



Trump pardons former WellCare executives

Jim Saunders

January 20, 2021

TALLAHASSEE, Fla. (News Service of Florida) - As part of a flurry of last-minute pardons and commutations, President Donald Trump granted pardons to five former executives of WellCare Health Plans who were convicted in a case involving allegations of defrauding Florida's Medicaid program.

Trump pardoned former WellCare CEO and President Todd Farha, former General Counsel Thaddeus Bereday, former Chief Financial Officer Paul Behrens, former Vice President William Kale and former Vice President Peter Clay.

FBI agents raided WellCare's Tampa headquarters in 2007 as part of an investigation that included using an undercover informant. At least in part, the case involved allegations that WellCare deceived the state about how much money the company spent on behavioral-health services for Medicaid beneficiaries and did not refund money as required.

A statement issued early Wednesday by the White House said the prosecution has been "widely cited as a case study in overcriminalization" and that the men had received support from organizations such as Cato Institute, the Reason Foundation and the National Association of Criminal Defense Lawyers.

"In 2008, Messrs. Farha, Bereday, Kale, Behrens, and Clay were criminally prosecuted for a state regulatory matter involving the reporting of expenditures to a state health agency," the White House statement said. "The expenditures reported were based on actual monies spent, and the reporting methodology was reviewed and endorsed by those with expertise in the state regulatory scheme. Notably, there was no evidence that any of the individuals were motivated by greed."

But a 2016 opinion by a panel of the 11th U.S. Circuit Court of Appeals described the case differently as the Atlanta-based court upheld the convictions of Farha, Behrens, Kale and Clay.

"At trial, the government proved that together the defendants participated in a fraudulent scheme to file false Medicaid expense reports that misrepresented and overstated the amounts Staywell

and Healthsease (WellCare subsidiaries) spent on medical services for Medicaid patients, specifically outpatient behavioral health care services,” the opinion said. “By overstating these expenses, the defendants helped Staywell and Healthsease retain millions of dollars in tax-subsidized Medicaid funds that they should have refunded to the Florida Agency for Health Care Administration. This, in turn, inflated the profits of Staywell, Healthsease, and WellCare and earned the defendants financial rewards.”

Similarly, a 2017 U.S. Department of Justice news release about the sentencing of Bereday described the case as a “\$35 million health care fraud scheme.” It also said that WellCare, as part of an agreement with prosecutors, was required to pay \$40 million in restitution and forfeit another \$40 million to the federal government and cooperate in the criminal investigation.

The news release in the Bereday sentencing said a 2002 Florida law required Medicaid HMOs to spend at least 80 percent of the Medicaid premiums they received for behavioral-health services on care for patients. If HMOs spent less than 80 percent, they were required to return money to the Medicaid program.

“Bereday and four other defendants were charged in an indictment that alleged the ways in which the defendants falsely and fraudulently schemed to submit inflated expenditure information in the company’s annual reports to AHCA in order to reduce the WellCare HMOs’ contractual payback obligations for behavioral health care services,” the news release said.

Farha, Behrens, Kale and Clay were convicted in 2013 on charges related to fraud and making false statements, according to the news release and the appeals-court opinion. Bereday later pleaded guilty to a charge involving a false statement.

“The judge imposed a range of sentences from probation to three years’ imprisonment, reflecting the conduct as an aberration from these individuals’ otherwise law-abiding lives,” the White House statement on the pardons said. “Messrs. Farha, Bereday, Kale, Behrens, and Clay are described as devoted to their family and their communities, and have weathered their convictions without complaint.”

As he prepared to leave office Wednesday, Trump granted pardons to 73 people and commuted the sentences of 70. WellCare merged last year with Centene Corp. in a \$17.3 billion deal that combined two of the largest players in Florida’s Medicaid managed-care system.