

Beverly Enterprises – A History of Fraud, Neglect, Felony Abuse, and Employee Intimidation

Criminal Activity	Details of the Case	Settlement
Medicare Fraud	<p>From 1992-98 Beverly defrauded Medicare of \$460 million by fabricating nursing cost figures based on set formulas designed to maximize profits while avoiding detection by Medicare auditors.</p> <p>A Coordinated investigation was conducted by the FBI's Health Care Fraud Unit,¹ the HHS-OIG² and the DOJ.³</p>	<p>Largest Settlement Ever Reached For a Nursing Home Case:⁴</p> <p>2000 – Beverly negotiated a settlement for \$175 million to resolve criminal and civil issues; pled guilty to criminal mail fraud and making false statement to Medicare; divested itself of 10 nursing homes in CA, KN, WA, GA, and SC; and entered into a corporate integrity agreement with the HHS-OIG requiring internal and external auditing of its compliance procedures plus regular reports to OIG for the next 5 years. According to the DOJ, Beverly "incorporated defrauding Medicare as part of their overall business strategy."⁵</p>

Nationwide Nursing Home Resident Abuse and Neglect

A Government Accounting Office (GAO) report found that Beverly had cut staff in its facilities across the nation to please stockholders.

Arkansas	1998 closure of Jacksonville facility for infected bedsores, filthy conditions, medication errors, and painful deaths. ⁶	1999 – Beverly entered into a corporate integrity agreement with DHS, a 2-year self-regulation program of <u>all</u> its facilities. During the 2-year period, no indicator of quality of care showed improvement.
California	1998-2001 – CA Department of Health Services investigated 20 of 60 Beverly-California (BEC) facilities. Regulators filed 90 citations and accused Beverly of contributing to the deaths of nine patients. Beverly pleaded no contest to two felony charges for two resident deaths. ⁷	Beverly is on felony probation for 4 years, and paid the statutory maximum fine of \$54,000, \$2 million in civil money penalties and more than \$500,000 in investigative costs. ⁸ Beverly and three subsidiaries entered into a consent decree requiring them to comply with all applicable laws and regulations and maintain training and education programs.
Florida	Chronic neglect brought on by systemic short staffing led to shocking conditions at many facilities with numerous civil lawsuits. 2001 - Beverly divested itself of 18 Florida nursing homes, where a majority of their liability claims were generated. Florida advocates say "good riddance." ⁵	
Maine	Beverly left Maine after state inspectors cited substandard conditions. ⁶	
Minnesota	Between 1986 and 1988, eight residents at Beverly homes died due to inadequate care and lack of supervision. ⁶	
Missouri	Grand jury investigated Beverly residents with gaping wounds. ⁶	
Texas	Medicaid payments to 24 Beverly homes suspended because of health hazards. ⁶	
Washington	Beverly prohibited from opening any new homes because of its poor record of patient care. ⁶	

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<p>OSHA¹⁴ Violations</p>	<p>Beverly's working environment was associated with the highest incidence of work related injuries in the U.S. 1991 – OSHA conducted a 15-month investigation and cited five PA nursing homes for numerous back injuries related to lifting and transferring residents, with extensive lost work time and restricted work duty. Out of 18 violations cited, 13 were considered to be serious – i.e., with a "substantial probability that death or serious physical harm could result and the employer knew or should have known of the hazard."¹⁵</p>	<p>2002 – Although Beverly contended that the OSHA allegations in PA were unjustified and stemmed from union organizing tactics, they finally agreed to adopt employee ergonomic measures as part of a settlement with OSHA and the Service Employees International Union. The settlement also requires them to implement measures to reduce back injuries at all locations within federal OSHA jurisdiction, establish a training program, and purchase mechanical lift equipment.¹⁵</p>
<p>Deceiving Shareholders: Class Action Lawsuits</p>	<p>2002 – Beverly, its top executives and its auditors overstated the company's earnings and understated its losses in a fraudulent attempt to buoy its stock price, according to a federal class action lawsuit (with an estimated thousands of plaintiffs).¹⁶</p>	<p>The lawsuit alleges that Beverly failed to reveal the extent of the company's patient liabilities, violated federal securities laws by issuing "materially false and misleading statements" that artificially inflated share prices, and deceived investors in a series of news releases and document filings between 10/16/00 and 7/19/02.¹⁶ A second lawsuit alleges that Beverly had overstated its assets and earnings and understated its expenses.¹⁷</p>

¹ Federal Bureau of Investigation, Health Care Fraud Unit – http://www.fbi.gov/hq/cid/fc/hcf/about/hcf_about.htm

² Department of Health and Human Services – Office of Inspector General; ³ Department of Justice

⁴ *Beverly pays \$175 Mil for Medicare Fraud*, Reuters, 2/3/00.

⁵ *Why departure of nursing home giants is good news*, Barbara Hengstebeck, Tallahassee Democrat, 10/26/02.

⁶ *THE SHAME OF OUR NURSING HOMES*, Eric Bates, The Nation, 3/29/99.

⁷ *Beverly chief working to pick up the pieces of troubled company*, Nell Smith, Arkansas Democrat-Gazette, 8/2/02.

⁸ *California deaths, misdeeds to cost Beverly \$2.6 million*, Nell Smith, Arkansas Democrat-Gazette, 5/15/02.

⁹ Kate Bronfenbrenner, Ph.D., Director, labor education research, Cornell's School of Industrial and Labor Relations, testimony in Pittsburgh, PA, 5/97.

¹⁰ *Worker Protection: Federal Contractor and Violations of Labor Laws*, Government Accounting Office, October 1995.

¹¹ *CIRCUIT COURT APPROVES NLRB CORPORATE-WIDE ORDER AGAINST NURSING HOME CHAIN (BEVERLY)*, FOR IMMEDIATE RELEASE (R-2405) Friday, September 15, 2000 202/273-1991; www.nlr.gov.

¹² *Nurse's suicide note sparks probe into abuses at local convalescent home*, Joshua Molina & Scott Hadly, Florida News-Press, 9/24/00.

¹³ *Rest home settles case about slurs*, Susan Decker, Bloomberg News, 7/3/01.

¹⁴ Occupational Safety and Health Administration

¹⁵ *Beverly Adopts Ergonomic Measures To Reduce Back Injuries: Nursing Home Company Settles Case*, OPA News Release, 1/15/2002.

¹⁶ *Suit alleges Beverly misled stockholders*, Nell Smith, Democrat-Gazette, AP Newswires, AR, 8/15/02.

¹⁷ *Shareholders target Beverly Enterprises in two lawsuits*, Arkansas Business Journal, 8/22/02.

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Labor Violations	<p>Beverly repeatedly broke the law to impede the unionization of its 65,000 employees, who were trying to improve staffing and working conditions.⁶ It fought a bitter war of attrition with the unions, and was cited as "one of the nation's most notorious labor law violators" for unfair practices to curb organizing efforts.⁹</p> <p>1995 GAO study ranked Beverly among 15 worst violators of federal labor laws for a "clear pattern and practice" of labor abuses, and cited many instances where Beverly illegally refused to hire union members, created employer-dominated committees during union organizing drives, and violated other provisions of U.S. labor laws.¹⁰</p>	<p>1997 – National Labor Relations Board (NLRB) cited 106 instances of anti-union activity at 26 Beverly facilities in 15 states.</p> <p>1998 – NLRB issued an unusual corporation-wide "cease and desist" order for 240 violations of labor laws in 54 facilities in 18 states, barring intimidation of workers seeking to join unions and threats and coercion of employees.¹¹</p> <p>2000 – The U.S. Court of Appeals for the Seventh Circuit has approved a corporate-wide, "cease and desist" order by the NLRB against Beverly-California (BEC). The Court's decision imposed broad remedial provisions on Beverly and all of its nursing homes; enforced over 100 unfair labor practice findings that were chronicled in the Board's 1998 decisions, and found that Beverly was continuing its unlawful conduct on a large scale and at a corporate level.¹¹</p>
Prolonged Conflict With Nurses and Their Unions	<p>Nurses were required to participate in Beverly's fraud. Their working reports were done in pencil to facilitate later "doctoring" by management, and they were told to suppress information relating to poor care and abuse of residents. They were victimized when they spoke out; their notes were destroyed or altered.¹¹ One nurse whistleblower became so desperate about cover-ups she committed suicide. Her suicide note said she had lost her friends at work, seniority and ability to pay her bills. She feared that she could lose her nursing license.¹²</p>	<p>Suicide of Florida nurse, her suicide note and journal sparked a DOJ investigation, and focused attention on Beverly health care practices in Florida.</p> <p>2000 – State regulators found Beverly La Cumbre responsible for 99 violations within one year and at least 23 cases of abuse, neglect and financial exploitation of residents over a 20-month period.¹²</p> <p>Attorneys who filed civil cases observed, "There seems to be a pattern of disrespect for state regulations, their own internal policies and the patients... It's profit over care."¹²</p>
Racial Harassment	<p>1993-1994 – Nine workers at a Beverly home in St. Louis accused the administrator of "a campaign of flagrant racial harassment" against black workers.</p> <p>The administrator used racial slurs to refer to black workers, ordered black employees disciplined without cause, retaliated against any employee who complained, and required job applications to be coded with smiling faces for white applicants and frowning faces for black applicants.¹³</p>	<p>1998 – U.S. Equal Employment Opportunity Commission (EEOC) filed a federal suit on the workers' behalf.</p> <p>2001 – Beverly agreed to pay \$1.2 million in damages and other costs to settle charges of racial harassment.¹³</p> <p>Beverly also agreed to revise its anti-harassment policy and provide compliance reports for its Missouri-owned facilities to the commission over the next 3 years.¹³</p>