



U.S. Securities and Exchange Commission

U.S. SECURITIES AND EXCHANGE COMMISSION

[Litigation Release No. 21044 / May 18, 2009](#)

[Accounting and Auditing Release No. 2971 / May 18, 2009](#)

[Securities and Exchange Commission v. WellCare Health Plans, Inc.,
Civil Action No. 8:09-CV-00910-T-33-EAJ \(M.D. Fla., May 18, 2009\)](#)

SEC FILES ACTION AGAINST WELLCARE REGARDING SCHEME TO WITHHOLD MONEY FROM FLORIDA HEALTH CARE PROGRAMS; COMPANY TO PAY \$10 MILLION PENALTY

The Securities and Exchange Commission ("Commission") today filed a settled civil injunctive action against WellCare Health Plans, Inc. ("WellCare"), a managed care services company that administers federal government-sponsored health care programs. According to the Commission's complaint, from at least November 2003 to October 2007, WellCare fraudulently retained over \$40 million it was required to return to Florida state agencies under programs that provided mental health services to Medicaid recipients and health care services to uninsured children. As a result, WellCare materially overstated its publicly reported net income and diluted earnings per share in periodic filings made with the Commission.

As alleged in the complaint, WellCare executed its scheme by intentionally underpaying refunds it owed to two Florida state health care entities, the Florida Agency for Health Care Administration ("AHCA"), and the Florida Healthy Kids Corporation ("Healthy Kids"). Under these contracts, WellCare received funds, or "premiums," from the state to be used to provide medical and health benefits. To ensure a proper balance between cost savings and quality health care, the state required WellCare to spend a certain percentage of the premiums on eligible medical expenses. If WellCare spent less than the minimum amounts on eligible expenses, it was required to refund some or all of the difference to the state.

According to the Commission's complaint, WellCare did not follow the state's guidelines and regulatory framework governing how the company was required to calculate the refunds under each program. Instead, the company evaded the statutory requirements and fraudulently included ineligible payments to a subsidiary and administrative expenses as legitimate medical expenses. In addition, for certain refunds, WellCare considered a range of arbitrary amounts to refund to AHCA, and then reverse-engineered a methodology to arrive at a particular refund target. WellCare also engaged in a rate-swapping scheme whereby it inflated reimbursement rates for its Healthy Kids plan in exchange for lower Medicaid and Medicare rates at two Florida hospitals. In total, through its fraudulent conduct, WellCare reduced the refunds it paid to AHCA by approximately \$35 million and to Healthy Kids by approximately \$6 million.

WellCare's fraudulent retention of over \$40 million materially inflated its net income and earnings per share by essentially the same amounts — 14% for fiscal year ("FY") 2004, 9% for FY 2005, 13% for FY 2006, and 9% for the first quarter of FY 2007. On January 26, 2009, WellCare filed its Form 10-K for FY 2007 and restated its financial results for its FYs 2004 through 2006 and the first two quarters of FY 2007.

Without admitting or denying the allegations in the Commission's complaint, WellCare has consented to the entry of a final judgment for violations of the antifraud provision of the federal securities laws, Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rule 10b-5, the reporting provisions, Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1 and 13a-13, and the record-keeping and internal controls provisions, Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. In addition, the company has agreed to pay \$1 in disgorgement and a \$10 million civil penalty. The Commission acknowledges WellCare's cooperation with its investigation.

In conducting its investigation, the Commission received assistance from the U.S. Attorney's Office for the Middle District of Florida, the Office of Inspector General for the Department of Health and Human Services and the Federal Bureau of Investigation.

The Commission's investigation is continuing.

► [SEC Complaint in this matter](#)

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