# WALKING THE THIN GRAY LINE: A CASE STUDY IN MEDICARE FRAUD

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*Having started Superior Home Health Care (SHHC) over 15 years before, Jake Miles, the owner and Chief Executive Officer (CEO) SHHC, found himself facing criminal allegations of Medicare fraud. Jake and his wife, Martha, together, had scraped up $15K to purchase a home health agency, with 8 employees and 30 patients. SHHC grew from a single agency employing six people to nearly 350 agencies in 19 states employing more the 7,600 in 1993. SHHC was instrumental in the rapid development of patient care in their own home rather than a hospital setting. During the mid-1980s, the home health industry and the durable medical equipment industry were both seeing expansion in their ability to provide services. SHHC was influential in the shift of hospital care to home health care, offering licensed practical nursing, psychiatric nursing visits, physical therapy, occupational therapy, and speech therapy. There had never been any accusations of negligent medical care provided to patients of SHHC, Jake was being charged with having broken supposed Medicare reimbursement guidelines that, in the Experts own admission, were not clear on what was not allowable and what was barely allowable for reimbursement. Today the courts would make a ruling in Jake's case. The court might rule in Jake's favor, realizing that he was a businessman trying to earn a living and taking care of stakeholders. On the other hand, the court might rule the evidence as criminally convicting and sentence him to prison.*

## INTRODUCTION

Jake awoke to a morning just like other summer mornings in 1996. Here in this southwest Georgia town, the hot season lasts four months, from mid-May to mid-September. But it was only June and the hottest month, July, was still to come. As Jake pondered the coming months, his thoughts immediately turned into questions. Where will I be when hot July comes around? Hell, where will I be tomorrow?

Is what I am accused of doing really breaking the law? Whose law? Like I told those people last March, "The [Medicare] manual tells you what you can't do. So,

if it's silent you can do it." They are just angry because a good ole boy made good for himself, his family, and his work family.

They don't talk about the good things Martha and I have done. They don't speak of the lives we have touched by enabling folks to receive care at home instead of a hospital. They don't speak of the contributions we have made to the communities we serve and here at home, or the charities we support.

Jake had been convicted the previous March of defrauding Medicare. He knew the government had been after him for many years now and they had finally had their day in court. Today was sentencing day. At 58, Jake hoped for leniency in his sentencing. He was anxious to get his life back and move forward.

**THE MILES AND THE ORIGIN OF SHHC**

Jake Miles was born in a small town in Alabama in 1938. As a boy, he pumped gasoline at his father's filling station. His first job after high school was cutting tree branches for a power company. In 1968 Jake went to work for a global shipping and mailing company in Florida as a salesman, earning about $106K annually.

Martha Miles was a nurse at a tiny home health agency in Florida, whose owner wanted to sell. Jake and Martha, together, scraped up $15K and purchased the Florida agency, with 8 employees and 30 patients. SHHC was moved to Georgia in 1978. SHHC grew from a single agency employing six people to nearly 350 agencies in 19 states employing more the 7,600 in 1993.

SHHC was instrumental in the rapid development of patient care in their own home rather than a hospital setting. In the mid-1980s chemotherapy and AIDS patients required more services and were going home from the hospital with many more needs. Medical equipment was becoming portable and could be used in the home. The home health industry and the durable medical equipment industry were both seeing expansion in the industry. Services provided by SHHC included licensed practical nursing, psychiatric nursing visits, physical therapy, occupational therapy, speech therapy. No doubt, SHHC was influential in the shift of hospital care to home health care.

From a national standpoint, the 1988–1989 liberalization and standardization of coverage for home health care services resulted in an exponential increase in Medicare expenditures for home health. This resulted in a substantial increase in the number of home health agencies certified by Medicare. Home health care reimbursements grew from $2 billion in 1988 to $12.7 billion in 1994 and in 1996 accounted for more than 8 percent of the total budget for Medicare. Between 1989 and 1995, the number of such agencies increased from 5676 to 8747 (+50 percent).

The number of for-profit agencies increased from 1,818 to 3,730 (Halamandaris, 1995).

SHHC's growth mirrored that of the nation.

| | **1990** | **1994** |
|---|---|---|
| Offices | 141 | 354 |
| States | 10 | 21 |
| Number Patients | 24,431 | 58,330 |
| Number Visits | 1.3M | 7.8M |
| Medicare Revenues | $83.5M | $615.9M |

## ACCOLADES

SHHC's primary concern was to help those in need, be they patient, coworker, neighbor, friend, or stranger. Nurses were known for their compassionate giving to their patients and their families, above and beyond the call of duty.

Martha orchestrated the publication of a company cookbook. Proceeds from the sale of cookbooks were dedicated to a special project of habitat for Humanity. The project sought to raise $25,000 to build a new home for an employee of SHHC and her six-year-old daughter. The single mother was determined to get her education and get off welfare.

Jake and Martha were also involved in numerous community organizations including the American Red Cross, United Way, Kiwanis Club, American Cancer Society. They were also active members of their local church.

## BACKGROUND – MEDICARE REIMBURSEMENT SYSTEM AND THE HOME HEALTH CARE SYSTEM

## MEDICARE OVERVIEW

Medicare was created in 1965. The program, stemming from the original Social Security Act was the first public health insurance system in the United States. Medicare is a social insurance program administered by the United States government, providing health insurance coverage to people who are aged 65 and over, or who meet other special criteria. The program also funds residency training programs for the vast majority of physicians in the United States. Medicare operates as a single-payer health care system.

The program has undergone many changes, additions, and amendments since its inception. The focus of this present case is on its coverage of home health care.

In the 1970s, policy makers were all about Medicare expansion. In 1972, Social Security Disability recipients became eligible for Medicare benefits and in 1978 patients with End Stage Renal Disease became eligible Medicare recipients.

Whenever a nurse visits an elderly patient's home to change their dressing, administer insulin or provide other services, Medicare reimburses a home-care company for all its costs. Those costs include not just medical supplies and nurses' wages but also indirect expenses such as executive salaries, office rent and brochures.

During this decade of Medicare expansion, concerns over regulation and administration of the reimbursement of home health care also increased. There were inconsistencies in costs of services and allowable administrative costs. In spite of these concerns, home health reimbursement continued to expand. One major expansion was the Omnibus Budget Reconciliation Act (OBRA) of 1980. Prior to OBRA, a patient had to be in the hospital for three days prior to becoming eligible for home health care. The Act removed the hospital requirement and also permitted unlimited home health visits. Adding to the Government Accountability Office (GAO) concerns, the Act did not provide the Centers for Medicare and Medicaid Services (CMS) to publish consistent standards related to health care visits and reimbursements. (Keenan, Fanale, Ripsin, & Billows, 1990). The GAO supports Congress in meeting its constitutional responsibilities and helps improve the performance and accountability of the federal government for the benefit of the American people.

Perhaps one of the most significant changes by OBRA was the removal of the state licensure requirement for for-profit agencies which opened the door for for-profit providers of home health care.

Throughout the 1980's home health regulations underwent numerous changes between offerings by the CMS and the GAO. Some legislation related to patient eligibility and care, while others related to administrative reimbursement requirements by intermediaries. For more information related to the Medicare program related to home health, the authors encourage a look at Davitt and Choi, (2008). Ultimately, the Medicare home health manual was rewritten in 1989 by the CMS, changing the eligibility requirement for home health recipients. The result was that "Medicare home care was available to more beneficiaries for less acute conditions and for longer periods of time (GAO, 1996) as stated in Davitt and Choi, 2008.

The struggles with regulations related to patient care and expense reimbursement continued into the 1990s, and administrative oversight of the home health Medicare program went unchecked. Figure 1 shows the growth and decline of home health visits billed to Medicare nationally between 1988 and 2003.

| Visits | | |
|---|---|---|
| **Year** | **Actual (in 1,000s)** | **Growth %** |
| 1988 | 37,713 | 4.5 |
| 1989 | 47,258 | 25.31 |
| 1990 | 70,268 | 48.69 |
| 1991 | 99,825 | 42.06 |
| 1992 | 132,220 | 32.45 |
| 1993 | 164,234 | 24.21 |
| 1994 | 208,621 | 27.03 |
| 1995 | 249,394 | 19.54 |
| 1996 | 264,798 | 6.18 |
| 1997 | 258,168 | -2.5 |
| 1998 | 155,407 | -39.8 |
| 1999 | 113,439 | -27 |
| 2000 | 90,566 | -20.16 |
| 2001 | 73,573 | -18.76 |
| 2002 | 78,192 | 6.28 |
| 2003 | 82,851 | 5.96 |

Davitt, J. K., & Choi, S. (2008).

**MEDICARE'S HOME HEALTH CARE SYSTEM**

The Medicare home-health care system has three players. First, care providers such as SHHC care for patients in exchange for reimbursement of their reasonable patient care-related expenses. The second player, the fiscal intermediary, holds the purse strings to reimbursement funds under contract with the third player, the Health Care Financing Administration (HCFA), a government agency. Fiscal intermediaries, like providers, are entitled only to a return of their costs in exchange for their services.

Providers commonly receive biweekly payments in an amount based on quarterly figures of how many patients the provider has visited and how much each visit costs. At year end, providers submit an annual "cost report" for a reconciliation with the sum of these interim payments. If the total interim payments exceed the provider's actual allowable expenses as determined by the cost report, the provider owes the intermediary money. If, on the other hand, the provider's actual allowable expenses surpass the total periodic payments, the intermediary pays the provider.

In practice, SHHC's fiscal intermediary subjected SHHC's cost reports to a detailed audit, and this true-up for years as far back as 1990 was incomplete at the time of trial.

It is important to also note that the 45,000-page Medicare rule book contains decades of clarifications and interpretations piled on top of one another. Experts often could not agree on what is not allowable and what was barely allowable. Thus, creating a thin gray line for home health providers to use as a guide.

**THE SLIPPERY SLOPE**

Several milestone events occurred leading up to Jake's indictments. In the mid-1980s, disputes arose between SHHC's intermediary, over Jake's use of airplanes for travel; Jake took the position that his family life warranted the substantial additional expense to Medicare.

In 1989, SHHC's intermediary threatened to withhold interim payments because SHHC had denied access to records. Then, in 1990, a new intermediary reported SHHC to the Office of the Inspector General because of perceived irregularities and withheld interim payments because of a sudden and unexplained increase in costs.

In 1992 SHHC's Chief Financial Officer contacted federal officials to discuss shady practices at his previous employer of deceiving Medicare about who used corporate aircraft and where the planes went.

In 1995, the Office of the Inspector General sought to exclude SHHC from participation in the Medicare program for seven years, charging that SHHC had submitted false or fraudulent charges to the Medicare program for patient-related services allegedly made over the course of three fiscal years.

SHHC filed Chapter 11 Bankruptcy in 1996. The merger of SHHC with another home health provider (further referred to as The New Company) was affected at $329M, in November 1996. Effective with this merger, SHHC emerged from Chapter 11 bankruptcy.

In February 1999, 69 home healthcare agencies were purchased from The New Company by another home health company. This transaction resulted from The New Company selling its home health division due to changes in the Medicare reimbursement system.

**ALLEGATIONS OF FRAUD**

Throughout the ownership changes of SHHC, reports by the HHS Inspector General and the General Accounting Office portrayed a firm that grew rapidly

while billing the federal government for marketing services, lobbying and the purchase of new agencies.

In 1987, for instance, SHHC submitted bills for $3,832 in maid service on the condominium owned by SHHC executives Jake and Martha Miles and $5,132 for the lease on their son's BMW and for his college costs.

SHHC's 1992 Medicare bills included $1.7 million in salaries, benefits and travel that the Inspector General found "unallowable." The auditors counted 17 "Associate Directors of Community Affairs" whose activities included soliciting patients for the home health care agencies. Also billed to Medicare were the following:

- $1.02-million Leadership conference in San Diego
- $366,465 - Salary for SHHC Chairman Jake Miles
- $304,885 - Salary for SHHC President Martha Miles
- $2,723 - 6,000 SHHC golf tees
- $21,243 - 3,000 SHHC earrings and 99 cufflinks
- $30,888 - 88,272 containers of SHHC hand and body lotion
- $14,415 - 334,590 SHHC emery boards
- $38,969 - 142,835 SHHC refrigerator magnets
- $37,568 - 131,023 SHHC promotional pens
- $84,341 - 5,100 custom tins of gourmet popcorn for physicians
- $14,861 - Dinnerware
- $2,700 - 22 Mardi Gras Tickets
- $686 - 98 bags of Vidalia onions for legislators
- $2,473 - Luncheons with legislators

SHHC also billed Medicare for tickets to the Phantom of the Opera and for presents to state legislators, including 98 bags of Vidalia onions for $686. Medicare also paid $72,500 for board of directors' fees on a board made up of five members of the co-owners' immediate family.

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Charges were also filed involving numerous schemes related to what was considered by GAO and the OIG to be fraudulent billing.

**Personal Use Of Medicare-Reimbursed Airplanes**

SHHC owned, leased, or borrowed several airplanes, including a $2.8 million King Air jet, that its executives used for business travel. The Intermediaries policies did not prohibit reimbursement of the corporate airplane costs. In fact,

the Intermediary agreed to reimburse SHHC for its plane installment payments, provided that at least 90% of the plane's flight time was reimbursable, patient care-related travel. The Intermediary also consented to reimburse expenses such as maintenance and pilot salaries prorated to the percentage of time spent on business travel.

During and after these discussions with The Intermediary, Jake and Martha took SHHC planes on dozens of personal trips-twelve round trips alleged in the indictment, 72 total found by investigators, including attending their high school reunions and sports events such as university football games.

The costs allocable to this personal use would not have been reimbursable under the arrangement with The Intermediary if this use rose over 10% of total flying time, moreover, it threatened reimbursement for the King Air payments. SHHC, at Jake's direction and with the cooperation of the chief pilot, therefore, undertook to disguise and conceal personal use.

The chief pilot testified in court that on occasion SHHC's pilots disconnected monitoring equipment on certain trips in which Jake and Martha attended college football games, a Mexican resort, and other personal destinations of the Miles.

**Kickbacks On Aviation Fuel Purchases**

SHHC purchased most of its fuel and leased hangar and office space from a local Aviation company. For some time, the aviation company had discounted the fuel sold to SHHC because of the volume purchased. The difference between retail and SHHC's price would go into a rebate account with the aviation company. The aviation company applied the rebate account to renovation costs for SHHC's hangar and other maintenance expenses. Invoices would be presented to the aviation company to be paid out of the rebate account, or charges billed on a credit card paid by the aviation company out of the rebate account. Checks from this account also reimbursed Jake for fuel bought for some personal flights; thus, although it would appear that Medicare was not fueling the flights, through the rebate mechanism it was. SHHC reported the full fuel cost as part of its travel expenses. Thus, SHHC had the advantage of using the rebate money without having to justify the relation between the expenditures and patient care (Findlaw, 1998).

**Lobbying Expenses**

Medicare reimburses providers only their actual costs for patient care. Thus, Medicare providers cannot make a profit. A legislative proposal called the "prospective payment system," or "PPS," however, would change this system.

Under "PPS," providers would receive a flat fee for patient care. Hence, an efficient provider-or one that successfully inflated the baseline costs on which the flat fee rested-could realize a profit. As Jake explained in a speech to SHHC employees, with PPS SHHC could go public and make lots of money. For this reason, Jake hired lobbyists to promote PPS. Some were politicians, whom SHHC hired as a "consultant" to introduce Jake to influential lawmakers. Others were full-time, professional lobbyists. Lobbying costs are not reimbursable. SHHC's lobbying expenses were therefore reported on SHHC's cost reports as consulting expenses, which are reimbursable. These misrepresentations were backed up by well-engineered paperwork (Findlaw, 1998).

**Political Contributions**

In June 1991, during a Georgia gubernatorial campaign, Jake pressured seven executives of SHHC to attend a gubernatorial fundraiser. All seven executives made $500 contributions, which were then reimbursed by way of "bonuses" that were reported to The Intermediary as reimbursable salary expense. Jake testified that the contributions were purely coincidental to the bonuses, but there was no evidence that any executive who had not made a contribution received a $500 bonus at this time. Jake's demand of an Alabama manager to make campaign contributions, again to be reimbursed by padding expense reports, failed because SHHC's accounting department refused to approve the expense reports. Various employees testified that Jake Miles urged them to donate funds to political candidates while giving the employee equal-sized bonuses (Findlaw, 1998).

**"Salaries" To Former Owners Of Acquired Agencies**

The General Accounting Office also described the ways SHHC skirted Medicare rules in purchasing new home health care agencies. SHHC offered the owners a low purchase price in conjunction with a sizable employment contract. The employment contract would be reimbursable under Medicare.

SHHC grew rapidly during the late eighties and early nineties. SHHC achieved this rapid expansion by acquiring local home health care providers, often those that were in financial difficulty. SHHC's cash-flow predicament, however, made it difficult for it to pay for even these ailing agencies. Medicare would not pay for SHHC's acquisition of other agencies' goodwill (Findlaw, 1998).

Jake solved this problem in a few cases by inducing the owners of acquired agencies to sell by putting them on SHHC's payroll to be "community relations" specialists or, as one was told, "vice president of smiles." (R. 36 at 98-99.) A common thread was that the jobs were sinecures that required a few hours of marketing work a week with no patient care-related responsibilities. In all these

instances, SHHC was careful to maintain an appearance of employment. Timesheets, often signed in blank by the owners, were also kept.

SHHC avoided paying out of pocket more than a few thousand dollars for any agency, enough to cover the tangible assets such as furniture. Many of the owners had substantial liabilities, however, that they had guaranteed personally. Jake's solution to this problem was to encourage the agencies to delay reporting the purchase to the fiscal intermediary and to continue receiving periodic interim payments, which the owners would use as they pleased. Although the agency would owe those payments back to the government, the agency's sale of its assets to SHHC would prevent the government from ever collecting the money. Meanwhile, the liabilities would be paid, and the owner would walk away with a handsome employment contract.

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