of its total revenues. Headquartered in Brunswick, Georgia, ABC has grown rapidly in the last few years. Since 1990, ABC has more than doubled its number of offices, the number of states in which it does business, and the number of patients it has. By 1994, ABC had increased the number of visits it made six-fold--to some 7.8 million visits. It had also increased its Medicare revenues more than seven-fold--from \$83.5 million in 1990 to \$615.9 million in 1994.

In summary, current and former ABC employees told us that medical records were altered and forged to make it appear that patients continued to need home health visits. Additionally, managers directed employees to continue visiting patients who, in the employees' opinion, did not qualify for home health care because they no longer met Medicare eligibility standards for "homebound" status. Further, ABC reportedly charged Medicare for the cost of acquiring other home health agencies (HHAs) by paying owners a small sum up front and the balance in the form of salary under employment agreements, a practice that is inconsistent with Medicare regulations for reimbursement. Finally, according to former employees, some managers directed employees to market ABC and its services with the intent of charging Medicare for costs that the Health Care Financing Administration (HCFA) does not reimburse.

We discussed the nature of the allegations we investigated with ABC's Chief Executive Officer (CEO), Robert "Jack" Mills, and ABC's principal attorney. They replied that ABC has not knowingly violated Medicare law or regulations. They added that the regulations are vague and subject to broad interpretation and selective enforcement.

In February 1995, the Office of the Inspector General, U.S. Department of Health and Human Services, sent ABC an exclusion letter, seeking to exclude it from participation in the Medicare program for 7 years. The letter charged, in part, that ABC had submitted false or fraudulent charges to the Medicare program for patient-related services.

ABC MODIFIED MEDICAL RECORDS TO CONTINUE TO PROVIDE SERVICES TO PATIENTS WHO MAY BE INELIGIBLE

Current and former ABC employees told us that ABC employees altered or forged medical records to assure continued or prolonged home health care visits. In addition, several former ABC nurses and aides said that local ABC managers stressed "negative charting," by

including only negative aspects of a patient's condition. Examples follow.

- One office manager directed a nurse to record visits that were never made.
- One manager forged physicians' signatures on plans of care that described the treatment.
- A local ABC Quality Assurance Coordinator traced physicians' signatures onto a physician recertification form.
- In one office, a manager highlighted nurses' notes that the manager wanted changed to make it appear that continued care was necessary and dictated what the rewritten language should be.
- In another office, after plans of care were signed by physicians, nurses added language that increased the number of visits, without consulting with the physicians.
- In one instance, a diabetic home health care patient walked to church regularly without assistance, but a manager directed the patient's nurse to omit any reference to this fact.

#### ABC MANAGERS EMPHASIZED THE NEED TO MAXIMIZE PATIENT VISITS

Industry officials and current and former ABC employees told us that ABC visited patients more frequently than other HHAs. Each month, ABC sent out what it termed "High Rollers Memos" that congratulated those offices with the largest number of visits for the given month. Employees stated that the primary purpose of the memorandums was to promote an increase in patient visits.

One senior manager had told local administrators, "Increase the number of visits. Whatever it takes to get that done, do it." Nurses and aides told us they felt pressured to prolong treatment or to make more frequent visits. In their opinion, they made frequent visits in order to keep the patient visit count high. When they expressed their concerns to management about visiting patients who did not qualify for home visits, managers told them to continue with the visits or merely reduce the number of visits to the patients. According to nurses and aides, managers were more likely to decrease the visit frequency for patients no longer eligible for home care rather than to discontinue visits altogether.

#### ABC REPORTEDLY CHARGED MEDICARE FOR COSTS OF PURCHASING HOME HEALTH AGENCIES AND FOR GIFTS GIVEN TO PHYSICIANS

ABC reportedly charged Medicare for questionable costs when ABC included expenses associated with the purchase of other HHAs in its cost reports. Officials of HCFA and the Medicare fiscal

intermediary do not view ABC's reported method for charging Medicare for the overall purchase price of other HHAs as appropriate.

Former owners whom we interviewed and who had sold their HHAs to ABC maintain that ABC masked the total price of purchasing their HHAs by paying HHA owners a small sum up front and the balance in the form of salary under employment agreements over a number of years. As a result, former owners and former managers concluded that ABC had charged most of the purchase price to Medicare by claiming that the salary paid out under the employment agreement was not the HHA acquisition price but for work performed by the former owners. They understood that ABC was expecting them to work under the terms of the employment agreement. A former ABC manager heard ABC's CEO, Mr. Mills, state on several occasions that the high price of salaries paid to former owners under the employment agreements was, in part, the purchase price of the HHAs. Mr. Mills was quoted as saying such things as, "I would really rather they not work." The former manager added that after he and another management official became concerned about the impropriety of charging Medicare for such salaries, Mr. Mills replied, "Medicare won't pay to buy agencies but will reimburse for salaries."

-- One former owner signed a \$35,000 per year, 5-year employment contract plus fringe benefits and a salary escalator clause. ABC also paid him \$12,000 for used furniture and signed a 5-year lease for his building. There was no purchase price for his agency. The contract specified that his duties would be limited to part-time community affairs. However, the former owner told us that he worked less than 1 month a year under his employment contract because he was occupied with his other businesses and ABC did not want him to interfere with its operation. "Why doesn't he just stay home?" was the question Mr. Mills asked ABC employees when they told him that the former owner was trying to help run the HHA. The former owner told us that he negotiated a buyout slightly over 2 years into the employment agreement. According to ABC's attorney, ABC negotiated a buyout because the former owner refused to report to a female supervisor.

-- Another former owner signed an employment agreement which stated that she would receive \$10,000 per month for 5 years. The former owner, who understood that there would be no work required of her, said Mr. Mills told her she could spend her time tending to her garden and her antiques. During the 23-month period in which she remained on the payroll, she did not perform any work but received her full salary. ABC subsequently terminated her employment, citing her inability to perform any work.

According to former employees, ABC also marketed its services to physicians and the community with the intent of charging Medicare for these nonallowable expenditures. Although Medicare

reimbursement is available for the expenses of educating health professionals and the community at large, HCFA regulations on cost reimbursement do not provide for payment for marketing home health care services.

The primary responsibility of certain ABC employees was to solicit patient referrals from physicians. In return for referrals, the employees gave physicians gifts and other items of value. ABC then charged Medicare for these expenses.

Former employees stated to us that ABC managers told them not to use the term "marketing" when identifying the nature of such expenses, but rather to disguise them as "health education" expenses. According to the former employees, they purchased meals or gifts for physicians on a regular basis and gave gifts to physicians and their spouses in recognition of special events, i.e., birthdays and new births. On at least one occasion, a physician received golf tickets to a Professional Golf Association tournament. However, according to HCFA and the Medicare fiscal intermediary, these expenses are not allowed because they are not patient-related.

According to former employees, ABC managers told employees to conceal the cost of items given to physicians in their expense reports so that the cost would be reimbursed without being questioned by HCFA. Managers wanted these costs to be labeled as "educational," "training," "luncheon," or "mileage" costs. Further, they told employees that to be reimbursed, they should charge certain expenditures, such as liquor for physicians, on their personal credit cards. This would make tracing the true expenditures more difficult. One former employee disclosed that his supervisor recommended purchasing a restaurant receipt book from a stationary store for use when submitting these types of expenses for reimbursement.

We have shared information concerning possible illegal activities with appropriate law enforcement authorities.

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This concludes my prepared remarks. I would be happy to answer any questions that the Subcommittees may have.

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