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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

[UNDER SEAL],

Plaintiffs,

v.

[UNDER SEAL],

Defendant.

Case No: 2:21-CV-151-SMJ

**ORIGINAL COMPLAINT FOR
VIOLATION OF THE FEDERAL
FALSE CLAIMS ACT [31 U.S.C.
§ 3729 *et seq.*]**

JURY TRIAL DEMANDED

**FILED UNDER SEAL PURSUANT TO
31 U.S.C. § 3730(b)(2)**

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAY 03 2021

SEAN F. McAVOY, CLERK
DEPUTY
SPOKANE, WASHINGTON

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

United States *ex rel.* Benjamin
Montgomery and Brandon Haugen,

Plaintiffs,

v.

Lincare Holdings, Inc.,

Defendant.

Case No:

**ORIGINAL COMPLAINT FOR
VIOLATION OF THE FEDERAL
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§ 3729 *et seq.*]**

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31 U.S.C. § 3730(b)(2)**

1 **FALSE CLAIMS ACT COMPLAINT**

2 *Qui Tam* Plaintiff Relators Benjamin Montgomery and Brandon Haugen
3 (“Relators”), on behalf of the United States of America (“the Government”), bring
4 this Complaint against Lincare Holdings, Inc. and allege, based upon personal
5 knowledge, relevant documents, and information and belief, as follows:

6 **I. INTRODUCTION**

7 1. This is an action to recover damages and civil penalties on behalf of
8 the United States for Defendant’s violations of the False Claims Act, 31 U.S.C.
9 § 3729, *et seq.* (the “FCA”).

10 2. Defendant Lincare Holdings Inc. is a durable medical equipment
11 company that specializes in supplying oxygen and associated equipment and
12 services to patients with respiratory issues such as chronic obstructive pulmonary
13 disorder (“COPD”). Since at least 2007, Lincare has overcharged the Medicare
14 program by knowingly claiming payment from Medicare Advantage (“MA”) plans
15 for monthly rentals of oxygen equipment for which it is not entitled to payment.
16 Lincare has received millions of dollars in overpayments through this misconduct,
17 harming both the Medicare program—which funds MA plans to administer
18 Medicare benefits—and Medicare beneficiaries, who pay up to 20% of the
19 improper charges. Lincare has failed to return the overpayments to the plans and
20 has deliberately continued to submit claims that are ineligible for payment.

21 3. Home oxygen concentrators, portable oxygen concentrators, and high-
22 pressure portable oxygen tanks are machines that supply patients with concentrated
23 oxygen. The typical lifespan of the equipment is five years or more.

24 4. Medicare covers the rental of oxygen concentrators and portable
25 oxygen systems as long as a patient has the medical need for such. However,
26 under Medicare’s traditional medical insurance program, known as Medicare Part
27 B, Medicare will only make monthly rental payments for oxygen concentrators and
28 portable oxygen systems for up to 36 months of continuous use. 42 C.F.R.

1 § 414.226(a)(1). After 36 months, the equipment supplier is required to allow the
2 beneficiary to keep the machine without further rental charges to the beneficiary or
3 to Medicare for the remainder of the useful life of the machine (an additional 24
4 months). 42 C.F.R. § 414.226(h)(1); 42 C.F.R. § 414.210(f)(1). Through these
5 criteria, Medicare covers the rental of oxygen equipment as long as it is needed,
6 but only pays monthly rental charges for 3 out of 5 years of continuous use.

7 5. A large and growing share of Medicare beneficiaries receive Medicare
8 benefits through the MA program, also known as Medicare Part C, under which
9 private health insurers contract with Medicare to provide Medicare benefits to
10 program beneficiaries. MA plans are required by law to provide their beneficiaries
11 with, at a minimum, the same benefits available under traditional Medicare, at the
12 same or equivalent levels of cost-sharing. *See* 42 U.S.C. § 1395w-22(a)(1)(A), 42
13 C.F.R. § 422.101(a). The benefits that MA plans provide are subject to CMS
14 approval.

15 6. Many MA plans have adopted Medicare Part B's payment limitation
16 for oxygen equipment rentals. Thus, such MA plans will cover the rental of
17 oxygen equipment for 36 months of continuous use, after which the beneficiary
18 may keep the machine for the remainder of its useful life without further rental
19 charges.

20 7. In violation of MA plans' coverage limitations, Lincare knowingly
21 bills MA plans for oxygen equipment rental fees past the 36-month reimbursement
22 limit. In many cases, Lincare has continued to charge MA plans—and to demand
23 copays from beneficiaries—for months, and sometimes years, beyond the 36-
24 month limit. The result is that MA plans and Medicare beneficiaries have
25 significantly overpaid Lincare for oxygen equipment.

26 8. Lincare knows that the MA plans prohibit payment for oxygen rentals
27 beyond 36 months and that the MA plans have erred in continuing to pay rental
28 fees beyond that limit. Lincare managers explained to the Relators that the

1 company policy is to continue to bill MA plans beyond the 36-month limit so long
2 as the plans continue to pay its claims, notwithstanding the fact that Lincare knows
3 the claims are ineligible for payment.

4 9. Lincare’s misconduct violates the False Claims Act. The False
5 Claims Act prohibits suppliers from, inter alia, knowingly presenting false claims
6 for payment; making or using false records or statements material to false claims;
7 and improperly avoiding an obligation to return funds to the Government. A
8 “claim” includes any request for payment presented to a government contractor
9 where the Government provided or will reimburse any portion of the funds in
10 question and the money is to be spent or used on the Government’s behalf or to
11 advance a government interest—all of which applies to invoices submitted to MA
12 plans. By knowingly charging MA plans for equipment rental fees that are
13 ineligible for payment and retaining the improper payments on those claims,
14 Lincare has knowingly presented false claims for payment, made or used false
15 records and statements material to false claims, and improperly avoided an
16 obligation to return funds to the Government.

17 **II. THE PARTIES**

18 **A. Lincare Holdings Inc.**

19 10. Defendant Lincare Holdings, Inc. (“Lincare”) is a durable medical
20 device supply company specializing in oxygen and respiratory equipment,
21 supplies, and services for patients. Lincare is a privately held Delaware
22 corporation headquartered in Clearwater, Florida at 193787 U.S. Highway 19
23 North.

24 11. Lincare operates over 1,000 distribution centers and operates in every
25 state except for Alaska and Hawaii. It serves over 750,000 patients and reported a
26 gross annual revenue of approximately \$1.8 billion in 2012 (the last year for which
27 it filed an annual report with the SEC). Oxygen, respiratory, and other chronic
28 therapy services make up approximately 90% of Lincare’s net revenue according

1 to its 2012 annual report. In 2011, 61% of Lincare’s revenue came from Medicare
2 and Medicaid reimbursement.

3 12. Lincare has a regional billing and collections office (“RBCO”) located
4 in Spokane, Washington.

5 13. Lincare Holdings is owned by Linde Plc., a multinational chemical
6 company with global headquarters in Guildford, Surrey, in the United Kingdom.

7 14. Hereinafter, “Lincare” Refers to Lincare Holdings, Inc. and any and
8 all subsidiaries, affiliates, and/or assumed names under which it conducts business.

9 **B. Plaintiff-Relators**

10 15. Plaintiff-Relator Benjamin Montgomery is a resident of Libby,
11 Montana. From 2007 until January 18, 2021, Relator Montgomery worked for
12 Lincare, first as a Service Representative and Driver for approximately two years,
13 then as a Center Manager of the distribution center in Libby, Montana.

14 16. Plaintiff-Relator Brandon Haugen is a resident of Libby, Montana.
15 From 2016 until January 18, 2021, Relator Haugen worked for Lincare as a
16 Customer Service Representative out of its distribution center in Libby, Montana.

17 17. The Libby distribution center reported to Lincare’s RBCO located in
18 Spokane, Washington. In addition to overseeing the 12 regional distribution
19 offices located in Montana, the Spokane RBCO also oversees regional distribution
20 offices located in Idaho and Washington.

21 **III. JURISDICTION AND VENUE**

22 18. This Court has jurisdiction over the subject matter of this action
23 pursuant to 28 U.S.C. § 1331 and 31 U.S.C. § 3732, which confers jurisdiction on
24 this Court for actions brought pursuant to 31 U.S.C. §§ 3729 and 3730.

25 19. This Court has personal jurisdiction over Defendant pursuant to 31
26 U.S.C. § 3732(a), which authorizes nationwide service of process, and because
27 Defendant has minimum contacts with the United States. Moreover, Defendant
28 can be found in, resides, and/or transacts or has transacted business in this District.

1 20. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and
2 1395(a) and 31 U.S.C. § 3732(a) because Defendant can be found in and/or
3 transacts or has transacted business in this District. At all times relevant to this
4 Complaint, Defendant regularly conducted substantial business, maintained
5 employees, and/or made significant sales in this District. In addition, statutory
6 violations, as alleged in this Complaint, occurred in this District.

7 21. Although the issue is no longer jurisdictional, there has been no public
8 disclosure of the “allegations or transactions” in this Complaint within the meaning
9 of 31 U.S.C. § 3730(e). Even if there had been any such public disclosure,
10 Relators are original sources of the allegations herein because prior to any relevant
11 public disclosure, they voluntarily disclosed to the Government the information
12 upon which the allegations or transactions in the Complaint are based, and/or
13 because they have knowledge that is independent of and materially adds to any
14 publicly-disclosed allegations or transactions relevant to the claims, and
15 voluntarily provided the information to the Government before filing this action.

16 **IV. THE MEDICARE PROGRAM**

17 22. Medicare is a federally funded health insurance program that provides
18 medical coverage for individuals over 65, disabled individuals, and those suffering
19 from end stage renal disease. Medicare is administered by the Department of
20 Health and Human Services, Centers for Medicare and Medicaid Services
21 (“CMS”).

22 23. The Medicare program has four parts: Part A, Part B, Part C, and Part
23 D. Medicare Part A covers the cost of inpatient hospital services and post-hospital
24 nursing facility care. Medicare Part B covers the cost of services performed by
25 physicians and certain other health care providers, such as services provided to
26 Medicare patients by physicians, laboratories, and diagnostic testing facilities. *See*
27 42 U.S.C. § 1395k, 1395x(s). Medicare Part C established a program under which
28 most individuals entitled to Medicare Part A and enrolled under Part B may elect

1 to receive Part A and Part B benefits through private managed care plans.
2 Medicare Part D provides subsidized prescription drug coverage for Medicare
3 beneficiaries.

4 24. The allegations in this Complaint concern Medicare Part C,
5 commonly known as the MA program. Under the MA program, beneficiaries may
6 elect to receive Medicare Parts A and B benefits through managed care plans
7 offered by private health insurance companies under contract with CMS. The
8 health insurance companies that contract with CMS to operate these MA plans are
9 known as MA Organizations or “MAOs.”

10 25. Although MAOs are private insurance companies, the Government,
11 through CMS, finances the benefits that MA plans provide their members. CMS
12 provides payments on a capitated basis to MAOs to reimburse the MAOs for the
13 cost of providing Medicare benefits to their members. 42 U.S.C. § 1395w-23(a).
14 Therefore, any claims submitted to MA plans for Medicare benefits will be paid
15 with Government funds and spent to advance a Government interest, namely the
16 provision of Medicare benefits to program beneficiaries.

17 26. MAOs must submit an annual bid to CMS in order to receive or renew
18 a contract for an MA plan. 42 C.F.R. § 422.254. Each bid submission must reflect
19 a uniform benefit package for the intended service area and must contain
20 information on the MA plan’s projected allowable costs, as well as its deductibles,
21 coinsurance, and copayments. For an MA plan to receive a contract, CMS must
22 determine that the bid is actuarially supported and reasonably and equitably
23 reflects the MA plan’s revenue requirements for providing the specified benefit
24 package. 42 C.F.R. § 422.256(b).

25 27. By law, MA plans are required to provide beneficiaries with coverage
26 for the items and services provided by Medicare Parts A and B in the plan’s service
27 area. *See* 42 U.S.C. § 1395w-22(a)(1)(A), 42 C.F.R. § 422.101(a). MA plans must
28 provide all “items and services . . . for which benefits are available under parts A

1 and B . . . with cost-sharing for those services as required under parts A and B or,
2 subject to clause (iii), an actuarially equivalent level of cost-sharing as determined
3 in this part.” 42 U.S.C. § 1395w-22(a)(1)(B)(i).

4 28. Medicare coverage of services and items is set forth in the Medicare
5 statute and CMS regulations, as well as by manuals issued by CMS, and by
6 National Coverage Determinations (NCDs), Local Coverage Determinations
7 (LCDs), and Local Medical Review Policies (LMRPs). MA plans must follow
8 LCDs and LMRPs that extend or limit coverage of a particular medical item or
9 service for Part A and B Medicare beneficiaries within that jurisdiction. MA plans
10 may provide additional, supplemental coverage to beneficiaries beyond the
11 coverage required by Parts A and B. But in no case may an MA plan provide
12 items or services that are less than what is available to the beneficiary under Part A
13 and Part B.

14 29. MAOs contract with healthcare providers such as Lincare to provide
15 covered items and services to MA plan members.

16 **V. MEDICARE COVERAGE OF OXYGEN EQUIPMENT AND**
17 **SUPPLIES**

18 30. Medicare Part B covers home oxygen therapy equipment “for patients
19 with significant hypoxemia who meet the medical documentation, laboratory
20 evidence, and health conditions” specified in CMS’s national coverage
21 determination for “Home Use of Oxygen.” Medicare National Coverage
22 Determinations Manual, Pub. 100-03, § 240.2.

23 31. Since 2006, Medicare Part B has paid suppliers a monthly fee to rent
24 oxygen equipment to beneficiaries. *See* Deficit Reduction Act of 2005, Pub. L.
25 No. 109-171, § 5101(b), 120 Stat. 37 (2005), codified at 42 U.S.C. § 1395m(a)(5).
26 The monthly rental payment that Part B makes to the equipment supplier “may not
27 extend over a period of continuous use (as determined by the Secretary) of longer
28 than 36 months.” 42 U.S.C. § 1395m(a)(5)(F)(i).

1 32. CMS regulations prohibit suppliers from replacing or modifying
2 Medicare beneficiary oxygen equipment during the 36-month rental period, except
3 in limited circumstances. 42 C.F.R. § 414.226(i)(1). This prohibition was adopted
4 to prevent equipment suppliers from circumventing the payment rules by replacing
5 equipment before the end of the 36-month rental period and restarting the 36-
6 month clock to extend rental payments beyond 36 months. 74 Fed. Reg. 61738,
7 61887 (Nov. 25, 2009) (explaining that rule was intended “to protect the
8 beneficiary from the supplier changing the beneficiary’s equipment in order to
9 maximize Medicare payments.”).

10 33. After the 36-month rental payment period has lapsed, the equipment
11 supplier is required to allow the patient to retain, without cost to Medicare or the
12 patient, the equipment for the reasonable useful lifetime of the equipment as long
13 as the equipment remains medically necessary for the patient. 42 C.F.R.
14 § 414.226(h). The “reasonable useful life” of the equipment is determined by
15 program instructions, but must be at least five years. 42 C.F.R. § 414.210(f)(1).
16 Suppliers must also perform maintenance and servicing of beneficiary equipment
17 after the 36-month period, for which Medicare reimburses reasonable and
18 necessary charges. 42 C.F.R. § 414.210(e). Suppliers must also continue to
19 furnish the patient with oxygen contents for the remainder of the reasonable useful
20 life of the equipment after the 36-month period has elapsed. 42 C.F.R.
21 § 414.226(h)(2).

22 34. Medicare’s 36-month cap on oxygen equipment rental payments is
23 designed to prevent the beneficiary from paying a greater amount in rental
24 payments over time than the reasonable retail value of the equipment itself. If
25 Medicare made monthly rental payments for oxygen equipment indefinitely, as it
26 used to do prior to January 2006, the beneficiary’s portion of the payments after
27 approximately 36 months would have more than eclipsed the retail price of the
28 equipment. Therefore, allowing the beneficiary to retain the equipment after 36

1 months with no further rental fees charged to Medicare or the beneficiary reflects
2 the fact that the beneficiary and Medicare would have essentially paid for the
3 machine by that point.

4 35. Thus, the cap on rental payments after 36 months prevents suppliers
5 from reaping unreasonable profits and ensures that equipment is provided
6 “economically” as required by the Social Security Act. 42 U.S.C. § 1320c-5(a)(1).

7 **VI. ALLEGATIONS**

8 **A. Lincare Bills MA Plans for Oxygen Equipment Rental Fees that**
9 **Are Ineligible for Payment**

10 36. Lincare is a nation-wide durable medical equipment supplier that
11 specializes in equipment and supplies for patients with respiratory disorders. Its
12 services include the rental of stationary and portable oxygen concentrators.

13 37. Lincare contracts with numerous MAOs to provide oxygen equipment
14 and supplies to Medicare beneficiaries enrolled in MA plans. Numerous MA
15 plans, including Blue Cross and Blue Shield of Montana (“BCBS Montana”),
16 follow Medicare Part B’s 36-month payment limit for the monthly rental of oxygen
17 concentrators.

18 38. Notwithstanding the MA plans’ payment limitations, Lincare
19 routinely bills MA plans (and the beneficiaries enrolled in them) rental fees for
20 oxygen concentrators beyond 36 months, significantly increasing the amount it is
21 paid for its services.

22 39. The following are representative examples of rental fees that Lincare
23 has charged to a single MAO, BCBS Montana, for beneficiaries enrolled in its MA
24 plans. In line with traditional Medicare coverage, BCBS Montana at all relevant
25 times has paid for oxygen equipment rentals from network providers such as
26 Lincare for 36 months only with 20% coinsurance. Notwithstanding these
27 coverage limits, Lincare has billed BCBS Montana’s MA plans for oxygen
28 equipment rentals far beyond the plans’ payment limits:

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Patient Number	Billing Start Date	Billing End Date	Total Months Billed	Months Overpaid
Patient 1	6/2/2016	10/15/2020	54	18
Patient 2	10/15/2016	10/14/2020	121	85
Patient 3	1/8/2015	10/7/2020	70	36
Patient 4	7/10/2017	10/9/2020	40	4
Patient 5	10/27/2011	9/26/2020	108	72
Patient 6	1/1/2015	10/9/2020	69	33
Patient 7	6/22/2016	9/22/2020	54	18
Patient 8	2/25/2016	9/24/2020	56	20
Patient 9	1/7/2015	6/7/2018	41	5
Patient 10	10/22/2010	9/21/2020	120	84
Patient 11	3/23/2015	10/4/2020	68	32
Patient 12	3/3/2016	10/8/2020	57	21
Patient 13	3/8/2010	10/7/2020	142	106
Patient 14	3/26/2014	9/25/2020	79	43
Patient 15	6/23/2015	9/22/2020	64	28
Patient 16	1/21/2015	9/20/2020	69	33
Patient 17	4/29/2016	9/28/2020	54	18
Patient 18	6/27/2013	9/26/2020	88	52
Patient 19	1/1/2016	10/12/2020	57	21
Patient 20	4/8/2014	10/7/2020	79	43
Patient 21	3/4/2016	9/24/2020	56	20
Patient 22	2/24/2012	9/23/2020	104	68
Patient 23	1/1/2017	10/11/2020	45	9
Patient 24	1/1/2016	9/27/2020	56	20
Patient 25	8/3/2016	10/2/2020	51	15
Patient 26	4/6/2015	11/5/2019	56	20

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Patient 27	11/14/2013	10/13/2020	84	48
Patient 28	5/15/2014	10/14/2020	78	42
Patient 29	7/9/2014	10/8/2020	76	40
Patient 30	8/28/2015	11/27/2020	62	26
Patient 31	1/16/2017	10/3/2020	46	10
Patient 32	8/13/2015	10/10/2020	63	27
Patient 33	10/27/2011	9/30/2020	110	74

40. BCBS Montana paid Lincare’s claims notwithstanding the fact that they were not eligible for payment under BCBS Montana’s plan. Lincare’s claims for payment in excess of BCBS Montana’s coverage limits have caused BCBS Montana and its enrolled beneficiaries to overpay Lincare substantially for oxygen equipment.

41. Lincare’s improper billing further impacts MA plans by denying their members new equipment that the members are eligible to receive. Lincare’s systems do not allow patients to receive new equipment if they are currently being billed rental fees. Because Lincare bills MA plans for rental fees beyond 36 months, its systems deny new equipment to some patients whose existing equipment has exceeded its reasonable useful lifetime (60 months), and who are therefore eligible for new equipment under the MA plans’ coverage policies.

42. Lincare’s improper billing practices extend beyond BCBS Montana and its wider operations in Montana. Lincare manages its Montana distribution centers from an RBCO in Spokane, Washington. The Regional Vice President overseeing the Spokane RBCO has informed employees that Lincare has no responsibility to stop billing MA plans after 36 months and has expressly approved the company’s charges to BCBS Montana despite knowing that BCBS Montana does not pay for oxygen rental fees beyond 36 months. To Relators’ knowledge,

1 the Regional Vice President is responsible for multiple states, including Montana,
2 Washington, and Idaho.

3 43. Lincare follows standardized billing practices and procedures across
4 all its billing offices. In light of the company's operations in Montana and the
5 position of the Spokane RBCO, Relators believe that Lincare overcharges MA
6 plans across the Pacific Northwest and elsewhere. Consistent with that belief,
7 Relator Haugen emailed Idaho Customer Service Representative ("CSR")
8 Bridgette Thompson on November 13, 2020, to ask if she had encountered the
9 same issue of Lincare continuing to bill MA plans for rental fees past 36 months.
10 Ms. Thompson confirmed that she had encountered the same problem in Idaho and
11 stated that Lincare only stops billing MA plans if the patient requests that the
12 insurance stop the rental payments.

13 **B. Lincare Knows That It Bills MA Plans Past Their 36 Month Cap**
14 **On Monthly Rental Fees**

15 44. Lincare knows that MA plans cap rental fees for oxygen equipment
16 after 36 months and that Lincare continues to bill and receive payments from the
17 MA plans beyond that payment limit. As discussed below, Relators have spoken
18 with Lincare management on multiple occasions about the company's violations of
19 the MA plans' 36-month limit. Despite acknowledging that the MA plans do not
20 pay rental fees beyond 36 months, Lincare's management informed Relators that
21 the company's policy is to continue to bill rental fees unless and until the MA
22 plans stop further payment.

23 45. In approximately 2015, Relator Haugen discussed his concerns about
24 the policy's effect on patients seeking new oxygen equipment with RBCO Upfront
25 Reviewer Mike Gonzales, whose position involved reviewing and submitting
26 claims to insurers. Relator explained to Mr. Gonzalez that Lincare's systems were
27 denying new equipment to patients whose existing equipment had exceeded their
28 reasonable useful lifetimes (60 months). Relator Haugen, who had fielded multiple
requests for new equipment from eligible beneficiaries, asked Mr. Gonzalez to

1 explain why Lincare was still billing those patients after the 36-month cap, thereby
2 preventing the patients from receiving new machines. In response, Mr. Gonzalez
3 told Relator Haugen that Lincare would only stop billing MA plans for a patient if
4 the plan stopped paying its claims. In the case of one patient who had been billed
5 for rental fees over 36 months, Mr. Gonzalez said that he would “cap” billing in
6 the patient’s account only if the MA plan “capped” its payments, which it had not
7 yet done.

8 46. The process Mr. Gonzalez described was contrary to Lincare’s
9 procedure for billing Medicare Part B. Lincare tracks the monthly rental fees it
10 charges to insurers and patients, including the month and year the patient received
11 their new equipment. For Part B claims, Lincare’s systems automatically cease
12 billing after 36 months of continuous use, in compliance with the payment cap.
13 The systems continue to monitor the age of the patients’ equipment after 36
14 months to determine when the members reach 60 months of continuous use and
15 become eligible for new equipment. Thus, the company knows when patients’
16 equipment hits the 36-month and 60-month marks and has implemented an
17 automatic payment stop when the payor is Medicare Part B. For MA plans,
18 however, the company has not implemented a rule to stop billing at 36 months,
19 even though it knows that MA plans follow the Part B payment limit.

20 47. On October 2, 2020, Relator Haugen emailed Sara Iseman, the
21 Medicare supervisor for the RBCO in Spokane; Marlene Cross, the Head of MAO
22 and private insurance and supervisor of the RBCO; Regional Training Manager
23 Ruama Kruse; and Regional Manager Crystal Reyes, about “a practice Lincare has
24 regarding the cap policy with Bx MCR ADV” (referring to Blue Cross Blue Shield
25 MA plans). In the email, Relator Haugen explained that “Lincare continues to bill
26 for oxygen after the 36-month rental period on Bx advantage plans as they don’t
27 seem to track the number of payments.” Having recently attended a training on the
28 False Claims Act, Relator noted that the Act prohibits companies from knowingly

1 retaining money wrongly paid to the company by a government funded healthcare
2 program.

3 48. Three days later, on October 5, 2020, Ms. Cross forwarded Relator
4 Haugen's email to Ms. Moore copying Ms. Reyes and Ms. Kruse. In forwarding
5 the email, she noted that it wasn't the first time this issue had been brought to
6 Lincare's attention, stating: "Joni, we have brought this up before, how would you
7 like me to answer this?"

8 49. In a subsequent email the same day, Ms. Kruse emailed Ms. Moore to
9 explain that they had reached out to her for guidance on "what the correct
10 procedure is for submitting these claims to Bx MCR ADV" and if it was being
11 "done correctly then it's all we need to know." Ms. Moore simply replied that
12 "Yes, it is how we have been instructed"—indicating that billing beyond the 36-
13 month limit is what Lincare had instructed its staff to do. Ms. Kruse then emailed
14 Relator Haugen that "RBCO management confirmed that is the correct way to bill
15 for those insurances."

16 50. Relator Montgomery also reported the issue to Lincare in an October
17 5, 2020 voice message to Cass Lott, a Lincare Compliance Investigator in
18 Lincare's corporate office in Florida. While Mr. Lott never responded to Relator's
19 voice mail, Compliance Director Karen Coursen returned Relator's voicemail.
20 Relator explained to Ms. Coursen that Lincare was overbilling MA patients by
21 continuing to bill the plans for rental payments after 36 months. The same day,
22 Relator also left a voice message with another Compliance Investigator, Benjamin
23 Doan, stating he had a compliance concern and requesting that Mr. Doan contact
24 him. Mr. Doan never responded to the voicemail.

25 51. Receiving no explanation of the issue, Relator Montgomery followed
26 up with Ms. Coursen on October 13, 2020, sending her two examples of patients
27 for whom Lincare had continued to bill BCBS Montana for oxygen equipment
28 after 36 months. Relator noted that Lincare had continued to bill the patients for

1 coinsurance and that the billing prevented the patients from receiving new oxygen
2 equipment.

3 52. On November 13, 2020, Relator Montgomery had another phone
4 conversation with Ms. Coursen regarding Lincare's fraud. This time, Ms. Coursen
5 informed Relator that Lincare's policy was not to stop billing the MA plan after 36
6 months, unless the plan stopped making payments beyond that date. Ms. Coursen
7 told Relator that she had discussed the issue with the Regional Vice President in
8 the Spokane RBCO (who Relator Montgomery understood to be John Rouse) and
9 that it was not Lincare's responsibility to stop billing until the plan cut off
10 payment. When Relator explained that this practice was preventing one of his
11 patients from being able to receive new oxygen equipment, Ms. Coursen responded
12 that the patient would have to pursue the issue with his health insurer, not Lincare.

13 53. The same day, Relator Montgomery emailed Lincare's Chief
14 Compliance Officer Jenna Pedersen. Ms. Pedersen called Relator Montgomery
15 and requested that he send her information on the two patients Relator had
16 identified to Ms. Coursen. Relator sent the information to Ms. Pedersen, as well as
17 Ms. Coursen's response to Relator. Ms. Pedersen did not respond to Relator
18 Montgomery's concerns prior to his departure from the company several months
19 later.

20 54. Confirming that Lincare's policy extended beyond Montana, Relator
21 Montgomery emailed Ms. Thompson, the Customer Service Representative in
22 Idaho, to ask whether "you have Bx advantage plans in your state and if you ever
23 had a problem with the plans not capping for O2." Ms. Thompson replied:

24 Yes. This is a problem here too. I was advised that the pt needs to contact
25 his insurance and have them cap the payments. Once they cap then the
26 billing office can cap in the system and process a 60 month swap at the right
27 time frame. But ultimately it is going to be based on the pt contacting the
28 insurance to cap the payment.

55. Lincare's policy, as conveyed to the Relators and to Ms. Thompson, is
deliberate and brazen. Lincare purposely bills MA plans for rental fees beyond 36

1 months, knowing that the charges are not allowable and that the MA plans have
2 erred in continuing to pay them. Lincare only stops billing its improper charges to
3 the MA plans if a Medicare beneficiary intervenes and insists that the MA plan
4 stops paying Lincare's invoices. Even then, Lincare fails to refund the
5 overpayments it had knowingly claimed from the MA plans.

6 **VII. LINCARE'S VIOLATIONS OF THE FALSE CLAIMS ACT**

7 56. Through the conduct described above, Lincare knowingly presented,
8 and caused to be presented, false claims for payment. Lincare has presented false
9 claims by submitting invoices to the MAOs for services that are not eligible for
10 payment under the MAOs' MA plans. Each false invoice is a claim for payment
11 under the FCA because the MAOs contract with CMS and receive federal funds to
12 spend or use to advance the MA program.

13 57. Lincare similarly has caused the MAOs to present false claims for
14 payment to CMS by requesting payment based on costs that were not allowable.
15 The rates that CMS pays MAO are based on the MAOs' incurred costs in the prior
16 year, which the MAOs are required to report to CMS each year. By overcharging
17 the MAOs, Lincare caused MAOs to report inflated costs to CMS, which used
18 those costs to determine the rates it would pay MAOs going forward.

19 58. Lincare also has made, used, and caused to be made and used, false
20 records and statements material to false claims. In submitting invoices to MAOs
21 for rental fees, Lincare expressly or implicitly represented that the invoices were
22 eligible for payment and complied with the MA plans' coverage requirements.
23 Those representations were false for each invoice Lincare submitted for payment
24 after 36 months because such invoices sought payment beyond the maximum
25 coverage that the MA plans allowed. The representations were material to
26 payment because they caused the MAOs to make rental payments to Lincare. Had
27 the MAOs known that Lincare's invoices were not allowable, they would not have
28 paid the claims.

1 59. Lincare also has caused MAOs to make and use false records and
2 statements material to false claims by causing the MAOs to falsely represent to
3 CMS that their payments reflect allowable costs under the Medicare program. The
4 MAOs' representations to CMS are false because the payments do not reflect
5 allowable costs; they are material to payment because the costs MAOs report to
6 CMS determine their current and future payment amounts.

7 60. Lincare has known, recklessly disregarded, or been indifferent to the
8 fact that these claims, records, and statements were false. Lincare has known at all
9 relevant times that Medicare does not pay for oxygen equipment rentals beyond 36
10 months and that it has contracted with MAOs that administer MA plans that follow
11 Medicare's payment limitation. Lincare further knows that MAOs, including
12 BCBS Montana, do not prevent payment of claims for oxygen equipment rentals
13 after 36 months, even though the costs are not allowable. Lincare submits claims
14 for payment beyond 36 months to receive funds that it knows it is not eligible to
15 receive. Lincare also has recklessly disregarded or acted with indifference to the
16 truth that its billing practices violate MA plans' payment limits by continuing to
17 bill MAOs after Relators had warned that the company was billing MAOs beyond
18 plan coverage limits.

19 61. Lincare additionally has concealed or knowingly and improperly
20 avoided or decreased obligations to pay or transmit money or property to the
21 Government by knowingly retaining payments from MAOs for patients who
22 exceed the 36-month limit. Lincare knows that the MA plans do not allow rental
23 payments beyond 36 months but has not returned the improper payments it
24 received from the MAOs within 60 days, as required by law.

25 **VIII. CAUSE OF ACTION**

26 62. Relators reallege and incorporate by reference the allegations
27 contained in paragraphs 1 through 61 as though fully set forth herein.

28

1 63. This is a claim for treble damages and penalties under the False
2 Claims Act, 31 U.S.C. §§ 3729 – 3733.

3 64. By virtue of the acts described above, Defendant knowingly
4 presented, or caused to be presented, false or fraudulent claims for payment, in
5 violation of 31 U.S.C. § 3729(a)(1)(A).

6 65. By virtue of the acts described above, Defendant knowingly made,
7 used, or caused to be made or used, false records or statements material to false or
8 fraudulent claims, in violation of 31 U.S.C. § 3729(a)(1)(B).

9 66. By virtue of the acts described above, Defendant knowingly made,
10 used, or caused to be made or used, a false record or statement material to an
11 obligation to pay or transmit money or property to the Government, or knowingly
12 concealed or knowingly and improperly avoided or decreased an obligation to pay
13 or transmit money or property to the Government, in violation of 31 U.S.C.
14 § 3729(a)(1)(G).

15 67. The Government, unaware of the falsity of the claims, records, and
16 statements that Defendant made or caused to be made, paid and continues to pay
17 claims that would not be paid but for Defendant's illegal conduct.

18 68. Defendant has damaged, and continues to damage, the United States
19 in a substantial amount to be determined at trial.

20 69. Additionally, the United States is entitled to the maximum penalty
21 under 31 U.S.C. § 3729, as adjusted by the Federal Civil Penalties Inflation
22 Adjustment Act of 1990, for each and every violation alleged herein.

23 **IX. PRAYER**

24 WHEREFORE, Relators prays for judgment against Defendant as follows:

25 1. That Defendant cease and desist from violating 31 U.S.C. §§ 3729 –
26 3733 as set forth above.

27 2. That this Court enter judgment against Defendant in an amount equal
28 to three times the amount of damages the United States has sustained because of

1 Defendant's actions, plus the maximum civil penalty permitted for each violation
2 of the False Claims Act;

3 3. That Relators be awarded the maximum amount allowed pursuant to
4 § 3730(d) of the False Claims Act;

5 4. That Relators be awarded all fees, costs, and expenses incurred in
6 connection with this action, including attorneys' fees, costs, and expenses; and

7 5. That Relators recover such other relief as the Court deems just and
8 proper.

9 **DEMAND FOR JURY TRIAL**

10 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Relators hereby
11 demand a trial by jury.

12 Dated: May 3, 2021

13 By: 

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