UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

In re CHEMED CORP. SECURITIES LITIGATION This Document Relates To: ALL ACTIONS.	No. 1:12-cv-00028-MRB CLASS ACTION Judge Michael R. Barrett

SECOND AMENDED COMPLAINT

Lead Plaintiffs Electrical Workers Pension Fund, Local 103, I.B.E.W. and Greater Pennsylvania Carpenters Pension Fund ("Lead Plaintiffs" or "Plaintiffs"), by their undersigned attorneys, hereby bring this Second Consolidated Amended Complaint ("Complaint") against Chemed Corporation ("Chemed" or the "Company"), Kevin McNamara, David Williams and Timothy O'Toole (collectively, "Defendants") and allege the following upon knowledge as to their own acts, and upon the investigation conducted by Plaintiffs' counsel as detailed below.

I. NATURE OF THE ACTION

1. This is a federal securities class action brought on behalf of purchasers of the common stock of Chemed between February 15, 2010 and May 2, 2013, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

2. Defendant Chemed operates in two business segments: VITAS Innovative Hospice Care ("VITAS"), a national hospice care provider; and Roto-Rooter, a residential and commercial plumbing and drain cleaner. This action concerns the VITAS hospice segment of Chemed's business. During the Class Period, VITAS accounted for more than 70% of the Company's revenue, with over 90% of VITAS' revenue consisting of payments from Medicare and Medicaid programs. Chemed's ability to grow as a Company, therefore, was closely tied to VITAS' ability to increase reimbursements from federal Medicare and Medicaid programs.

3. Prior to the Class Period, VITAS was moving in the wrong direction. Growth in hospice care admissions was slowing, and with it, growth in revenue and earnings declined as well. Following four consecutive quarters of declining admissions growth, Defendants embarked on a fraudulent scheme to reverse this trend. To the investing public, Defendants announced that VITAS planned to increase admissions (and, thereby, increase payments from Medicare and Medicaid) by improving employee training, by doing a better job processing new admissions, by increasing its

marketing efforts and by pursuing non-traditional referral sources. Unbeknownst to investors, however, the plan, which unmistakably came from the top echelon of Chemed's management team, promoted the clear-cut circumvention of Medicare and Medicaid rules and regulations to increase revenue coming from these government programs.

4. In furtherance of its maneuver to increase admissions and federal government reimbursements, VITAS engaged in a wide-spread fraud, each element of which led to the submission of improper and ineligible claims to Medicare and Medicaid. The first step in the scheme to enroll hospice care patients who did not qualify for Medicare or Medicaid benefits involved the inadequate training of VITAS' employees, who were never properly instructed in vetting which patients actually qualified for hospice care under Medicare's eligibility criteria. This lack of training led to the second step in the scheme: the admission of patients into VITAS' hospice care who were not terminally ill - a requirement for hospice care reimbursement under Medicare, and to the recertification of patients for continued hospice care even when those patients no longer met Medicare's eligibility criteria. To further increase its hospice care census, VITAS automatically enrolled new hospice patients discharged from hospitals in continuous home care, the level of care with the highest rate of compensation, without regard to the actual medical needs of the patient.

5. Throughout the Class Period, VITAS physicians and admitting nurses were pressured by general managers and marketing personnel to admit and recertify as many patients as possible, without regard to the eligibility of those patients for Medicare's hospice reimbursement. By manipulating the manner in which patients' admission forms were completed, these practices allowed VITAS to improperly receive payments from Medicare and Medicaid for services rendered to ineligible patients and for a level of care well beyond that which was permissible.

6. Defendants publicly touted VITAS' improved financial performance without disclosing the manipulation of Medicare and Medicaid rules and regulations employed to achieve the enhanced results.

7. Defendants' materially false and misleading statements alleged herein caused the artificial inflation of Chemed's stock price during the Class Period. Defendants took advantage of the artificially inflated Chemed stock price in two ways: 1) they sold over $14.4 million of Chemed shares that they knew carried an artificially inflated value at the time they sold those shares during the Class Period; and 2) they reaped additional rewards from the Company's Executive Long Term Incentive Plan, designed to reward executives for improving the Company's financial performance, but used here to improperly reward Defendants for their misconduct.

8. By mid-2011, as government reimbursements to hospice providers and particularly *for-profit* hospice providers, like VITAS, increased at alarming rates, concerned federal officials put hospice providers in their cross-hairs in an effort to determine why hospice care disbursements had increased so significantly. On July 18, 2011, the Office of Inspector General ("OIG"), the government entity involved in investigating hospice providers for compliance with Medicare rules and regulations, published a report entitled, "Medicare Hospices That Focus on Nursing Facility Residents," which outlined concerns about inappropriate enrollment and compensation for hospice services provided to nursing facility residents. Specific hospices were not identified in this report.

9. Defendants, however, continued to tout Chemed's purported compliance with Medicare rules and regulations in their public statements and affirmatively denied their involvement in the types of activities discussed in the OIG report. During an investor conference held on July 27, 2011, Defendant O'Toole responded to questions about the OIG report, by saying, "***[w]e don't have that issue at all. We are very comfortable with where we sit.***"[1]

[1] All emphasis is added unless otherwise noted.

10. Only four months later, on November 16, 2011, *Bloomberg News* published an article entitled "Whistleblower Accuses Chemed Unit of Medicare HMO Conspiracy." The article disclosed that a former VITAS general manager charged VITAS with defrauding the federal government by conspiring with health insurers to enroll patients into hospice care even when those patients were not dying, making VITAS' reimbursements from Medicare improper and in violation of Medicare's rules and regulations. Shockingly, the *qui tam* lawsuit detailed how several of VITAS' highest level managers were complicit in this corporate-wide effort to circumvent Medicare rules and regulations. The article further reported that a U.S. Department of Justice ("DOJ") investigation had commenced to determine whether VITAS entered into a widespread, "extensive scheme" to defraud Medicare and Medicaid of "hundreds of millions of dollars" by falsifying records *and hospice certifications.* The article also stated that the Texas Attorney General's office was investigating VITAS and had filed a notice with the court to obtain information from the Company.

11. During the Class Period, Chemed's stock traded as high as $80.68 per share on February 20, 2013.

12. The news about VITAS on November 16, 2011 sent Chemed's stock plummeting. On November 16, 2011, after news became public of the breadth of the DOJ investigation into VITAS and the scope of the whistleblower action, Chemed's stock fell $6.87 per share, or 11%, to close at $50.65 per share on extremely heavy trading volume.

13. While the November 16, 2011 *Bloomberg News* article informed investors that Chemed's improved financial condition was a result of their improper scheme to defraud the government, the scope and breadth of Defendants' fraud was made abundantly clearer upon the subsequent disclosure of additional federal and state investigations, the unsealing of newly filed *qui*

tam lawsuits and ultimately, the filing of a federal False Claims Act ("FCA") lawsuit by the DOJ alleging that VITAS and Chemed engaged in widespread Medicare fraud.

14. On August 2, 2012, Chemed announced that VITAS had received an administrative subpoena from the OIG in June 2012 in connection with an investigation of improper claims submitted to Medicare and Medicaid, requesting documents related to VITAS' hospice program in Southern California.

15. On November 2, 2012, Chemed disclosed that VITAS had received a subpoena from the Florida Attorney General in July 2012 seeking various categories of documents related to VITAS' improper provision of hospice care in Florida. Chemed also disclosed certain details contained in two *qui tam* complaints, now unsealed, both alleging that Chemed violated the FCA by submitting fraudulent claims to Medicare for patients inappropriately admitted for hospice care. Chemed further stated that VITAS received another administrative subpoena from the OIG in September 2012 seeking production of medical records for patients from 10 states who received continuous care at VITAS' facilities.

16. After the stock market closed on May 2, 2013, it was announced that the DOJ filed a complaint against Chemed and VITAS in the Western District of Missouri captioned *United States v. Vitas Hospice Services LLC, et al*. (W.D. Mo.) (the "DOJ Complaint").[2] The DOJ Complaint alleges that starting in at least 2004 and "even to this day" VITAS and Chemed were knowingly billing Medicare for patients who did not satisfy the eligibility requirements for hospice care. In response to this news, Chemed's stock price plummeted $13.79 per share, or 16.86%, to close at $68.00 per share on May 3, 2013 on extremely heavy trading volume.

[2] The DOJ Complaint is attached hereto as Exhibit A.

II. JURISDICTION AND VENUE

17. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act [15 U.S.C. §§78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission ("SEC") [17 C.F.R. §240.10b-5].

18. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and Section 27 of the Exchange Act [15 U.S.C. §78aa].

19. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C. §1391(b), as and many of the acts and practices complained of herein occurred in substantial part in this District.

20. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

III. PARTIES

21. Lead Plaintiffs Electrical Workers Pension Fund, Local 103, I.B.E.W. and Greater Pennsylvania Carpenters Pension Fund, as set forth in their certifications previously filed with the Court and incorporated by reference herein, purchased the common stock of Chemed at artificially inflated prices during the Class Period and have been damaged thereby.

22. Defendant Chemed provides hospice care through its subsidiary VITAS, and plumbing repair and drain cleaning services through its subsidiary Roto-Rooter. The Company maintains its principal executive offices in this District.

(a) Defendant Kevin McNamara ("McNamara") was President and Chief Executive Officer ("CEO") of Chemed during the Class Period and has held these positions since August 1994 and May 2001, respectively. Previously, he served as an Executive Vice President, Secretary and General Counsel of the Company, since November 1993, August 1986 and August

1986, respectively. Before that, he held the position of Vice President of the Company, from August 1986 to May 1992.

(b) Defendant David Williams ("Williams") was Executive Vice President ("EVP") and Chief Financial Officer ("CFO") of Chemed during the Class Period and has held these positions since August 10, 2007 and March 5, 2004, respectively.

(c) Defendant Timothy O'Toole ("O'Toole") was CEO of the VITAS segment of Chemed and an EVP of Chemed during the Class Period and has held this position since February 24, 2004. During the Class Period, O'Toole was also an EVP of Chemed and has held this position since May 1992. Previously, from May 1992 to February 24, 2004, he also served as Chemed's Treasurer.

(d) Defendants McNamara, Williams, and O'Toole are collectively referred to herein as the "Individual Defendants." Chemed and the Individual Defendants are collectively referred to herein as "Defendants."

23. Because of the Individual Defendants' positions with the Company, they had access to the adverse undisclosed information about the Company's business, operations, operational trends, financial statements, markets and present and future business prospects via internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and Board of Directors' meetings and committees thereof and via reports and other information provided to them in connection therewith.

24. Each of the above officers of Chemed, by virtue of their high-level positions with the Company, directly participated in the management of the Company, especially VITAS, was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, growth, financial statements, and financial condition, as alleged herein. Said Defendants had the ultimate

authority over and were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

25. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was, and is, traded on the New York Stock Exchange ("NYSE"), and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to promptly disseminate accurate and truthful information with respect to the Company's financial condition and performance, growth, operations, financial statements, business, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly-traded common stock would be based upon truthful and accurate information. The Individual Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

26. The Individual Defendants had ultimate authority over, and participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their executive and managerial positions with Chemed, each of the Individual Defendants had access to the adverse undisclosed information about Chemed's financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about Chemed and its business issued or adopted by the Company materially false and misleading.

27. The Individual Defendants, because of their positions of control and authority as officers of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Each Individual Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Individual Defendants is responsible for the accuracy of the public reports and releases detailed herein and is therefore primarily liable for the representations contained therein.

28. Each of the Defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Chemed common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding VITAS' business, operations, management and the intrinsic value of Chemed common stock; (ii) enabled the Individual Defendants and other Chemed insiders to sell almost 100,000 shares of their personally-held Chemed common stock, generating proceeds of more than $14.4 million; (iii) provided each of the Individual Defendants with additional bonus compensation pursuant to the Company's Long Term Incentive Plan; and (iv) caused Plaintiffs and other members of the Class to purchase Chemed common stock at artificially inflated prices.

IV. CLASS ACTION ALLEGATIONS

29. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all those who purchased the common stock of Chemed during the Class Period and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times,

members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

30. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Chemed common shares were actively traded on the NYSE under the ticker symbol "CHE." According to Chemed's Form 10-Q dated November 4, 2011, as of September 30, 2011, 19,881,497 shares of Chemed stock were outstanding. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Chemed or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

31. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

32. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

33. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period misrepresented or omitted material facts about the business, operations and management of Chemed;

(c) whether the Individual Defendants acted with scienter; and

(d) to what extent the members of the Class have sustained damages and the proper measure of damages.

34. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

V. BASIS OF ALLEGATIONS

35. The allegations herein are based on Plaintiffs' personal knowledge as to their own acts and on information and belief as to all other matters, such information and belief having been informed by the investigation conducted by, and under the supervision of, their counsel, which included reviewing and analyzing publicly available information relating to the relevant time period obtained from numerous public and proprietary sources (such as LexisNexis, Dow Jones and Bloomberg, Inc.), SEC filings by Chemed, regulatory filings and reports, securities analysts' reports and research data, investor conference transcripts, Company advisories, press releases and other public statements issued by the Company, media reports, news articles and the DOJ Complaint. Plaintiffs believe that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

36. Moreover, the allegations made herein are supported by the first-hand knowledge of 20 confidential witnesses ("CWs") – all former employees who describe their experiences at VITAS during their tenure (some of whom have provided information in confidence, these CWs will be identified herein by number (CW1, CW2, *etc*.) and will be described in the masculine in all cases in

order to protect their identities). As detailed below, the CWs each served in positions at VITAS that provided them with access to information as alleged herein.

(a) CW1 was employed as Director of Market Development for VITAS' Hartford, Connecticut region from September 2008 to September 2011. In this capacity, CW1 supervised a team of sales representatives responsible for communicating with long term care facilities, nursing homes and physicians in the Hartford area to market VITAS' hospice services. CW1 reported directly to Michelle Hanlon, the general manager of VITAS' operations in Hartford, Connecticut.

(b) CW2 was the former Senior Director of Compliance at VITAS from July 2007 through May 2010. As Senior Director, CW2 was responsible for assisting and putting together VITAS' financial statements and implementing VITAS's internal controls. CW2 reported to former Controller, Lawrence Press, and Chief Accounting Officer, Burt Tracey.

(c) CW3 was a former patient care administrator at VITAS' operations for the Columbus, Ohio program from January 2011 through October 2011, when he resigned. CW is a registered nurse. As a patient administrator, CW3 was responsible for supervising patient care teams to provide medical, social and emotional support to patients and their families. CW3 reported to Steve Wishart the general manager, who reported to Joanne Mack.

(d) CW4 served as VITAS' Director of Market Development at the New Jersey North office from March 2009 through April 2011. In CW4's capacity as Director of Market Development, CW4 headed up a team of marketers who sought leads and referrals for the Company's hospice care programs. CW4 reported to VITAS' general manager of operations in the New Jersey region.

(e) CW5 was a former admissions nurse at the Sacramento, California location of VITAS from February 2008 through October 2010. As an admissions nurse, CW5 was responsible

for conducting patient assessments and recommending whether a particular patient qualified for hospice services. CW5 reported to the nursing supervisor of admissions.

(f) CW6 was employed at VITAS' Dublin, Ohio facility from November 2010 through October 2011. CW6 first served as a case manager, but became an admitting nurse in July 2011. As an admitting nurse, CW6 was responsible for interviewing and examining patients to determine if they qualified for hospice services. CW6 reported to the patient care administrator.

(g) CW7 was employed in VITAS' Coachella Valley, California location as a registered nurse from the spring of 2009 through spring of 2010. Coachella Valley was a satellite office for VITAS' San Bernardino, California location. As a registered nurse at VITAS, CW7 admitted patients and provided patient care. CW7 reported to former team manager, Harris Jamison, who, in turn, reported to patient care administrator, Anne Beamesderfer.

(h) CW8 was employed as a marketer for VITAS' Pittsburgh, Pennsylvania branch from December 2007 through October 2010. As a marketer, CW8 was responsible for obtaining referrals of patients for hospice admissions. CW8 reported to Mark Cadence, the general manager of the Pittsburgh branch.

(i) CW9 was employed at VITAS' Encino, California location as an admissions nurse from August 2009 through approximately November 2009. From November 2009 through February 2011, CW9 worked as a case manager at the VITAS Camarillo, California location. As an admission nurse at Encino, CW9 was responsible for assessing patients for appropriateness for hospice care. As a case manager at Camarillo, CW9 was responsible for overseeing patient care, reporting changes in the patient's condition to the medical director, reporting the patient's status to the medical director, and monitoring the patient. At Encino, CW9 reported to the admissions supervisor, Jack Guinn, and Guinn reported to general manager Susie Fishenfeld. At Camarillo, CW9 reported to Gail Hart who reported directly to patient care administrator Anne Beamsdorfer.

(j) CW10 was employed as an admission nurse from September 2009 through August 2011, at VITAS' Walnut Creek, California location. As an admitting nurse, CW10 was responsible for interviewing and examining patients to see if they qualified for hospice care. In this capacity, CW10 reported directly to admissions manager Jill Heifetz, who reported to general manager Bruce Davis.

(k) CW11 was employed as a hospital sales representative by VITAS' San Bernardino, California location from November 2008 to March 2011. As a sales representative, CW11 marketed VITAS' services to hospitals and doctors' offices and, at times, directly to the patients and/or their families. CW11 reported to Mary Beth Wadding, the Director of Marketing. Wadding reported to general manager Steve Girod and regional vice president of marketing Mary Ann Davidson.

(l) CW12 was employed as an admissions coordinator at the Lombard, Illinois call center from 2008 until August 2011. CW12 was responsible for dispatching admission nurses to evaluate patients and evaluated the patients' charts that were entered into the computer system that CW12 had access to. Once a referral had been entered into the system, CW12 was responsible for calling the patient's family on a consistent basis to ask if they were ready to transfer the patient to hospice care. CW12 reported to director of customer service Deborah Lipinski who reported to call center general manager Carol DeGrazia. DeGrazia reported to telecare services general manager Julie Dayiantis.

(m) CW13 was a certified nurse practitioner at the palliative care program in VITAS' Pittsburgh, Pennsylvania location from May 2010 until June 2011. CW13 reported to the general manager of the palliative care program, Jim Joyce, who reported to both the executive director of palliative care, Dawn DaSilva, and the GM of the VITAS hospice program in Pittsburgh, PA, Mark Katich, who in turn reported to regional vice president Rosemary Baughn.

(n) CW14 was a marketing representative at VITAS' Boynton Beach, Florida location from January 2009 until May 2011. CW14 was responsible for marketing to nursing homes and to doctors who worked at nursing homes. CW14 reported to the director of marketing development, Nancy Boulter, who reported to a regional director of marketing, Jane Merritt, and the program general manager, Susan Acocella, who reported to Senior Vice President of Market Development and Sales, Donald Gaddy.

(o) CW15 was a hospice representative at VITAS' Fort Lauderdale, Florida location from December 2009 to August 2010. CW15 was responsible for marketing to hospitals, independent living facilities, nursing facilities, assisted living facilities and doctors' offices. CW15 reported directly to the director of business development, Richard Deal, who reported to the general manager of the Fort Lauderdale location, Mary Zalaznik, who reported to the Senior Vice President of Market Development and Sales, Donald Gaddy.

(p) CW16 was a business development and admissions representative employed in VITAS' Boynton Beach, Florida location from before the Class Period through the summer of 2012. CW16 was responsible for sales and marketing of hospice services in the Northern Palm Beaches and for reviewing the charts of medical and pharmaceutical criteria for hospice admissions. CW16 reported to director of market development, Nancy Boulter, who reported to regional director of market development Jane Merritt.

(q) CW17 was a staff nurse for continuous care from November 2005 to January 2011. He first worked at the Chicagoland NW location (Lombard, Illinois) as a Staff Nurse on the Continuous Care team from November 2005 to May 2009, and then as a Telecare Nurse from May 2009 to May 2010 at the same location. CW17 finished his tenure at VITAS as a Staff Nurse on the Continuous Care Team of the Chicagoland Central location (Chicago, Illinois) from May 2010 to January 2011. CW17's responsibilities as a Staff Nurse included providing continuous care and

monitoring and documenting the status of terminal patients. As a Telecare Nurse, his responsibilities included ordering home medical equipment, verifying medication orders, and receiving calls from vendors, nurses and other employees for the purposes of assessing the patients' health. During his employment as both Staff Nurse and Telecare Nurse at the Chicagoland NW location, CW17 reported to Continuous Care Supervisor, Joann Gawczynski. CW17 reported to Continuous Care Supervisor Gwendolyn Crowder at Chicagoland Central during CW17's tenure as a Staff Nurse on a continuous care team.

(r) CW18 was a medical social worker and community liaison at VITAS' Torrance, California location from 2009 until March 2011. As a medical social worker, CW18 met with patients, collected patient information and coordinated follow-up assessments. As a community liaison, CW18 provided hospice education in assisted living and skilled nursing facilities, as well as physicians' offices. CW18 reported to Donna Scott, assistant clinical director who reported to general manager Marie Hagerty who reported to Joanne Mack, regional Vice President of Hospice Operations.

(s) CW19 was an admission manager of VITAS' three Connecticut locations from approximately 2006 to October 2010. CW19 was an admissions manager at VITAS' Middlebury, Connecticut location the entire time, and served in that capacity at VITAS' Hartford and Fairfield, Connecticut locations for approximately one year, from the middle of 2008 to the middle of 2009. As an admissions manager, CW19 evaluated every potential new patient for their appropriateness for hospice. CW19 also supervised admitting nurses. CW19 reported to Patient Care Administrator ("PCA") Nancy Petrowski and then PCA Beth Keitzer. Both PCAs reported to General Manager Theresa Bachuber ("Bachuber").

(t) CW20 was a registered nurse at the VITAS inpatient unit at St. Mary's hospital in Waterbury, Connecticut from March 2011 to June 2012. CW20 was responsible for

conducting a "head-to-toe" assessment of the patient for hospice eligibility, making sure that documentation met VITAS standards, providing psycho-social support and spiritual support for the patient, and medical and social needs of the patient and family. CW20 reported to the patient care manager Cindy Fitzmaurice who reported to the Middlebury patient care manager Beth Keitzer.

VI. SUBSTANTIVE ALLEGATIONS

A. The Company and Its Core Business – VITAS

37. Defendant Chemed, through its subsidiaries, provides hospice care, plumbing and drain repair and cleaning services in the United States. The Company operates in two segments, VITAS and Roto-Rooter. The VITAS segment offers hospice care services, including routine home care, general inpatient care, continuous care, and respite care. It also offers spiritual and emotional counseling to patients and their families through its team of doctors, nurses, home health aides, social workers, clergy, and volunteers. The Roto-Rooter segment provides plumbing repair and cleaning services, including sewer, drain, and pipe cleaning, as well as plumbing repair to residential and commercial customers through its network of Company-owned branches, independent contractors, and franchisees. The Company was founded in 1970 and is headquartered in Cincinnati, Ohio.

38. This action concerns the VITAS hospice segment of Chemed's business, which, during the Class Period, accounted for more than 70% of the Company's revenue and a similar percentage of the Company's after-tax profit. In the larger VITAS segment, more than 90% of the segment's revenue was generated from Medicare and Medicaid reimbursements, which were made on a "per diem" basis.

B. The Medicare Hospice Benefit

39. The Medicare Hospice Benefit ("MHB") covers palliative and support services for terminally ill beneficiaries. To be eligible for hospice care, a physician must certify that the patient is "terminally ill." 42 U.S.C. §1395f(a)(7). An individual is considered terminally ill if he or she

has "a medical prognosis that the individual's life expectancy is 6 months or less." 42 U.S.C. §1395x(dd)(3).

40. The services covered under MHB include, among others, nursing care; physical, occupational or speech therapy; medical social services; home health aide and homemaker services; physician services; counseling; short-term inpatient care; drugs and biologicals for symptom control; home medical equipment; bereavement services; and other services for palliation of the terminal condition. 42 U.S.C. §1395x(dd)(1).

41. Beneficiaries who elect the MHB agree to forgo Medicare coverage for treatment of their terminal illness. Once admitted to a hospice program, a written plan of care is established and maintained by an attending physician, medical director or another hospice physician. 42 U.S.C. §1395f(a)(7)(B).

C. Medicare Eligibility for Hospice Services

42. Once a beneficiary elects hospice services, a hospice physician and the patient's attending physician, must certify that the beneficiary has a life expectancy of six months or less if the terminal illness runs its normal course. 42 U.S.C. §1395f(a)(7)(A).

43. If a patient is admitted into hospice care and survives for 90 days, the patient is reassessed. If the terminally ill beneficiary continues to have a life expectancy of six months or less, the patient can be recertified for another 90 days. *Id.* Following the second 90 day period, as long as the patient remains eligible for MHB, the patient can be recertified for an unlimited number of 60 day benefit periods. 42 U.S.C. §1395d(a)(4). For recertification, only the hospice physician must certify that the beneficiary's life expectancy is six months or less. 42 U.S.C. §1395f(a)(7)(A).

44. All certifications and recertifications must include a brief physician narrative explaining the clinical basis for the patient's prognosis. 42 U.S.C. §418.22(b)(3).

45. In addition to the requirements covering the eligibility of Medicare beneficiaries for hospice care benefits, there are also federal regulations governing the hospice program itself. To that end, a hospice program must satisfy certain Conditions of Participation ("COP") to be certified and to receive Medicare payment for the services it provides.

46. One such COP requires the hospice to obtain the "informed consent" of the hospice patient, or the patient's legal representative, specifying the type of care services that will be provided. Admitting a hospice patient, even for a short time, without the patient's informed consent violates the COP.

47. In addition, to satisfy the COP requirement, a written plan of care for the patient must be established and developed prior to the administration of any care by an interdisciplinary team, which includes the patient's attending physician and the medical director at the hospice. The plan must assess the patient's needs, identify services to be provided to meet those needs, and must be reviewed and updated at specified intervals.

48. The COP requirements also mandate that hospice care employees receive ongoing training in the provision of hospice care services.

D. Medicare Payment for Hospice

49. Medicare pays hospice providers a daily rate for each day a beneficiary is enrolled in hospice. Accordingly, the longer a patient is enrolled in hospice, the more revenue the hospice provider generates.

50. Payments are made according to a fee schedule that has base payment amounts for four categories of care: (i) routine home care; (ii) continuous home care; (iii) inpatient respite care; and (iv) general inpatient care. In fiscal year 2010, the routine home care rate was $143 per day. The routine home care rate is paid for each day that a patient is enrolled in a hospice program and does not receive any of the other types of hospice care. For continuous home care (home care

provided during periods of patient crisis), the hospice is paid an hourly rate ($34.75 per hour in 2010) for care delivered during periods of crisis if care is provided in the home for 8 or more hours within a 24-hour period. The rate for inpatient respite care – short period inpatient care to provide respite for a primary caregiver – was $148 per day in 2010, and $636 per day for general inpatient care to treat symptoms that cannot be managed in another setting.

E. Avoiding Medicare Cap Penalty Created Additional Need to Increase Admissions

51. The "Medicare cap" limits the total aggregate payment an individual hospice can receive in a year and is calculated by multiplying the number of beneficiaries who have elected hospice care during an accounting year by a per beneficiary "cap amount." It was crucial for the Company not to exceed the Medicare cap limit because the Company would then have to record a liability and reimburse Medicare for the difference at the end of that year.

52. Prior to the Class Period, VITAS suffered a significant decline in hospice admissions. Indeed, between the third quarter of 2008 to the second quarter of 2009, VITAS experienced four consecutive quarters of negative hospice admissions growth. The decline was due, in part, to competition from other hospice providers and weak industry trends.

53. Negative admissions growth is reflected in the Company's financial statements in the form of slower revenue growth and lower earnings. Negative admissions growth may cause a hospice provider to exceed the Medicare cap limit. To avoid these outcomes, Defendants mandated material changes to VITAS' business model to increase hospice admissions. Unbeknownst to investors, however, these changes involved the improper admission and recertification of hospice patients and the institution of billing practices designed to circumvent Medicare's rules and regulations.

F. Hospice Providers Become Subject to Heightened Scrutiny

54. As Medicare spending on hospice rose 70% from 2005 through 2009, hospice providers started to face increased scrutiny from regulators.

55. In June 2008 and March 2009, the Medicare Payment Advisory Commission ("MedPAC") analyzed the hospice benefit and found that Medicare's hospice payment system contains incentives that make very long stays in hospice more profitable for providers than short stays, which may lead to inappropriate utilization of the benefit among some hospices. MedPAC also found that the Center for Medicare and Medicaid Services ("CMS") lacks adequate administrative and other controls to check the incentives for long stays in hospice or ensure providers' compliance with the benefit's eligibility criteria. In particular, MedPAC found: (i) an increase in the number of hospices, driven almost entirely by growth in for-profit providers; (ii) an increase in average length of stay due to increased lengths of stay among patients with the longest stays; (iii) a positive correlation between hospice profit margins and average length of stay; (iv) reports that some hospices admit patients who do not meet the Medicare hospice eligibility criteria of a life expectancy of six months or less; and (v) efforts by hospices to enroll nursing home residents and reports of questionable relationships between some nursing facilities and hospices.

56. In addition, the OIG became increasingly involved in investigating hospice care providers and their compliance with Medicare and Medicaid regulations. On or about July 18, 2011, the OIG published a report titled "Medicare Hospices That Focus on Nursing Facility Residents," detailing concerns with the provision of hospice care for nursing facility residents, including inappropriate enrollment and claims for compensation submitted to Medicare. The OIG found that these hospices seek out patients with conditions that typically require longer stays and less complex care. The report noted the OIG's intent to look at marketing practices of these hospices and their

relationships with nursing facilities. Neither Chemed nor VITAS were specifically mentioned in this report.

G. The VITAS Hospice Program

57. Headquartered in Miami, Florida, VITAS is one of the nation's largest hospice providers. During the Class Period, it served patients through Medicare-certified hospice programs in 16 states: California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Kansas, Michigan, Missouri, New Jersey, Ohio, Pennsylvania, Texas, Virginia and Wisconsin. VITAS' largest markets were Florida and California.

58. VITAS provides its hospice services primarily in the patients' homes, but also provides services in inpatient hospice units, hospitals, nursing homes and assisted living communities/residential care facilities for the elderly. VITAS contracts with several health care providers and practitioners, including physicians, hospitals and nursing homes and arranges for these entities to provide services to VITAS patients.

59. Patients are referred to VITAS by physicians, hospitals, long-term care facilities and other institutional health care providers. Some of these referral sources have contracts with VITAS to provide services to VITAS patients.

60. Marketing personnel employed by VITAS are responsible for securing the referral of patients for hospice admissions and receive bonuses based on the number of patients who they refer *and who enroll* for hospice care. Marketers forward a patient's name and information to a VITAS admissions nurse. The admissions nurse examines the patient to determine the patient's eligibility for hospice care under the relevant Medicare and Medicaid rules and regulations. The admitting nurse relates his or her findings to a VITAS physician, who, most often based solely upon the evaluation and determination of an admitting nurse, decides if he should certify that patient as "terminally ill" and, therefore, qualified for hospice care.

61. VITAS keeps track of its potential patient referrals using an internal reporting system called Salesforce. According to a former VITAS marketer, CW8, the sales data and referral reports on Salesforce are monitored daily by VITAS' corporate office. CW15 confirmed that the Salesforce program contained census information, including the amount of time a patient had been on hospice. According to CW15, "[e]veryone had access to Salesforce including corporate."

62. Indeed, during the Class Period, VITAS' corporate officers monitored the most important elements of VITAS' business, including admissions, discharge rate and median length of patient stay. VITAS' former Senior Director of Compliance, CW2, reported that a "census" specifically monitoring hospice admissions was generated at the corporate level and updated daily. The census was created for upper management, including managers and directors, and allowed them to track the performance of VITAS' business. According to CW2, VITAS directors were always looking at admissions numbers and had access to the census via computer log-in. CW2 recalled that the census also included "budget" numbers that VITAS was required to achieve monthly, as well as length of patient stay. CW2 further noted that Defendant O'Toole regularly discussed numbers contained in the census with VITAS' CFO.

63. As the Company admitted in its annual reports for the years ended December 31, 2009 and December 31, 2010, filed with the SEC on Form 10-K, Defendants "actively monitor[ed] each of [their] hospice programs, by provider number, as to their specific admissions, discharge rate and median length of stay data in an attempt to determine whether they are likely to exceed the Medicare cap."

64. Along with VITAS' management, "Chemed management regularly corresponded with Vitas management about the average daily census and growth in admissions, making focused, frequent inquiries if they believed the numbers reported were too low." DOJ Complaint ¶161.

65. As alleged *infra*, Defendants engaged in an extensive, ***company-wide*** scheme to: (i) enroll and keep patients in hospice even though those individuals were not eligible for hospice care; (ii) enroll and keep patients in the more expensive continuous care level of service, including those who were not eligible for this "crisis care"; and (iii) fraudulently obtain payments for these hospice services from the federal government. A material portion of Chemed's revenues, earnings and hospice enrollments in the VITAS segment were inflated during the Class Period due to these and other fraudulent practices.

H. Throughout the Class Period, Defendants Circumvented Medicare Rules and Regulations

66. In an effort to turn around VITAS' streak of negative admissions growth, Defendants engaged in a Company-wide scheme of admitting patients who were not eligible for hospice care and billed Medicare for their services to such patients. Indeed, following a lengthy investigation, the DOJ concluded: "Vitas's corporate culture encouraged its marketing and clinical staff to admit as many patients as possible, regardless of whether they were eligible for hospice." DOJ Complaint ¶164.

67. While Medicare rules and regulations require a physician to certify a patient for admission to hospice care, at VITAS, that certification was wholly dependent upon the evaluation of the only person who met with the patient prior to admission, the admitting nurse. Thus, by exerting pressure on its admitting nurses to ratify the admission of non-terminally ill patients (¶¶73-93, *infra*), VITAS enabled physicians to ultimately certify the admission of ineligible patients.

1. VITAS Fails to Properly Train and Teach Employees the Requirements for Medicare Coverage

68. Given the importance VITAS had to Chemed's overall success and the significance of the revenues received directly from Medicare, VITAS had a duty to obtain a thorough understanding of the Medicare hospice program. Inherent in that duty was their obligation to properly train and inform its employees regarding the requirements for Medicare coverage of hospice services. DOJ Complaint ¶31.

69. As the DOJ observed, VITAS did not properly train its staff on hospice eligibility criteria. A former VITAS medical director stated that he received no training at all from VITAS on Medicare eligibility requirements for hospice. VITAS expected this former medical director to certify patients as eligible for hospice without first determining that the patient had a prognosis of six months or less to live should the patient's illness run its normal course. In contrast, numerous VITAS marketing employees informed the DOJ that VITAS spent a significant amount of resources training its marketing employees on how to "sell hospice" to patients, patients' families, and referral sources for potential hospice patients. DOJ Complaint ¶169.

70. VITAS employed field nurses to provide care to its hospice patients residing in skilled nursing facilities, assisted living facilities, and hospitals, but did not adequately teach the nurses of the eligibility requirements for Medicare eligibility. DOJ Complaint ¶170.

71. VITAS directed these untrained field nurses, as part of their roles and responsibilities, to identify elderly people who were eligible for the Medicare hospice benefit, and to encourage the referral of elderly people to VITAS for end of life care. DOJ Complaint ¶171.

72. The allegations of inadequate and improper training alleged by the DOJ are supported by CW4, who stated that at his VITAS location, there was an inconsistency in admissions due to a lack of training of staff to identify hospice-appropriate patients, which led to the admission of inappropriate patients.

2. VITAS Pressures Admission Nurses to Admit Non-Terminally Ill Patients

73. As detailed by numerous former VITAS employees who worked at the Company during the Class Period, there was immense pressure at VITAS to routinely admit as many patients to hospice as possible, regardless of their eligibility. VITAS put pressure on admission nurses because nurses were typically the ones who evaluated the patient for hospice eligibility. Admission nurses would present their findings to doctors who would rely on the nurses' assessment in making a

determination as to whether to admit a patient to hospice[3]. This is corroborated by several CWs. For example, CW3 explained that when a patient is referred to VITAS, a VITAS admissions nurse conducts a medical examination of the patient. The admissions nurse reports her findings to a VITAS physician. The VITAS physician determines eligibility based on the nurse's assessment and report. CW6 confirmed this process, stating that physicians went along with the nurse's recommendations. CW6 stated that because the nurse was the one who evaluated the patient, the doctors had to trust his or her judgment. CW5 stated that while a doctor would make the referral, the patient could not be admitted unless an admissions nurse approves that they meet the criteria. CW19 corroborated this stating that doctors approved patients to hospice case based on the admission nurses' evaluation. CW10 confirmed that this also occurred for crisis/continuous care patients – while physicians must refer patients, patients cannot be admitted without the admission nurse first assessing that they have met the criteria for continuous care.

74. While serving as an admitting nurse at VITAS' Dublin, Ohio facility, CW6 stated that there was constant pressure from sales staff to admit patients who were ineligible for hospice care. In cases where CW6 evaluated a patient, determined that the patient did not qualify for hospice care and recommended against enrolling that patient, CW6 was badgered by the sales manager, Cristal Schmit, and general manager, Steve Wishart, regarding his recommendation. A second admitting nurse would then be sent to reevaluate the same patient, and the patient would subsequently be admitted. According to CW6, other admitting nurses experienced similar pressure to admit ineligible patients into hospice care.

75. Former VITAS admitting nurse, CW5, confirmed that the practice of reexamining a patient after the patient was found to be ineligible for hospice care by a different admitting nurse

[3] Constant, strong pressure was also put on doctors to certify and recertify patients who did not meet Medicare eligibility requirements. *See* ¶197.

"happened quite frequently" during his tenure. Former marketing sales representative, CW11 also stated that his location the director of marketing and the patient care administrator would send the same nurse out multiple times to visit the same patient in order to find a diagnosis allowing the patient to be brought on to hospice care. Former patient care administrator, CW3, similarly noted that, during the Class Period, there was a practice and procedure in place by VITAS management to overturn decisions made by admitting nurses who denied a patient hospice care. When this happened, the general manager or marketing director would contact team physicians to provide them with other qualifying facts supposedly not considered by the admitting nurse, which led to the admission of the patients in question.

76. The DOJ Complaint also cites this practice, describing reports of "Medical staff … that . . . felt pressured by Vitas to admit or readmit patients who were inappropriate for hospice services. One former Vitas admissions nurse said that if he did not admit a patient he believed to be ineligible, he would be pressured to reconsider his decision until he finally determined the patient was eligible for the Medicare hospice benefit. The same nurse stated that he was pressured by Vitas to bend the Medicare rules to get patients onto hospice service." DOJ Complaint ¶173.

77. CW15 explained that admission nurses had to recommend admission of 80% of the patients they evaluated to keep their jobs, as well as earn a merit increase. If they did not recommend the admission of 80% of the patients they evaluated in their first 90 days of employment as an admission nurse, they would either be fired, offered another job (such as a home care nurse), or be transferred to the overnight shift which would often induce them to quit. This happened to CW6. His general manager, Wishart, did not approve of CW6's determination to not admit ineligible patients, and retaliated by altering his work schedule.

78. CW10 stated that nurses would "get a lot of heat" if they did not admit patients because "it was all driven by bonuses," adding that the admissions manager and general manager

were on bonus programs. According to CW10, even under circumstances outside of the admission nurses' control, the nurses would be reprimanded for not admitting enough patients. CW19, an admissions manager, confirmed that monthly quotas had to be met and that the overwhelming pressure to achieve census numbers was a cause of CW19's departure.

79. CW13 personally witnessed personnel challenging admission nurses who determined that a patient was not terminally ill and was not qualified for hospice care. He recalled one specific example in which patient care administrator, Evalisa McClure, challenged an admitting nurse for denying hospice care to a patient who the nurse determined did not meet the admitting criteria. CW13 stated that it was not the patient care administrator's responsibility to challenge the admitting nurse on criteria, and added that "it seemed unethical." CW11 also overheard the director of marketing, Mary Beth Wadding, and patient care administrator, Anne Beamesderfer, chastise nurses for failing to admit patients into hospice care. CW20 stated that the inpatient unit manager, Fitzmaurice, would instruct the RN's to go through the patient's chart to find something and anything that they could use to make it seem as if the patient met CMS guidelines for inpatient care. CW20 stated that it seemed to her and the other inpatient RN's that the home care side was charting these patients to make it appear as if their health was worse than it really was in order to get them into the inpatient unit. An example that CW20 provided was a patient whose chart stated that the patient was "in pain and anxious," but the patient was not in pain and did not seem anxious when arriving to, or while in, the inpatient unit.

80. CW12 also stated that nurses were under pressure to admit patients who did not qualify for hospice care and that as a result, VITAS admitted patients inappropriately. CW12 heard admission nurses and registered nurses often complaining about being pressured to admit inappropriate patients and that every employee, including nurses, marketers, and telecare workers, was encouraged to admit as many patients as possible. CW12 recalled an instance when an

admitting nurse was literally crying to him over being pressured to admit an inappropriate patient that the admitting nurse refused to admit. CW12 also recalled another situation where Dayiantis, the telecare services general manager, instructed an admissions coordinator in the Lombard, Illinois office on how to apply pressure and convince admissions nurses to admit patients. The pressure was so intolerable that, according to CW12, admitting nurses sometimes evaluated patients without their family's knowledge. This would anger the patient's family, who would complain that VITAS admitted their non-terminally ill family member to hospice care. CW12 had actual knowledge that patients' families were upset since he and other admissions coordinators would field their phone calls. CW12 added that doctors were also upset, and questioned why ineligible patients were being admitted to hospice care.

81. The DOJ Complaint details specific examples of VITAS doctors who recommended *against* admitting certain patients being overruled by VITAS administrators. "One Vitas team doctor stated that on several occasions, when he did not believe patients were eligible for hospice, and therefore did not certify the patients as eligible, the Vitas medical director overruled him and signed the certification even in the absence of justification. A former Vitas physician stated that he was under pressure from Vitas management to increase the number of patients admitted to hospice, and that he was often overruled when he determined that a patient should be discharged because the patient was not dying. This physician informed Vitas managers that he was concerned that his medical decisions were being ignored, but Vitas did not address his concerns." DOJ Complaint ¶¶176-77.

82. CW12 stated that "there was a big push on numbers." CW12 stated that the nurses were often hard pressed to find an admitting diagnosis that met criteria and he noticed that often times a patient's charts did not properly memorialize the admitting nurse's diagnosis. One such example was of an Alzheimer patient whose diagnosis would not meet, or at least was not

documented as, an end stage diagnosis. When CW12 would notify his supervisors, Lipinski and DeGrazia, that a patient's chart was inconsistent with the admitting nurses' diagnosis, they both replied, "get them on, no matter what." CW12 added that similar pressure was placed on all telecare workers, nurses, and marketers and that both Lipinski and DeGrazia stated that this was as per Dayiantis's orders. CW12 would be instructed to transfer the patient to hospice and he would do so by entering the "Transfer to Patient Care" setting in the computer system. CW12 added that "it was all about meeting the numbers," and was instructed to not ask questions and just transfer the patient. CW20 confirmed that when the inpatient unit census was low, that patients were being referred from the hospital and the field who did not match the symptoms in their charts. She recalled "diarrhea patients" who showed up without having diarrhea and "respiratory distress patients" showing up without respiratory distress. CW20 stated that she and the other inpatient unit RN's spoke about the inappropriateness of these patients, as did inpatient unit manager Fitzmaurice. CW20 added that Fitzmaurice had stated, "Some of these patients were inappropriate."

83. CW12 also described how VITAS pressured nurses and doctors at nursing homes to transfer patients to hospice care. CW12 stated that an admission nurse would fill out a transfer order on a patient, travel to the nurse's station at a nursing home, and ask the nurse to have the doctor sign the order. If the nurse refused because the patient did not require hospice care, then the admissions manager would constantly call the nurse at the nursing home for a transfer order until either the nurse had the doctor sign the order, or left the order in the patient's file until the doctor signed it. According to CW12, the objective was to keep pestering the nurse until the doctor eventually signed the transfer order, either out of frustration, or possibly not realizing what exactly he was signing due to the volume of paperwork requiring his signature.

84. The DOJ Complaint supports the veracity of these CW accounts. "According to one former hospice manager for Vitas, the company philosophy was to sign everybody up for Medicare

hospice services. A former Vitas nurse in Florida said that Vitas wanted everyone enrolled in hospice care. This philosophy is inconsistent with Medicare requirements, because, for example, a patient who elects hospice care under the Medicare program also chooses to stop receiving curative care for his or her illness." DOJ Complaint ¶172.

85. CW14 described "general debility" and "failure to thrive" as "catchalls" to admit patients who were either questionable or did not satisfy admission criteria. CW14 recalled hearing admission managers, nurses, and the regional director of marketing, Merritt, state that "if you can't find anything (to admit a patient), then use 'failure to thrive.'" CW14 advised that this was stated at weekly meetings attended by Acocella (who reported to Vice President of Market Development and Sales, Donald Gaddy. Gaddy reported directly to Defendant O'Toole), Boulter, physicians and marketers. CW14 added that in these meetings, nurses posed questions regarding the discharge of patients diagnosed with dementia and Alzheimer's who had been on hospice care for 3 or 4 years. The nurses were instructed by Acocella and Boulter to find a reason to keep them in hospice care. CW14 stated that patients diagnosed with dementia and Alzheimer's who did not meet criteria were admitted to hospice care under the "failure to thrive" diagnosis.

86. Many of these patients were admitted at the end of the month because, as CW11 confirmed, there was a focus to meet monthly census or admission goals, and that VITAS nurses would look for any diagnosis to get patients on hospice. CW19 confirmed that during the last week of each month, the pressure to admit patients into hospice care, whether they qualified for Medicare reimbursement or not, was intense. CW14 also confirmed that admissions increased at the end of the month. CW20 stated that "when the census was low, it seemed we took any patient." CW14 described the number of inappropriate patients as being fairly significant, especially amongst the dementia and Alzheimer's patients. CW15 confirmed VITAS would select general debility and

failure to thrive as the diagnosis code for Alzheimer's or dementia patients who did not meet the admission criteria.

87. Former VITAS registered nurse, CW7, similarly reported that, throughout his tenure, pressure was placed on admitting nurses to admit inappropriate patients for hospice care at VITAS. Many of these inappropriately admitted patients were diagnosed as "debility unspecified" and received VITAS' hospice services for periods of one to two years. CW7 stated that when it came to referrals, VITAS took a "we'll take anything" approach.

88. CW11, a former sales representative, confirmed that admission nurses were under intense pressure to admit patients and search for any diagnosis in order to admit patients into VITAS' hospice care. CW11 stated that the admissions nurses would diagnose patients as "general debility" if they could not find another diagnosis. CW4 confirmed that inappropriately admitted patients were diagnosed with dementia or Alzheimer's, or were categorized as "failure to thrive" or general debility.

89. CW15 stated that VITAS admission nurses would "manipulate a patient's information" to certify that the patient met hospice criteria even if the patient was not quite hospice-appropriate. CW15 provided examples of overstating an Alzheimer or dementia patient's forgetfulness and recording an inaccurate reading of a patient's blood pressure.

90. The DOJ Complaint also details how nurses were coerced into falsifying information. A "Vitas nurse stated that she was instructed by Vitas to falsely write that a patient experienced symptoms that the patient did not experience in order to support a determination of hospice eligibility. For example, she was once told to write that a patient had an unnatural color, or pallor, when the patient did not, and was instructed not to write that the patient's health was improving in the medical record." DOJ Complaint ¶175.

91. The DOJ Complaint confirms that this pressure was coming from "top-level management" at Chemed and VITAS. "Top-level managers at Vitas's corporate headquarters set aggressive hospice admissions goals for regional and mid-level corporate managers at local Vitas programs, resulting in the admission of ineligible patients. Chemed management regularly corresponded with Vitas management about the average daily census and growth in admissions, making focused frequent inquiries if they believed the numbers reported were too low. Vitas senior managers regularly corresponded with personnel in the field offices when their average daily census and admissions growth were lagging." DOJ Complaint ¶¶160-62.

92. The fraud also extended beyond the admission of patients who did not qualify for hospice care. VITAS also pressured its employees to recertify patients for hospice care even when they no longer qualified. CW9, an admissions nurse and case manager, witnessed inappropriate dementia patients who remained in hospice care at VITAS for 2 or 3 years. CW9 and others "scramble[ed] to find [a] diagnosis" to attribute to these dementia patients so that they would qualify for and remain in hospice care. CW3 stated that at team meetings – whose purpose was to evaluate patient charts for possible recertification – there would be discussions concerning the fact that patients were no longer appropriate to recertify. CW3 stated that team physicians ended up resigning because of the pressure to recertify inappropriate patients. "They didn't want to have their name on something where the patients weren't appropriate."

93. CW18 corroborated this, stating that he observed inappropriate patients provided with hospice care. When he or other social workers, or other nurses would state their opinion as to the inappropriateness of certain patients in team meetings, the response from team managers would often be to keep the patient on for 3 months until the recertification period to determine whether the patient's health deteriorated. As set forth in the DOJ Complaint: "[a]nother Vitas nurse stated that when she attended the weekly meetings to discuss discharging patients, the goal was to discharge as

few patients as possible without regard to hospice appropriateness. Discharging more than four patients per meeting was frowned upon by the Vitas business managers, and Vitas medical staff were told to stop discharging patients even if patients were not eligible." DOJ Complaint ¶174.

3. VITAS Pressures Marketers to Push for Inappropriate Admissions

94. In addition to the pressure placed by VITAS on admitting nurses to admit ineligible patients, pressure was also placed on other VITAS employees. Among those pressured and incentivized to admit patients into VITAS' hospice care programs were general managers and their sales and marketing staffs. As the DOJ observed, "[g]eneral managers, who were typically not nurses or doctors, expected their marketing departments and sales representatives to find referral sources and patients, and evaluated and promoted their employees based on meeting hospice admissions goals. This often meant that the Vitas program managers disregarded concerns of nurses and doctors who expressed that they did not believe that certain Vitas hospice patients were terminally ill." DOJ Complaint ¶166. These general managers were directly evaluated based on the number of patients admitted at the program facility and the profitability of those patients. *Id*. at ¶165.

95. Severe pressure was placed on VITAS' marketing personnel by general managers to improperly admit patients into hospice care in form of monthly and quarterly quotas that came from the top level of the Company. CW14 described Senior Vice President of Market Development and Sales, Donald Gaddy (who reported directly to Defendant O'Toole), as "running the show" and believed that he most likely generated monthly and quarterly quotas. CW4 confirmed this stating that the push on quotas was coming from Gaddy, and that Regional Director of Marketing, Kim Lowerman, received the quotas from Gaddy and then sent them out to the marketers. According to CW1, the quotas were set by Defendant O'Toole. It was CW1s understanding that Gaddy and

Executive Vice President Peggy Pettit (who reported directly to O'Toole) were also involved in setting the quotas.

96. VITAS' quota system created incentives for marketing personnel to not only generate referrals for VITAS, but to also ensure that those referrals turned into actual patients. According to CW8, to meet VITAS' company-wide quota, 80% of a marketer's referrals had to be admitted into VITAS' hospice services. Marketers received bonuses for meeting quota. Quotas increased exponentially as admissions rose above the 80% quota level. The DOJ Complaint supports these allegations, alleging that "[o]ne former general manager stated that Vitas paid him bonuses based on the number of patient admissions and the length of time he could get a patient to stay on hospice services." DOJ Complaint ¶¶167-68.

97. CW11 also noted that if marketers did not meet their quotas, they were penalized. CW4 confirmed this, stating that he was terminated because his team did not meet monthly quotas. Marketer's compensation was boosted when the number of leads and actual patients exceeded the quota and, if quotas were not met, marketers were fired.

98. CW14 corroborated that marketers had to meet their monthly quota in order to get a bonus and to avoid getting written up. CW 15 also stated that marketers had monthly quotas and that these quotas were distributed quarterly. CW15 advised that each marketer had to have 80% of his monthly referrals converted to admissions in order to get a bonus and to avoid getting written up. CW15 added that VITAS "made life miserable (for you) if you didn't meet the numbers." CW16 stated that marketers at his location were expected to obtain admissions and not just referrals. CW16 recalled an instance when he had made 22 referrals in one month, but only 7 were converted into admissions, and as a result, was written up because of that percentage. He advised that, "it was not the referrals, but the admissions that counted." CW1 and CW8 echoed this sentiment and stated that compensation was based on actual admissions and not referrals. The DOJ reached a similar

conclusion: "Vitas took adverse employment actions against marketing representatives who did not meet monthly admissions goals." DOJ Complaint ¶168.

99. CW12 stated that marketers would harass families until they obtained approval to place a patient into hospice care. CW12 also stated that marketers would pressure nurses, and as a result of this pressure that nurses would draft orders transferring patients onto hospice and pressure doctors to sign the orders. Doctors would sign-off on orders to stop being pressured by nurses.

100. Although VITAS' marketing personnel were not supposed to play a role in the admissions decision-making process, CW3 confirmed that VITAS' marketing personnel often became involved in the admissions process and would speak with patients' families to persuade them to use VITAS' hospice care services.

101. This was corroborated by CW14. According to CW14, both Boulter (director of marketing development) and Acocella (program general manager) worked closely in enrolling patients, Boulter and Acocella "followed the numbers," and instructed marketers to pressure admission nurses and physicians by constantly calling them and asking when a patient would be admitted. CW14 stated that there was "always a push to get patients on." CW14 advised that when marketing home hospice care, marketers would promote VITAS' services to nursing home physicians by pointing out that Medicare covers the patient's medication while enrolled in hospice care, and that this would have financial benefits for nursing homes who were no longer receiving Medicare money for that patient's medication. CW14 stated "we (hospice) pay for your (patient's) medications. They (Medicare) don't pay for your (patient's) medications." CW6 also understood that sales people were not supposed to influence the admissions staff, but that was not the case in his office. According to CW6, "the sales manager actually runs th[e] office."

102. CW15 similarly stated that many of VITAS' marketers who he worked with were former admission nurses who switched to marketing because of the higher income. CW15 added that

these marketers would then simultaneously act as a marketer and admission nurse when placing marketing calls.

103. CW16 confirmed that marketers were "absolutely" putting pressure on admission nurses to admit patients. CW16 said that both Boulter and Cutler directed him and his fellow marketers to call and visit admission nurses and physicians and ask if and when referred patients would be admitted. If the admitting nurse or doctor made a preliminary decision not to admit a patient, he was told to then ask "why," as well as ask other follow up questions. CW16 advised that these were not fact-finding questions, but rather were posed in order to pressure nurses and physicians to admit patients. CW16 added that in meetings attended by Merritt, both Boulter and Cutler stated "this is how VITAS does it."

104. CW13 described pressure placed on him by VITAS marketers in the referral of patients receiving palliative care to hospice care. CW13 stated that hospice marketers would call him stating that "it looked like a patient was ready for hospice care." CW13 explained that in many cases the patient was not ready for hospice care, and that he would inform the marketer of his opinion. He added that "I knew that their jobs were on the line because of the numbers." CW13 advised that both Katich and hospice admissions manager, Jayne Clements, stated to him that "palliative care services was measured by success on how many patients were referred to hospice."

105. CW3 stated that, during the Class Period, even when admitted patients were up for recertification of hospice services and physicians were ready to discharge patients who no longer qualified, VITAS' sales staff, who were also present at the meetings, would intervene by somehow obtaining documentation showing that the patients were appropriate for recertification. According to CW9, during interdisciplinary team meetings, team members were instructed by Gail Hart to find any medical criteria that would allow non-declining patients to remain in hospice.

106. The DOJ Complaint supports the accounts of the CWs regarding the aggressive sales goals set for the Company's sales staff, stating "Chemed and VITAS set aggressive sales goals for the number of crisis care days that it wanted Vitas to bill to Medicare, and was directly involved in making decisions about how Vitas would market its crisis care services. As a result, Chemed and Vitas set aggressive goals for Vitas's salespeople and other staff to find beneficiaries for whom they could bill Medicare for crisis care, and Vitas billed Medicare excessively for crisis care." DOJ Complaint ¶¶65-66. Aggressive marketing tactics were endorsed by Chemed and VITAS, which "expected their employees to increase the number of crisis care claims submitted to Medicare, without regard to whether the crisis care services were appropriate for patients, or whether Vitas was actually providing the crisis care services to patients when it billed Medicare for those services." *Id.* at ¶57.

4. VITAS' Pressure on Nurses and Marketers Results in Inappropriate Admissions to Hospice

107. Chemed and VITAS' plan worked. The intense pressure placed on admission nurses to evaluate patients and find them eligible for hospice care, and on marketers to push admitting nurses and doctors to admit the patients they referred, resulted in the widespread inappropriate admissions of patients for both hospice care and continuous home care. The increase in admissions numbers reflect both the pressure placed on admitting nurses and marketers, and the success of that pressure. Former employees throughout the country confirmed with specificity the percentage of patients admitted to VITAS' hospice care who did not qualify under Medicare's rules and regulations.

108. According to CW3, at least 50% of admitted patients in VITAS' Dublin, Ohio facility did not qualify for hospice care. CW3 personally conducted an audit of patient lists and charts during the Class Period to verify patient eligibility and found that documentation was not satisfactory. CW3 reported the improper admission of patients to general manager, Steve Wishart, to

the Regional Nursing Supervisor, and directly to the Vice President of Operations, Joanne Mack. Joanne Mack reported to Karen Peterson, the Chief Nursing Officer. Peterson, in turn, reported directly to O'Toole.

109. CW3 recalled a specific instance where he was told to admit a patient who was unconscious and unable to consent to hospice services. When CW3 refused, the general manager notified Joanne Mack, who authorized the admission. CW3 eventually resigned his position with VITAS because of the improper admission of ineligible patients at the Dublin, Ohio facility and sent a letter directly to Tim O'Toole and Karen Peterson (the Chief Nursing Officer, who reports to O'Toole), at VITAS' corporate office detailing all the admissions issues that he observed. CW3 knows that the corporate office received the letter because a VITAS attorney, a corporate representative and Karen Peterson contacted him about the letter and notified him that they would investigate his allegations. They conceded that the non-responsive patient admitted by Joanne Mack should not have been admitted. CW3 stated that several physicians ended up resigning as well because they did not want to have their names associated with these improper practices.

110. According to CW7, approximately 20% of the hospice patients in VITAS' Coachella Valley, California location were inappropriately admitted.

111. CW5 estimated that 70% of the dementia patients she observed under VITAS' hospice care in Sacramento, California did not meet hospice care admissions criteria.

112. CW12 estimated that 30% - 40% of the VITAS patients serviced out of the Lombard call center were inappropriate for hospice care based on the patients' charts that he evaluated. He added that "there were at least 7 charts per 8 hour shift that did not seem right." CW12 indicated that there were patients on VITAS hospice care for 2 to 3 years and stated that "there were referrals that seemed to come from nowhere."

113. CW15 estimated that 10% of VITAS' patients were inappropriate for hospice care, many of them being Alzheimer's and dementia patients. CW15 stated that 80% of Ft. Lauderdale's hospice patients were Medicare recipients, with anywhere from 25% - 50% being Alzheimer's and dementia patients. CW15 added that some Alzheimer's patients were in hospice care for 2 or 3 years.

114. According to former Director of Market Development, CW4, approximately 10% of VITAS' hospice patients were admitted inappropriately for at least one 90 day certification period. CW4 explained that the objective was to get the patients through the first certification period and see if they got progressively worse during that time. CW4 also observed that the admission of patients increased at the end of each month, since the General Manager of Operations put pressure on admissions personnel to enroll more patients to meet the General Manager's monthly sales goals.

115. CW14 (like CW12, ¶81) also stated that there was a "a big push on numbers" and that more patients were being admitted at the end of each month in order to meet quotas.

116. CW15 stated that admitting nurses would admit patients into hospice care who were not yet eligible but who were expected to qualify within a few days. CW15 provided an example of an admitting nurse who would admit a patient on a Monday and then re-evaluate the patient on Thursday. If the patient's health deteriorated by that time, then the patient would remain in hospice care. If the patient's condition did not deteriorate, then VITAS would discharge the patient, stating that the patient's health had improved. CW15 stated that VITAS billed Medicare for the days such patients were in hospice care.

117. The DOJ, which was empowered by different courts to conduct pre-suit discovery, identified several examples of *specific patients* who were inappropriately admitted to hospice care. The DOJ Complaint states that Chemed and VITAS fraudulently billed Medicare for these patients, including patients who were improperly admitted for hospice care before, during and after the Class

Period. The following patients were inappropriately admitted into hospice care and VITAS fraudulently billed Medicare for these patients:

(a) "MP" from Missouri – according to the DOJ, "Chemed and Vitas knowingly submitted or caused to be submitted false or fraudulent claims to Medicare for hospice care for Patient MP in Missouri from April 10, 2009 through February 3, 2010. These claims were false or fraudulent because Vitas's medical records for MP show that MP did not have a terminal illness with a prognosis of six months or less if MP's disease ran its normal course. According to Vitas's medical records, Vitas admitted MP to hospice based upon a diagnosis of debility, but MP did not meet the medical criteria for this diagnosis. In addition, on April 10, 2009, the day MP was admitted to hospice, there was no indication that MP's pre- existing condition had deteriorated. The medical records state that MP was alert and oriented to self, denied pain, and weighed 151 pounds, having only lost two pounds in the last one to two months. Throughout the period that Medicare paid Vitas's claims on behalf of MP, Vitas's medical records show that MP remained stable and even gained weight, and her body mass index remained consistently above the level required by hospice eligibility criteria . . . Chemed and Vitas knowingly submitted or caused the submission of false or fraudulent claims to Medicare for hospice care on behalf of patient MP from April 10, 2009 through February 3, 2010, in the amount of $42,763.82; and Medicare paid the claims." DOJ Complaint ¶¶187-90.

(b) "MC" from California – as related by the DOJ, "Chemed and Vitas knowingly submitted or caused to be submitted false and fraudulent claims for hospice care on behalf of Patient MC in California, covering the period from July 18, 2009 through February 16, 2012. These claims were false or fraudulent because Vitas's medical records for MC show that MC did not have a terminal illness with a prognosis of six months or less if MP's disease ran its normal course. Vitas's medical records for MC also show that at each period of time when Vitas recertified that MC was

eligible for hospice care, MC did not have a terminal illness with a prognosis of six months or less if MC's illness ran its normal course. According to Vitas's medical records, Vitas admitted MC to hospice after a hospital stay, based upon a diagnosis of heart failure, but MC had no symptoms to indicate MC had any end-stage disease or condition, including heart disease. At the time of MC's admission to the hospital, MC was living independently and performing daily activities without assistance. At around the time Vitas admitted MC to its hospice program, its medical notes for MC stated that MC was very healthy given her age. In fact, Vitas stopped administering MC heart medications during her time in hospice. During MC's hospice stay, the only medications that Vitas administered were for anxiety. MC was walking and performing daily activities without assistance. In March 2010, a doctor noted that MC did not need oxygen, unless she became excited. Any shortness of breath was related to MC's anxiety, not heart disease. In addition to improperly admitting MC for hospice care when she was not eligible, Chemed and Vitas also knowingly submitted or caused to be submitted false or fraudulent claims to Medicare on behalf of MC for crisis care. On January 20, 2012, Vitas began billing Medicare for crisis care for MC due to caregiver teaching and breakdown, neither of which are bases to submit claims to Medicare for crisis care. During the time that Vitas billed Medicare for crisis care for MC, Vitas's nursing notes state that MC was doing her own laundry. Vitas stopped billing Medicare for crisis care on January 24, 2012 for unspecified reasons. MC died on February 16, 2012, after being on hospice for approximately two and a half years. Although MC died while receiving hospice, at no point during the time that Vitas billed Medicare for MC's hospice care did MC have a life expectancy of six months or less if a disease ran its normal course. Chemed and Vitas knowingly submitted or caused the submission of false or fraudulent claims to Medicare for hospice care on behalf of Patient MC from July 18, 2009 through February 16, 2012, in the amount of approximately $169,820.99 and Medicare paid the claims." DOJ Complaint ¶¶199-209.

(c) "WB" from California – according to the DOJ Complaint, "Chemed and Vitas knowingly submitted or caused to be submitted false or fraudulent claims to Medicare for hospice care on behalf of Patient WB in California, covering the period from June 5, 2008 through March 18, 2011. These claims were false or fraudulent because Vitas's medical records for WB show that WB did not have a terminal illness with a prognosis of six months or less if WB's illness ran its normal course. Vitas's medical records for WB also show that at each period of time when Vitas recertified that WB was eligible for hospice care, WB did not have a terminal illness with a prognosis of six months or less if WB's illness ran its normal course. According to Vitas's medical records, Vitas admitted WB to hospice based upon a diagnosis of cardiovascular disease, but there were no medical examination findings to support the conclusion that WB was in end-stage heart failure or had another end-stage cardiac condition, and Vitas did not accurately assess whether WB had a terminal illness with a prognosis of six months or less if WB's illness ran its normal course. A patient with a cardiac disease can be terminal if the patient meets the criteria for Class IV on the New York Heart Association's system for classifying degrees of heart failure. To be Class IV, a patient must be unable to carry out any physical activity without discomfort, have symptoms of cardiac insufficiency while at rest, and experience increased discomfort if the patient engages in any physical activity. Vitas's records for WB show that he had no shortness of breath or other heart failure symptoms while at rest. Additionally, Vitas gradually decreased the heart medications that WB received while he was on hospice care, finally ceasing all of WB's heart medicines on December 20, 2009. Throughout his time on hospice, WB remained stable and was clearly not suffering from end-stage heart disease. Vitas's medical records for WB contained inconsistent and contradictory information, including inconsistent descriptions of WB's symptoms written by different members of Vitas staff as well as inaccurate functional scores noted by Vitas staff but contradicted by WB's documented symptoms. For example, nursing notes in WB's medical files would state that WB had no shortness

of breath, but a doctor who visited WB around the same time wrote that WB had intermittent shortness of breath. Additionally, Vitas staff noted in WB's records that he was experiencing slow progressive decline and remain[ed] appropriate for hospice with prognosis of 6 [months] or less, Vitas's records for WB lack any documentation of decline in WB's nutritional or functional status, or other factors that would indicate that WB had a prognosis of six months or less if his disease ran its normal course. After remaining stable while he received hospice care for almost three years, WB was ultimately discharged from hospice on March 2, 2011 for extended prognosis. Chemed and Vitas knowingly submitted or caused the submission of false or fraudulent claims to Medicare for hospice care on behalf of Patient WB from June 5, 2008 through March 18, 2011, in the amount of $170,666.02; and Medicare paid the claims." DOJ Complaint ¶¶191-98.

5. VITAS Inappropriately Admits Patients to Continuous Care

118. According to CW10, a former admissions nurse at the Walnut Creek, California location of VITAS, "continuous care" was routinely ordered for all new VITAS patients seeking hospice care after being discharged from a hospital, even when this level of care was not required. When a hospice patient is given "continuous care," which should be provided only during a period of crisis, he or she receives a minimum of eight hours of hospice care during a nurse's home visit. According to CW10, both Jill Heifetz, CW10's admissions manager, and Bruce Davis, the general manager of the Walnut Creek, California facility, stated that the policy to admit all patients discharged from a hospital into the more expensive "continuous care" level of hospice care had "com[e] down from corporate," and that the goal was to place 5 or 6 referred hospital patients into continuous care each day. While VITAS billed Medicare for a minimum of 8 hours for the home visit, CW10 stated that nurses provided about one hour of actual care. According to CW10, approximately 50% of the hospital-referred patients did not require hospice care at the "continuous care" level. CW10 stated that admission nurses would admit inappropriate patients into continuous

care because the admission nurses "were following orders under the policy that all hospital patients should go to continuous care."

119. CW15 stated that VITAS used the promise of continuing care to add hospice care customers. He explained that VITAS would offer continuous care to patients as round-the-clock care, but that once the patient was enrolled, VITAS would then transfer the patient to general hospice care after approximately 48 hours, claiming that the patient no longer required continuous care. CW15 indicated that the patients' families would often become upset, feeling that they had been led to believe that if they enrolled their relative in VITAS continuing care, their family member would receive continuous care for a longer period of time. CW15 stated that some families who felt misled would transfer their relative from VITAS to another hospice, but that most would just remain with VITAS. CW11 confirmed that continuous care was a major component of VITAS' marketing effort.

120. CW17 explained that VITAS and other hospice care providers were only supposed to provide continuous care during a period of crisis. CW17 estimated that 15% - 20% of his patients, at both the Chicagoland NW and Chicagoland Central locations, were inappropriately admitted for continuous care with a diagnosis such as failure-to-thrive, dementia or Alzheimer's. He added that many of these inappropriately admitted patients were "repeat patients" in that their conditions would improve and then they would be readmitted onto continuous care months later.

121. CW17 advised that continuous care was supposed to be only for those hospice patients who are in need of hospice care 24 hours a day, seven days a week. He recalled caring for VITAS continuous care patients at private homes who could sit up, talk coherently, feed themselves, walk on their own and bathe themselves. One patient attended a baseball game, and other patients asked CW17 to take them shopping (which he refused to do). CW17 specifically recalled one particular time when, upon arriving to care for a patient, a family member explained to him that the

patient was tired from shopping all day. CW17 stated that these inappropriately categorized patients had lucid conversations with their family and friends, and he described his responsibility in these circumstances as "babysitting while watching television." CW17 advised that his normal 13-hour shift as a continuous care nurse normally started at 7:00 p.m. and ended at 8:00 a.m.

122. CW17 stated that the continuous care team was instructed to reevaluate its diagnosis when a patient showed improvement. CW17 stated that "we would document change in any way that allows us to keep that patient on." For example, CW17 described a patient with pneumonia and, once his lungs healed, the continuous care nurse was told to document that the patient had problems walking or talking. CW17 stated that after a failure-to-thrive patient started eating again and regained his health the continuous care nurse was expected to document that the patient seemed more confused or to provide any other reason to keep the patient in continuous care. CW17 described it as "if you can't keep them on for one thing, then you find a new diagnosis."

123. The DOJ Complaint cites similar instances of abuse of continuous or "crisis" care billing. "Vitas marketed crisis care services to patients and their families as intensive comfort care services, without mentioning that in order to bill Medicare for these services at the higher rates, a patient had to be experiencing a short-term crisis and have acute medical symptoms. One of Vitas's marketing brochures states that 'intensive comfort care' is available for 'symptoms causing distress to the patient or family.' Vitas knowingly misled patients and their families to believe that the Medicare hospice benefit would routinely cover around-the-clock care for hospice patients, absent the requisite acute medical symptoms resulting in brief periods of crisis that must be present for crisis care to be covered by Medicare. Because of this marketing ploy, patients sometimes chose Vitas over other providers, although the Medicare benefit is the same for patients regardless of the hospice program they choose. Vitas used similarly misleading techniques when it marketed its

hospice services to potential referral sources of future hospice patients, such as physicians, nursing homes, and hospitals." DOJ Complaint. ¶¶58-59.

124. Detailed allegations from the DOJ Complaint demonstrate that Chemed and VITAS inappropriately admitted patients to continuous care and illegally billed Medicare for these inappropriate admissions during the Class Period. DOJ Complaint ¶¶9, 54, 186. For example, the DOJ Complaint describes how VITAS billed Medicare for "patient MG" in California for unnecessary crisis care during the time period from February 19, 2010 through March 8, 2010. "According to its medical records, Vitas billed Medicare for crisis care for MG beginning on February 25, 2010, and ending on March 8, 2010, for the stated reason of seizures. However, Vitas's records do not indicate that MG suffered seizures during this time period. MG was not otherwise in crisis during this time period. Vitas should not have billed Medicare for crisis care when routine home care was appropriate. Chemed and Vitas knowingly submitted or caused the submission of false or fraudulent claims to Medicare for crisis care services to Patient MG that were not necessary or not provided for the time period February 25, 2010 through March 8, 2010, in the amount of approximately $5,000; and Medicare paid the claims." DOJ Complaint ¶¶151-53.

6. VITAS' Inappropriate Relationships with Nursing Homes and Doctors

125. Several former VITAS employees also reported that, in order to increase hospice admissions, VITAS engaged in improper relationships with various referral sources. According to CW7, for example, it was the practice of VITAS to transfer patients from the hospital to VITAS for hospice care when coverage from Medicare was running out. Once admitted to VITAS, the patients' Medicare coverage for hospice care began. CW7 described such a relationship between VITAS and Desert Regional Hospital. CW3 also reported a reciprocal relationship between VITAS and Woodlands Assisted Living facility during the Class Period. According to CW3, out of approximately 20 VITAS patients at Woodlands, only about 2 qualified for hospice services and

many of these patients had been in hospice care for over one year. While Medicare did not pay for assisted living at facilities such as Woodlands, it covered hospice services. Accordingly, VITAS benefitted from Woodlands' patient referrals. In turn, Woodlands benefitted from having hospice patients continue to pay room and board, while being cared for by hospice nurses, freeing up staff to tend to other residents.

126. The director of nursing at another assisted living facility, Deer Creek on Hillsboro Blvd. in Deerfield Beach, Florida, told CW15 that if VITAS would have their nurses, while in the course of visiting their patients at Deer Creek, help out with patients who were not VITAS patients, that he would recommend VITAS to their patients and their families for hospice care much more often. CW15 advised that he brought this request to Deal who gave the okay on this and instructed CW15 to advise team leader Terri Sande that VITAS nurses should now assist Deer Creek nurses with their other patients when visiting VITAS' patients. CW15 stated that general manager Zalaznik must have given approval on such a decision and added that "Deal didn't pick his nose without first asking Zalaznik."

127. According to CW15, *referring* physicians were paid $350 to review a patient's chart, and an additional $350 for reviewing a chart for recertification, whether the patient was recertified for hospice care or not. Most of the time the patient would receive approval for admission or recertification. CW15 was told about these payments by Dr. Gabriel Gemayel of Palm Beach County. CW15 stated that Dr. Gemayel was a physician who he marketed to and who referred patients to VITAS.

7. Defendants Knowingly Violated Medicare Billing Practices

128. Defendants' knowledge of VITAS' illicit admission of patients into hospice care who did not qualify, provision of continuous care services to patients whose condition did not so warrant, and manipulated billing practices is clear. Defendants actively managed VITAS' business,

overseeing and monitoring VITAS' productivity, admissions levels, discharge rate and length of patient stays. *See* ¶¶61-63.

129. Moreover, Defendant O'Toole not only imposed unreasonable census goals, but knew that the results he received from the various hospice facilities were inflated with inappropriate admissions. *See* ¶¶61, 95, 108. In light of their intimate involvement with VITAS' activities, Defendants knew that VITAS' patient admission, patient retention, continuous care offerings and billing practices violated applicable Medicare regulations and resulted in the Company materially overstating its revenues based on hospice services rendered to ineligible patients.

130. The DOJ Complaint provides additional evidence that Defendants knew that patients were being inappropriately admitted to hospice care for continuous or crisis care. Since at least 2007, Chemed and VITAS conducted regular internal audits or program reviews. "Through these internal audits, Chemed and Vitas were made aware of patients (1) who were receiving crisis care services, but did not qualify for such services, (2) for whom services were billed to Medicare as crisis care services, but the services were inconsistent with the patients' medical plans of care or with Medicare requirements, (3) for whom Vitas's own medical records showed were not in crisis." DOJ Complaint ¶¶68-69.

131. The DOJ Complaint references an internal Company document written during the Class Period, in September 2010, entitled, "Patient Care Documentation and Compliance Internal Review" for the San Fernando, California VITAS hospice program, showing that VITAS reviewed crisis care medical records for this hospice program. "Only 50 percent of the records showed that Vitas was being consistent with Medicare's criteria for crisis care. Only 10 percent of the crisis care claims comported with the patients' plans of care set forth by Vitas medical teams. After reviewing multiple factors, the audit team gave the crisis care claims in this location a 69 percent score, indicating a significant deficiency in compliance with Medicare requirements." DOJ Complaint ¶70.

CW3 confirmed that during his tenure, Chemed sent a representative to perform an audit on patient charts. The Chemed representative went through the charts with CW3 and confirmed that the patients were not appropriate and that "the documentation's not there" and the patients should be discharged. CW6 also confirmed that during his tenure internal audits were conducted by the company.

132. The DOJ Complaint reports that "Chemed and Vitas were also aware that their Medicare billings for crisis care were excessive as compared to other hospices, yet their billings to Medicare did not decrease." DOJ Complaint ¶71. The National Hospice and Palliative Care Organization (NHPCO) releases annual reports regarding hospice operations. Based on their historical data, "Vitas obtains Medicare reimbursement for crisis care far exceeding that of the rest of the hospice industry...Vitas bills Medicare for twice as many crisis care days as all other hospice providers combined." DOJ Complaint ¶72.

133. When comparing the NHPCO reports to Chemed and VITAS' financial reports throughout the Class Period, "Vitas's crisis care billings are almost six times what would be expected if its crisis care figures were in line with the national average." DOJ Complaint ¶¶72-76.

I. Defendants Emphasize VITAS' Revenue Growth and Compliance with Medicare

134. Despite VITAS' improper patient enrollment and billing practices, throughout the Class Period, Defendants repeatedly emphasized VITAS' revenue growth and compliance with Medicare rules and regulations.

135. Quarter after quarter, Chemed's financial statements purported to show consistent and increasing profits for the VITAS segment, with net revenues of $217.6 million in the fourth quarter of 2009, $222.9 million in the first quarter of 2010, $226.6 million in the second quarter of 2010, $234.0 million in the third quarter of 2010, $242 million in the fourth quarter of 2010, $236 million in the first quarter of 2011, $243 million in the second quarter of 2011 and $253 million in the third

quarter of 2011. Defendants repeated and elaborated upon VITAS' positive financial performance in SEC filings, press releases and conference calls with analysts.

136. Defendants attributed VITAS' revenue increases, in part, to "increased ADC [average daily census] and admissions." Throughout the Class Period, Defendants cited what appeared to be legitimate explanations for VITAS' admissions growth, stating, among other things, that VITAS has "placed significant emphasis on increasing admissions," "generated some extremely positive improvements in [its] overall admission trends" and that it was now able to achieve "better responses from [its] admissions areas to get to people very quickly, and appropriately discuss the hospice option with them." Rather than disclose the true reason behind VITAS' increase in hospice admissions growth (*i.e.*, the fact that the Company was improperly admitting patients who were not eligible for hospice care), Defendants attributed the increase in admissions growth to "the expansion of our inpatient units" and "investments in our field personnel, in terms of staffing, training and support."

137. Throughout the Class Period, Defendants also insisted that their billing practices were appropriate and in compliance with Medicare rules and regulations. They repeatedly told investors, "[w]e believe our hospice programs comply with all payor requirements at the time of billing" and "[w]e believe that we are in material compliance with Medicare and Medicaid rules and regulations applicable to hospice providers."

J. Investigations of VITAS Alert Defendants to Abuses at the Company

138. In mid 2005, the OIG for the Department of Health and Human Services began an investigation of VITAS for its alleged failure to appropriately bill Medicare and Medicaid for hospice services. Four years later, in May 2009, the OIG launched another investigation into VITAS and issued a subpoena to the Company, requesting documents, patient records, and policy and procedure manuals concerning hospice services provided for the period January 1, 2003 to the date

of the letter. In February 2010, VITAS received a companion civil investigative demand from the state of Texas Attorney General's Office, seeking related documents.

139. These investigations, which are ongoing, alerted Defendants to the possibility of misconduct at the Company. At a minimum, Defendants were reckless in failing to establish internal controls to prevent such misconduct, which was ongoing long after the initial investigations were initiated.

K. Materially False And Misleading Statements Made During the Class Period

1. February 15, 2010 and February 16, 2010 Statements Regarding 4Q09 and FY09 Results

140. The Class Period begins on February 15, 2010. On that date, Chemed issued a press release announcing its financial results for the fourth quarter and year end 2009, the period ended December 31, 2009. For the quarter, the Company reported revenues of $303.2 million and net income of $17.99 million. For the year, the Company reported revenues of $1.19 billion and net income of $73.78 million. In the VITAS segment, the Company reported net revenues of $217.6 million, net income of $19.4 million, and patient admissions of 13,677 for the quarter. For the year, the Company reported VITAS revenues of $854.3 million and net income of $72.16 million. The press release described the reasons for revenue growth in VITAS, stating, in pertinent part, as follows:

> Net revenue for VITAS was $217.6 million in the fourth quarter of 2009, which is an increase of 5.7% over the prior year period. ***This revenue growth was the result of increased ADC [average daily census] and admissions of 2.7% and Medicare price increases of approximately 3.5%.***
>
> Average revenue per patient per day in the quarter, before the effect of the Medicare Cap, was $196.28, which is 3.6% above the prior-year period. Routine home care reimbursement and high acuity care averaged $154.74 and $678.94, respectively, per patient per day in the fourth quarter of 2009. During the quarter, high acuity days-of-care were 7.9% of total days-of-care. This compares to high acuity days of care of 7.8% in the prior-year quarter.

141. The next day, on February 16, 2010, Chemed held a conference call for analysts and investors to discuss the Company's earnings release and operations. Defendants McNamara, Williams and O'Toole participated in the conference call and spoke positively about the Company's businesses and prospects. Defendant McNamara made the following statements regarding VITAS' hospice admissions:

> In the fourth quarter of 2009, our admissions totaled 13,677, an increase of 2.7% over the prior-year quarter. Admissions growth has been challenging in 2009. However, ***through a combination of increased resources and significant effort by our field-based personnel, we have begun to positively impact our admissions trends. These efforts have generated a 2.9% admissions growth in the second half of 2009.*** In the fourth quarter of 2009, VITAS recorded a reduction in revenue due to an estimated Medicare cap limitation of $1.8 million. The amount recorded relates predominantly to one program, which is our largest provider number. Admissions for this provider were strong during the quarter. However, revenue increased at a more rapid pace during the quarter due to a decrease in overall discharges and a mix shift to higher acuity days of care. The full-year gross margin for the program, including the Medicare cap limitation, was approximately 28%.

Defendant O'Toole also discussed the increase in hospice admissions growth at VITAS, stating, in pertinent part, as follows:

> Over the past year ***we have placed significant emphasis on increasing admissions. We have begun to see a return for these efforts, with admissions totaling 13,677 in the quarter, an increase of 2.7%. Our largest market, Florida, increased admissions 4.4% in the quarter, and our second largest state presence, California, expanded admissions 3.5%. We were able to expand admissions in ten of our 16 states, and the District of Columbia***.
>
> * * *
>
> ***Admissions have increased in three of our four top referral categories. During the fourth quarter home-based admissions increased 1.1%, assisted care living facilities increased 7.8% and hospital-referred admissions increased 6.2%***. Nursing home referrals declined 6.6% in the quarter. We have also increased our investment in the admissions arena. Today we have 298 sales representative 119 admissions coordinators and 305 admission nurses. VITAS has increased our total admissions staffing personnel 9.2% when compared to the fourth quarter of 2008. These investments in the sales and admissions areas resulted in an increase of our total admissions cost of $1.4 million, or 9.6% when compared to the prior-year quarter.

142. Also during the February 16, 2010 call, when an analyst asked about the Company's strategy for growing patient admissions in the VITAS segment, the following exchange occurred:

> Eric Gommel – Stifel Nicolaus – Analyst:
>
> Okay. And then going to – you were talking about revamping your admissions sales and marketing strategy, I'm just curious, when you look at that do you see your strategy more as gaining market share from the existing operators in a market, or is it focusing on getting new patients or maybe growing the benefit on a base of patients that maybe haven't had access to it before, and ways you see as maybe the opportunity to further grow access to the benefits?
>
> Defendant O'Toole:
>
> Well, I think the answer to the question is we're trying to accomplish both of the areas you talked about. We're trying to maintain our market share in competitive markets. Some markets we have very high market share and we're trying to improve our sales effort, both from the professional individuals we hire, and how we train them and oversight them and the material we provide them, and certainly in certain programs where we have smaller market share, some of the new starts that are developed over the last two, three, four years, we're adding sales people, we're trying to grow our market share and we're accomplishing that. And yes, we are going to nonhistorical referral sources more frequently now, as we've developed opportunities to partner with home health companies, personal care companies, various sources out there that we have worked on over the last year, as we saw the hospital market and the nursing home market give us a little less opportunity and that'[s] working for us. So, again, just improving the overall selling, marketing effort, ***having the better responses from our admissions areas to get to people very quickly, and appropriately discuss the hospice option with them.*** So, again, we're just trying to improve on all fronts and I think we're making some progress in all of those areas.

143. The statements referenced above in ¶¶140-42 were materially false and misleading when made because, at the time they were made, Defendants knew (or were reckless in not knowing), but failed to disclose, that: (a) a significant portion of VITAS' hospice admissions, average daily census, revenues and earnings were the direct result of Defendants' scheme to enroll, and keep enrolled, ineligible patients in hospice and fraudulently bill Medicare for inappropriate hospice services; (b) VITAS' reported average revenue per patient per day was materially inflated as a result of unnecessary continuous home care services provided to patients who did not require such services; (c) the Company failed to maintain adequate internal controls and procedures with respect

to hospice admissions and Medicare billing; (d) the Company's financial results were materially inflated as a result of Defendants' fraudulent scheme to enroll, and keep enrolled, ineligible patients in hospice; and, accordingly; and (e) Defendants lacked a reasonable basis for their positive statements about VITAS and its admissions growth. Moreover, the statements in ¶141 were materially false and misleading when made because VITAS' admissions trends were not merely due to "a combination of increased resources and significant effort by our field-based personnel," but rather, VITAS' Company-wide practice of admitting patients who were ineligible for hospice care because they were not terminally ill. In addition, the statements in ¶142 that VITAS was getting "better responses from our admissions areas to get to people very quickly, and appropriately discuss the hospice option with them" were materially false and misleading when made because VITAS' admissions team was routinely admitting patients that they knew were not eligible for hospice and VITAS' marketing personnel were inappropriately attempting to persuade the patients to use VITAS' services. Finally, any statement that VITAS' efforts to grow sales in established markets included the hiring *and training* of professional individuals, or any statement that the Company's success could be attributable in any way to VITAS' efforts to properly train its employees to comply with Medicare rules and regulations, was misleading because VITAS' efforts to train its employees was completely inadequate. *See* ¶¶68-72.

2. February 26, 2010 Form 10-K for FY 2009

144. On February 26, 2010, Chemed filed its annual report for the year ended December 31, 2009 on Form 10-K ("2009 10-K"), which was signed by Defendants McNamara and Williams and reiterated the Company's financial results. The 2009 10-K described Medicare's billing audits and claims review process, stating, in pertinent part, as follows:

> *Billing Audits/Claims Reviews*. ***The Medicare program and its fiscal intermediaries and other payors periodically conduct pre-payment or post-payment reviews*** and other reviews and audits of health care claims, including hospice claims. There is pressure from state and federal governments and other payors to scrutinize health

> care claims to determine their validity and appropriateness. In order to conduct these reviews, the payor requests documentation from Vitas and then reviews that documentation ***to determine compliance with applicable rules and regulations, including the eligibility of patients to receive hospice benefits,*** the appropriateness of the care provided to those patients and the documentation of that care. During the past several years, Vitas' claims have been subject to review and audit. We make appropriate provisions in our accounting records to reduce our revenue for anticipated denial of payment related to these audits and reviews. ***We believe our hospice programs comply with all payor requirements at the time of billing.*** However, we cannot predict whether future billing reviews or similar audits by payors will result in material denials or reductions in revenue.

145. The 2009 10-K also discussed "Regulatory Matters," stating, in pertinent part, as follows:

> In May 2009, VITAS received an administrative subpoena from the U.S. Department of Justice requesting VITAS deliver to the OIG documents, patient records, and policy and procedure manuals for headquarters and its Texas programs concerning hospice services provided for the period January 1, 2003 to the date of the letter. In August 2009, the OIG selected medical records for 59 past and current patients from a Texas program for review. In February 2010, VITAS received a companion civil investigative demand from the state of Texas Attorney General's Office, seeking related documents. Based on the early stage of the investigation and the limited information we have at this time, we cannot predict the outcome of this investigation. ***We believe that we are in material compliance with Medicare and Medicaid rules and regulations applicable to hospice providers.***

146. The statements referenced above in ¶¶144-45 that VITAS' "hospice programs comply with all payor requirements at the time of billing" and "are in material compliance with Medicare and Medicaid rules and regulations" were materially false and misleading when made because, at the time they were made, Defendants were knowingly (or recklessly), violating Medicare and Medicaid rules and regulations by admitting patients who did not qualify for hospice care, recertifying patients who were not qualified for hospice treatment under Medicare laws and guidelines and improperly billing the government for inappropriate services rendered to hospice patients.

3. April 20, 2010 and April 21, 2010 Statements Regarding 1Q10 Results

147. On April 20, 2010, Chemed issued a press release announcing its financial results for the first quarter of 2010, the period ended March 31, 2010. For the quarter, the Company reported

revenues of $308.8 million and net income of $19.36 million. In the VITAS segment, the Company reported net revenues of $222.9 million, net income of $18.4 million, and patient admissions of 14,844 for the quarter. The press release described the reasons for revenue growth in VITAS, stating, in pertinent part, as follows:

> ***Net revenue for VITAS was $222.9 million in the first quarter of 2010***, which is an increase of 7.0% over the prior year period. ***This revenue growth was the result of increased ADC of 5.1%, driven by an increase in admissions of 4.8%, combined with Medicare price increases of approximately 1.3%.***
>
> * * *
>
> ***The 4.8% admissions growth is attributed to the opening of six additional inpatient units (IPUs) over the past four quarters as well as a significant increase in staffing focused on referral sources and patient admissions***. New IPUs provide increased visibility to referral sources in the community as well as increased capacity to provide hospice care to more high acuity terminally ill patients.
>
> ***Average revenue per patient per day in the quarter***, excluding the impact of Medicare Cap and the 2008 retroactive price adjustment, ***was $199.45***, which is 1.8% above the prior-year period. Routine home care reimbursement and high acuity care averaged $154.95 and $678.17, respectively, per patient per day in the first quarter of 2010. During the quarter, high acuity days of care were 8.5% of total days of care. This compares to high acuity days of care of 8.4% in the prior-year quarter.

148. The next day, on April 21, 2010, Chemed held a conference call for analysts and investors to discuss the Company's earnings release and operations. Defendants McNamara, Williams and O'Toole participated in the conference call and spoke positively about the Company's businesses and prospects. Defendant McNamara made the following statements regarding the growth in VITAS' hospice admissions:

> Admission growth had been challenging in 2009. However, through a combination of strategic expansion of our inpatient units in key markets, and an increase in our field-base personnel, ***we have positively impacted our admissions trends over the last three quarters. These efforts have generated a 2.9% admissions growth in the second half of 2009, and a 4.8% increase in admissions in the first quarter of 2010.***

149. Defendant O'Toole also discussed the increase in hospice admissions growth at VITAS, stating, in pertinent part, as follows:

> Over the past year, we have placed significant emphasis on increasing admissions. I am also pleased to say that ***we are reporting very positive results for these efforts, with admissions increasing 4.8% in the quarter to 14,844. Our largest market, Florida, increased admissions, 6.4% in the quarter, and our second largest state presence, California, expanded admissions 4%. We were able to expand admissions in 11 of our 15 states and the District of Columbia . . . I attribute a significant portion of this growth in admissions to our strategy of expanding our inpatient, high acuity care capacity***. This strategy raises VITAS's visibility with our referral sources and key markets. In addition, increased care to high acuity patients can have a very positive impact on our billing potential under the Medicare Cap formula.
>
> * * *
>
> ***Admissions have increased in three of our four top referral categories. During the first quarter, home-based admissions increased 6%, assisted care living facilities increased 25%, and hospital referred admissions increased 2.8%.*** Nursing home referrals declined 0.4% in the quarter.

150. During the call, when an analyst from Deutsche Bank asked about "the volume strength" that the Company was experiencing in the VITAS segment, Defendant O'Toole responded, in pertinent part, as follows:

> Yeah, I don't think – we tried to talk about some of the trends over the last several quarters with ***us making enhanced efforts to non-traditional referral sources, and adding our strength at the sales level, as well as making sure we're very responsible on the admission nurse side***. When there is a potential referral, to meet the needs immediately of the patient and their families, to bring them on, if that's their choice. So, those are beginning to take hold. The inpatient unit strategy with opening new beds brings in some very short-stay patients, which helps the admission trend, and also over time gives you presence in the referring hospitals, so it builds your home care program as well.

Defendant McNamara added:

> And I would say, (inaudible) commentary, ***we were very happy with the admission trend. We were happy with the census that we held on to***, and if – there's another comment I would make with regard to labor management, which is so important. That remains very good during the quarter on the cost side. Tim alluded to some costs on the administrative side. Some things that were done intentionally. Some of the administrative costs had come from a program of adding inpatient units and more doctors on staff. All of that is intentional, but something we're watching, but I don't want to leave the subject without saying that we had another quarter of very good labor management, which is essential in the business.

151. The statements referenced above in ¶¶147-50 were materially false and misleading when made for the reasons stated in ¶143. In addition, the statements in ¶147 attributing VITAS' admissions growth to the opening of "additional inpatient units" and "significant increase in staffing" were materially false and misleading when made because Defendants failed to also disclose that VITAS' increase in hospice admissions was due in large part to the Company-wide practice of admitting patients who were ineligible for hospice care because they were not terminally ill. Moreover, Defendants' statements in ¶150 that "we're very responsible on the admission nurse side" were materially false and misleading when made because, according to a number of former VITAS employees who worked at VITAS during the Class Period, the admission nurses routinely admitted patients to hospice, regardless of eligibility.

4. April 30, 2010 1Q10 Form 10-Q

152. On April 30, 2010, the Company filed its quarterly report for the first quarter of 2010 on Form 10-Q and reiterated the financial results reported on April 20, 2010. Additionally, the quarterly report discussed "Legal and Regulatory Matters" and stated, in pertinent part, as follows:

> In May 2009, VITAS received an administrative subpoena from the U.S. Department of Justice requesting VITAS deliver to the OIG documents, patient records, and policy and procedure manuals for headquarters and its Texas programs concerning hospice services provided for the period January 1, 2003 to the date of the letter. In August 2009, the OIG selected medical records for 59 past and current patients from a Texas program for review. In February 2010, VITAS received a companion civil investigative demand from the state of Texas Attorney General's Office, seeking related documents. Based on the early stage of the investigation and the limited information we have at this time, we cannot predict the outcome of this investigation. ***We believe that we are in material compliance with Medicare and Medicaid rules and regulations applicable to hospice providers.***

153. The statements referenced above in ¶152 that VITAS is "in material compliance with Medicare and Medicaid rules and regulations" were materially false and misleading when made because, at the time they were made, Defendants were knowingly (or recklessly), violating Medicare and Medicaid rules and regulations by admitting patients who did not qualify for hospice care, recertifying patients who were not qualified for hospice treatment under Medicare laws and

guidelines and improperly billing the government for inappropriate services rendered to hospice patients.

5. July 28, 2010 and July 29, 2010 Statements Regarding 2Q10 Results

154. On July 28, 2010, Chemed issued a press release announcing its financial results for the second quarter of 2010, the period ended June 30, 2010. For the quarter, the Company reported revenues of $315 million and net income of $18.9 million. In the VITAS segment, the Company reported net revenues of $226.6 million, net income of $18.3 million, and patient admissions of 14,423 for the quarter. The press release described the reasons for revenue growth in VITAS, stating, in pertinent part, as follows:

> ***Net revenue for VITAS was $226.6 million in the second quarter of 2010***, which is an increase of 7.3% over the prior year period. ***This revenue growth was the result of increased ADC of 5.6%, driven by an increase in admissions of 4.2%, combined with Medicare price increases of approximately 1.3%. The remaining growth was driven by geographic mix shift of the patient base***.
>
> The 4.2% admissions growth in the second quarter of 2010 compares favorably to the 0.8% decline in admissions in the prior-year quarter and a 0.7% decline in admissions for full-year 2009.
>
> ***Average revenue per patient per day in the quarter***, excluding the impact of Medicare Cap, ***was $197.89***, which is 1.8% above the prior-year period. Routine home care reimbursement and high acuity care averaged $155.33 and $682.40, respectively, per patient per day in the second quarter of 2010. During the quarter, high acuity days of care were 8.1% of total days of care. This is essentially equal to the prior-year quarter.

155. The next day, on July 29, 2010, Chemed held a conference call for analysts and investors to discuss the Company's earnings release and operations. Defendants McNamara, Williams and O'Toole participated in the conference call and spoke positively about the Company's businesses and prospects. Defendants made the following statements regarding the performance of the Company's VITAS segment:

Defendant McNamara:

In the second quarter of 2010, our hospice business segment generated revenue of $227 million, an increase of 7.3% over the comparable prior year period. VITAS provided an adjusted EBITDA of $33.1 million, an increase of 5.6% compared to the second quarter of 2009. This equated to an adjusted EBITDA margin of 14.6%. ***Our admissions expanded 4.2% in the quarter and have increased 4.5% on a year-to-date basis.*** This compares to a 4% decline in admissions in the first six months of 2009. ***This improvement in admissions trend is attributable to*** several factors. The most significant has been ***the expansion of our inpatient units, or IPUs, over the past year.*** As of June 30, 2010, VITAS has 31 dedicated IPUs with a total daily capacity of 414 beds. This is a 15% increase in IPU locations and 11% increase in patient beds. New IPUs provide increased visibility to the referral sources in the community as well as increased capacity to provide hospice care to our high acuity patients.

* * *

We have also made significant investments in our field personnel, in terms of staffing, training and support. These investments are now providing a noticeable improvement in our overall admissions trends.

* * *

Defendant Williams:

As Kevin noted, net revenue for VITAS was $227 million in the second quarter of 2010, which is an increase of 7.3% over the prior year period. ***This revenue growth was a result of increased ADC of 5.6%, driven by an increase in admissions of 4.2% combined with Medicare price increases of approximately 1.3%. The remaining growth was driven by a geographic mix shift in our patient base.*** The 4.2% admissions growth in the second quarter of 2010 compares favorably to the 0.8% decline in admissions in the prior year quarter and the 0.7% decline in admissions for a full year 2009.

* * *

Defendant O'Toole:

VITAS, as well as the hospice industry, experienced a reduction in admission trends during 2009. ***To counter this trend, we made significant investments in our marketing, sales and admission personnel and developed specific market strategies to maximize VITAS' opportunity in all of our locations. These efforts have begun to provide noticeable improvements in our admission trends.***

In the second quarter of 2010, VITAS admitted 14,423 patients, which is 4.2% higher than the prior year quarter. And for the first six months of 2010, admissions increased at a 4.5% rate. On a year-to-date basis, our largest state, Florida, increased admissions by 7.1%. And our second largest state presence, California, expanded admissions by 1.7%. Our most difficult states in 2009 were Illinois and Texas. The

> admissions for both of these states have stabilized. And in the first half of 2010, Illinois' admissions were effectively flat, and Texas declined just 1%. ***This growth in admissions is in part due to our strategy of expanding inpatient capacity.*** This strategy raises VITAS' visibility with our referral sources in key markets. In addition, increased care to high acuity patients has a very positive impact on our billing potential under the Medicare cap formula.
>
> * * *
>
> ***Admissions have increased in three of our four top referral categories. During the second quarter, home-based admissions increased 8.1%, assisted care living facilities increased 10.7%, and hospital-referred admissions increased 2.4%.*** Nursing home referrals declined less than 1% in the quarter.

156. The statements referenced above in ¶¶154-55 were materially false and misleading when made for the reasons stated in ¶143.

6. July 30, 2010 2Q10 Form 10-Q

157. On July 30, 2010, the Company filed its quarterly report for the second quarter of 2010 on Form 10-Q and reiterated the financial results reported on July 28, 2010. Additionally, the quarterly report discussed "Legal and Regulatory Matters" and stated, in pertinent part, as follows:

> In May 2009, VITAS received an administrative subpoena from the U.S. Department of Justice requesting VITAS deliver to the OIG documents, patient records, and policy and procedure manuals for headquarters and its Texas programs concerning hospice services provided for the period January 1, 2003 to the date of the letter. In August 2009, the OIG selected medical records for 59 past and current patients from a Texas program for review. In February 2010, VITAS received a companion civil investigative demand from the state of Texas Attorney General's Office, seeking related documents. Based on the early stage of the investigation and the limited information we have at this time, we cannot predict the outcome of this investigation. ***We believe that we are in material compliance with Medicare and Medicaid rules and regulations applicable to hospice providers.***

158. The statements referenced above in ¶157 that VITAS is "in material compliance with Medicare and Medicaid rules and regulations" were materially false and misleading when made because, at the time they were made, Defendants were knowingly (or recklessly), violating Medicare and Medicaid rules and regulations by admitting patients who did not qualify for hospice care, recertifying patients who were not qualified for hospice treatment under Medicare laws and

guidelines and improperly billing the government for inappropriate services rendered to hospice patients.

7. October 25, 2010 and October 26, 2010 Statements Regarding 3Q10 Results

159. On October 25, 2010, Chemed issued a press release announcing its financial results for the third quarter of 2010, the period ended September 30, 2010. For the quarter, the Company reported revenues of $320.5 million and net income of $21 million. In the VITAS segment, the Company reported net revenues of $234 million, net income of $19.8 million, and patient admissions of 14,483 for the quarter. The press release described the reasons for revenue growth in VITAS, stating, in pertinent part, as follows:

> ***Net revenue for VITAS was $234.0 million in the third quarter of 2010***, which is an increase of 7.8% over the prior-year period. ***This revenue growth was the result of increased ADC of 6.1%, driven by an increase in admissions of 5.4%, combined with Medicare price increases of approximately 1.3%. The remaining growth was driven by geographic mix shift of the patient base***.
>
> The 5.4% admissions growth in the third quarter of 2010 compares favorably to the 3.1% increase in admissions in the prior-year quarter and a 0.7% decline in admissions for full-year 2009.
>
> ***Average revenue per patient per day in the quarter***, excluding the impact of Medicare Cap, ***was $197.90***, which is 1.6% above the prior-year period. Routine home care reimbursement and high acuity care averaged $155.49 and $689.30, respectively, per patient per day in the third quarter of 2010. During the quarter, high acuity days of care were 7.9% of total days of care. This is essentially equal to the prior-year quarter.

160. The next day, on October 26, 2010, Chemed held a conference call for analysts and investors to discuss the Company's earnings release and operations. Defendants McNamara, Williams and O'Toole participated in the conference call and spoke positively about the Company's businesses and prospects. Defendants made the following statements regarding the performance of the Company's VITAS segment:

Defendant McNamara:

Our admissions expanded 5.4% in the quarter and have increased 4.8% on a year-to-date basis. This compares to a 1.7% decline in admissions in the first nine months of 2009. ***This improvement in admissions trends is attributable to several factors, the most significant has been the expansion of our inpatient units, or IPUs, over the past year***.

* * *

We've also made ***significant investments in our field personnel in terms of staffing, training, and support. These investments are now providing a noticeable improvement in our overall admissions trends***.

* * *

Defendant Williams:

As Kevin noted, the net revenue for VITAS was $234 million in the third quarter of 2010, which is an increase of 7.8% over the prior year period. ***This revenue growth was a result of increased ADC of 6.1%, driven by an increase of admissions of 5.4%, increased discharges of 4.7%, combined with Medicare price increases of approximately 1.3%. The remaining difference was driven by geographic mix shift of the patient base***. Our average revenue per patient per day in the quarter, excluding the impact of Medicare Cap, was $197.90, which is 1.6% above the prior year period.

* * *

Defendant O'Toole:

VITAS is continually monitoring and adjusting its local field efforts in terms of generating awareness of the hospice benefit for Medicare. ***Through the hard work of all of our employees we have generated some extremely positive improvements in our overall admission trends. This has resulted in VITAS admitting 14,483 patients in the quarter, which is 5.4% higher than the prior year***.

During the quarter our largest State, ***Florida, increased admissions 9.3%, and our second largest State presence, California, expanded admissions 4.1%. We were able to expand admissions in 11 of the 15 States plus the District of Columbia, in which VITAS operates***.

* * *

Admissions have increased in three of our four top referral categories. During the third quarter home based admissions increased 8.5%, assisted care living facilities admissions increased 5.6%, and hospital referred admissions increased 5.9%. Nursing home referrals declined 2.4% in the quarter. ***This growth in admissions is in part due to our strategy of expanding inpatient capacity***. This strategy raises VITAS' visibility with our referral sources in key markets. In addition, increased

> care to high acuity patients has a positive impact on our billing potential under the Medicare Cap formula.

161. During the call, when an analyst from Barclays asked how much of VITAS' admissions growth was attributed to Chemed's initiatives versus the growth in the hospice industry overall, Defendant O'Toole responded, in pertinent part, as follows:

> Well, ***I'd like to attribute most of the impact from initiatives that we took***, you know, the economy is a minor issue, I don't want to overstate it. So those are issues. We continue to have a lot of resources coming to the table. ***We're getting to the referrals sooner. We're providing great care, and the inpatient unit activity, the continuous care program, all of our marketing, we're – we have big market presence in many of our locations***.
>
> As you know, our strategy is to go into large markets, which gives us continual opportunity to expand. One of the ways we expand is by opening satellite offices, and we've done numerous of those during the year. They're not considered new starts. So, again, ***all those initiatives I expect to continue, and as I say we're optimistic***.

162. The statements referenced above in ¶¶159-61 were materially false and misleading when made for the reasons stated in ¶143.

8. November 3, 2010 3Q10 Form 10-Q

163. On November 3, 2010, the Company filed its quarterly report for the third quarter of 2010 on Form 10-Q and reiterated the financial results reported on October 25, 2010. Additionally, the quarterly report discussed "Legal and Regulatory Matters" and stated, in pertinent part, as follows:

> In May 2009, VITAS received an administrative subpoena from the U.S. Department of Justice requesting VITAS deliver to the OIG documents, patient records, and policy and procedure manuals for headquarters and its Texas programs concerning hospice services provided for the period January 1, 2003 to the date of the letter. In August 2009, the OIG selected medical records for 59 past and current patients from a Texas program for review. In February 2010, VITAS received a companion civil investigative demand ("CID") from the state of Texas Attorney General's Office, seeking related documents. In September 2010, it received a second CID and a second administrative subpoena seeking related documents. Based on the early stage of the investigation and the limited information we have at this time, we cannot predict the outcome of this investigation. ***We believe that we are in material compliance with Medicare and Medicaid rules and regulations applicable to hospice providers.***

164. The statements referenced above in ¶163 that VITAS is "in material compliance with Medicare and Medicaid rules and regulations" were materially false and misleading when made because, at the time they were made, Defendants were knowingly (or recklessly), violating Medicare and Medicaid rules and regulations by admitting patients who did not qualify for hospice care, recertifying patients who were not qualified for hospice treatment under Medicare laws and guidelines and improperly billing the government for inappropriate services rendered to hospice patients.

9. February 15, 2011 and February 16, 2011 Statements Regarding 4Q10 and FY10 Results

165. On February 15, 2011, Chemed issued a press release announcing its financial results for the fourth quarter and year end of 2010, the period ended December 31, 2010. For the quarter, the Company reported revenues of $336 million and net income of $22.6 million. For the year, the Company reported revenues of $1.28 billion and net income of $81.83 million. In the VITAS segment, the Company reported net revenues of $242 million, net income of $23.3 million, and patient admissions of 14,776 for the quarter. For the year in VITAS, the Company reported revenues of $925.81 million and net income of $79.8 million. The press release described the reasons for revenue growth in VITAS, stating, in pertinent part, as follows:

> ***Net revenue for VITAS was $242 million in the fourth quarter of 2010***, which is an increase of 11.4% over the prior-year period. Excluding the impact of Medicare Cap, revenue increased 10.9%. ***This revenue growth was the result of increased ADC of 7.7%, driven by an increase in admissions of 8.0%, combined with Medicare price increases of approximately 2.1%. The remaining growth was driven by geographic mix shift of the patient base***.
>
> ***Average revenue per patient per day in the quarter***, excluding the impact of Medicare Cap, ***was $202.21***, which is 3.0% above the prior-year period. Routine home care reimbursement and high acuity care averaged $159.31 and $701.21, respectively, per patient per day in the fourth quarter of 2010. During the quarter, high acuity days of care were 7.9% of total days of care, essentially equal to the prior-year quarter.

166. The next day, on February 16, 2011, Chemed held a conference call for analysts and investors to discuss the Company's earnings release and operations. Defendants McNamara, Williams and O'Toole participated in the conference call and spoke positively about the Company's businesses and prospects. Defendant McNamara made the following statements regarding the improvement in VITAS' admissions trends:

> In the fourth quarter of 2010 our admissions totaled 14,776, an increase of 8% over the prior-year quarter. This brings our full-year 2010 admissions growth to 5.6%. ***This improvement in admissions trends in 2010 is attributed to several factors. The most significant has been the expansion of our inpatient units, or IPUs, over the past year.*** As of December 31, 2010, VITAS now has 32 dedicated IPUs with a total daily capacity of 427 beds. Over 75% of our inpatient days of care are within these dedicated units. The remaining 25% of our high-acuity inpatient care is provided with short-term contract beds.
>
> * * *
>
> We have also made ***significant investments in our field personnel in terms of staffing, training, and support.*** These investments ***have provided a noticeable improvement in our overall admissions trends***.

Defendant O'Toole also commented on VITAS' admissions, stating, in pertinent part, as follows:

> Thank you, David. As most of you are aware, ***we have put considerable efforts into our marketing and community education programs to increase admissions. Through the hard work of all of our employees, those who are directly responsible for developing referral sources and admitting patients and those providing excellent care, we have generated a total of 58,526 admissions in 2010.*** This is an increase of 5.6% over the prior year. These admissions, coupled with our patient census at the start of the year, resulted in VITAS caring for over 70,000 patients in 2010. I could not be more appreciative of all of the hard work from our employees during 2010, particularly our 200-plus hospice teams that deliver excellent care to the patients and families we serve.
>
> In the fourth quarter of 2010, we admitted 14,776 patients, which is 8% higher than the prior-year quarter. During the quarter, our largest state, ***Florida, increased admissions 10.7%, and our second largest state presence, California, expanded admissions 7.6%. We were able to expand admissions in 11 of the 15 states, plus the District of Columbia, in which VITAS operates.*** Our most difficult states in 2009 had been Illinois and Texas. Both of these states have stabilized and in 2010, Illinois admissions declined 0.4%, and Texas increased 2.2%. These results represent a significant improvement over the prior-year period.
>
> ***Admissions have increased in all four of our largest referral categories. During the fourth quarter, home-based admissions increased 7.4%, assisted care living***

> ***facilities increased 18.9%, hospital-referred admissions increased 7.8%, and nursing home admissions increased 4%. This growth in admissions is in part due to our strategy of expanding inpatient capacity.*** This strategy raises VITAS' visibility with our referral sources in key markets. In addition, increased care to high-acuity patients has a very positive impact on our billing potential under the Medicare Cap formula.

167. During the call, Frank Morgan, an analyst at RBC Capital Markets, asked about any ongoing Medicare billing audits or claims reviews. In response, Defendant O'Toole stated, in pertinent part, as follows:

> They're always continuing, whether they be at the federal level, or various state level reviews, and ***we're doing very well in that regard and have improved, as Dave just mentioned, our internal processes. So we make sure we have all of the key documents in the file for those reviews and upgrading every aspect of our compliance program***.

168. The statements referenced above in ¶¶165-67 were materially false and misleading when made for the reasons stated in ¶143. In addition, the statements referenced in ¶167 that VITAS was "upgrading every aspect of [its] compliance program" and making sure it had "all of the key documents in the file" for Medicare billing audits and claims reviews was materially false and misleading when made because patient eligibility for hospice services at VITAS was based on inaccurate and manipulated documentation. Moreover, VITAS improperly received payments from Medicare for services rendered to ineligible hospice patients.

10. February 28, 2011 Form 10-K for FY 2010

169. On February 28, 2011, Chemed filed its annual report for the year ended December 31, 2010 on Form 10-K ("2010 10-K"), which was signed by Defendants McNamara and Williams and reiterated the Company's financial results. The 2010 10-K described Medicare's billing audits and claims review process, stating, in pertinent part, as follows:

> *Billing Audits/Claims Reviews*. ***The Medicare program and its fiscal intermediaries and other payors periodically conduct pre-payment or post-payment reviews*** and other reviews and audits of health care claims, including hospice claims. There is pressure from state and federal governments and other payors to scrutinize health care claims to determine their validity and appropriateness. In order to conduct these reviews, the payor requests documentation from Vitas and then reviews that

> documentation ***to determine compliance with applicable rules and regulations, including the eligibility of patients to receive hospice benefits***, the appropriateness of the care provided to those patients and the documentation of that care. During the past several years, Vitas' claims have been subject to review and audit. We make appropriate provisions in our accounting records to reduce our revenue for anticipated denial of payment related to these audits and reviews. ***We believe our hospice programs comply with all payor requirements at the time of billing.*** However, we cannot predict whether future billing reviews or similar audits by payors will result in material denials or reductions in revenue.

170. The 2010 10-K also discussed "Regulatory Matters," stating, in pertinent part, as follows:

> In May 2009, VITAS received an administrative subpoena from the U.S. Department of Justice requesting VITAS deliver to the OIG documents, patient records, and policy and procedure manuals for headquarters and its Texas programs concerning hospice services provided for the period January 1, 2003 to the date of the letter. In August 2009, the OIG selected medical records for 59 past and current patients from a Texas program for review. In February 2010, VITAS received a companion civil investigative demand ("CID") from the state of Texas Attorney General's Office, seeking related documents. In September 2010, it received a second CID and a second administrative subpoena seeking related documents. We can neither predict the outcome of this investigation nor estimate our potential liability, if any. ***We believe that we are in compliance with Medicare and Medicaid rules and regulations applicable to hospice providers***.

171. The statements referenced above in ¶¶169-70 that VITAS' "hospice programs comply with all payor requirements at the time of billing" and "are in material compliance with Medicare and Medicaid rules and regulations" were materially false and misleading when made because, at the time they were made, Defendants were knowingly (or recklessly, violating Medicare and Medicaid rules and regulations by admitting patients who did not qualify for hospice care, recertifying patients who were not qualified for hospice treatment under Medicare laws and guidelines and improperly billing the government for inappropriate services rendered to hospice patients.

11. April 25, 2010 and April 26, 2010 Statements Regarding 1Q11 Results

172. On April 25, 2011, Chemed issued a press release announcing its financial results for the first quarter of 2011, the period ended March 31, 2011. For the quarter, the Company reported revenues of $331 million and net income of $18.1 million. In the VITAS segment, the Company

reported net revenues of $236 million, net income of $18.1 million, and patient admissions of 15,798 for the quarter. The press release described the reasons for revenue growth in VITAS, stating, in pertinent part, as follows:

> ***Net revenue for VITAS was $236 million in the first quarter of 2011***, which is an increase of 5.7% over the prior-year period. Both periods include revenue from the reversal of Medicare Cap accruals. Excluding this impact of Medicare Cap, revenue increased 6.1%. ***This revenue growth was the result of increased ADC of 4.8%, driven by an increase in admissions of 6.4%, combined with Medicare price increases of approximately 2.1%.*** This growth was partially offset by geographic and level of acuity mix shift of the patient base.
>
> ***Average revenue per patient per day in the quarter***, excluding the impact of Medicare Cap, ***was $201.82***, which is 1.2% above the prior-year period. Routine home care reimbursement and high acuity care averaged $157.93 and $696.25, respectively, per patient per day in the first quarter of 2011. During the quarter, high acuity days of care were 8.2% of total days of care, 35 basis points lower than the prior-year quarter.

173. The next day, on April 26, 2011, Chemed held a conference call for analysts and investors to discuss the Company's earnings release and operations. Defendants McNamara, Williams and O'Toole participated in the conference call and spoke positively about the Company's businesses and prospects. Defendants made the following statements regarding the performance of the Company's VITAS segment:

> Defendant McNamara:
>
> In the first quarter of 2011, our admissions totaled 15,798, an increase of 6.4% over the prior-year quarter. The ***growth in our admissions in 2010 and 2011 are attributable to several factors. We continue to expand our presence in local communities with new or refurbished inpatient unit***s. This provides VITAS with increased visibility to our referral sources, as well as an increased capacity to provide hospice care to our high acuity patients.
>
> As of March 31, 2011, VITAS has 32 dedicated IPUs with a total daily capacity of 427 beds. This is an increase of 6% over the prior-year quarter. Approximately 73% of our inpatient days of care are within these dedicated units. The remaining 27% of our high acuity inpatient care provided within short-term contract beds. I anticipate this approach in using inpatient units of maximizing our visibility within the healthcare community to be a permanent part of our admissions strategy. We continue to expand our marketing and community liaison personnel in terms of staffing, training, and support. ***These investments in personnel, coupled with our***

inpatient units, have resulted in significant improvement in overall admission strengths.

* * *

Defendant Williams:

Thanks, Kevin. The net revenue for VITAS was $236 million in the first quarter of 2011, which is an increase of 5.7% over the prior-year period. If you exclude the impact of Medicare cap, our revenue increased 6.1%. This ***revenue growth was the result of increased ADC of 4.8%, driven by an increase in admissions of 6.4%, combined with Medicare price increases of approximately 2.1%***. This was partially offset by acuity and geographic mix shift of our patient base.

* * *

Defendant O'Toole:

Thank you, David. As most of you are aware, ***we have put considerable effort into our field-based sales and marketing efforts over the past year.*** We have made significant investments in terms of admission personnel, community liaisons, long-term care liaisons, and admissions coordinators. These investments have been in the form of increased personnel training and educational materials. ***This focus has resulted in VITAS generating a record 15,798 admissions in the quarter, an increase of 6.4% over the first quarter of 2010.*** At this rate, VITAS is on track to provide end-of-life care to more than 76,000 patients in 2011.

During the quarter, our largest state, ***Florida, increased admissions 8.5%, and our second largest state presence, California, expanded admissions 7.9%. We were able to expand admissions in 11 of the 15 states, plus the District of Columbia, in which VITAS operates. Admissions have increased in each of our four largest referral categories. During the first quarter of 2011, home-based admissions increased 5.9%. Assisted care living facilities increased 14%. Hospital referred admissions increased 7.5%. And nursing home admissions increase 0.2%.***

In addition to the significant expansion of our admissions-focused personnel, growth in admissions is also attributed to our focus on expanding inpatient capacity. This strategy raises VITAS's visibility within the healthcare community, resulting in increased admissions. In addition, providing more high acuity care further minimizes the likelihood of reaching billing limitations under the Medicare cap formula.

174. The statements referenced above in ¶¶172-73 were materially false and misleading when made for the reasons stated in ¶143.

12. April 29, 2011 1Q11 Form 10-Q

175. On April 29, 2011, the Company filed its quarterly report for the first quarter of 2011 on Form 10-Q and reiterated the financial results reported on April 25, 2011. Additionally, the quarterly report discussed "Legal and Regulatory Matters" and stated, in pertinent part, as follows:

> In May 2009, VITAS received an administrative subpoena from the U.S. Department of Justice requesting VITAS deliver to the Office of Inspector General for the Department of Health and Human Services ("OIG") documents, patient records, and policy and procedure manuals for headquarters and its Texas programs concerning hospice services provided for the period January 1, 2003 to the date of the letter. In August 2009, the OIG selected medical records for 59 past and current patients from a Texas program for review. In February 2010, VITAS received a companion civil investigative demand from the state of Texas Attorney General's Office, seeking related documents. In September 2010, it received a second CID and a second administrative subpoena seeking related documents. In April 2011, the U.S. Attorney provided the Company with a copy of a qui tam complaint filed under seal in U.S. District Court for the Northern District of Texas. The complaint and all the filings in the action remain under seal. The U.S. Attorney has not decided whether to intervene in the action. We are conferring with the U.S. Attorney regarding the Company's defenses to the complaint's allegations. We can neither predict the outcome of this investigation nor estimate our potential liability, if any. ***We believe that we are in compliance with Medicare and Medicaid rules and regulations applicable to hospice providers.***

176. The statements referenced above in ¶175 that VITAS is "in material compliance with Medicare and Medicaid rules and regulations" were materially false and misleading when made because, at the time they were made, Defendants were knowingly (or recklessly), violating Medicare and Medicaid rules and regulations by admitting patients who did not qualify for hospice care, recertifying patients who were not qualified for hospice treatment under Medicare laws and guidelines and improperly billing the government for inappropriate services rendered to hospice patients.

177. On or about July 18, 2011, the OIG published a report titled "Medicare Hospices That Focus on Nursing Facility Residents" regarding concerns raised about Medicare hospice care for nursing facility residents, including inappropriate enrollment and compensation. Nothing specific to Chemed or VITAS was included in the report.

13. July 26, 2011 and July 27, 2011 Statements Regarding 2Q11 Results

178. On July 26, 2011, Chemed issued a press release announcing its financial results for the second quarter of 2011, the period ended June 30, 2011. For the quarter, the Company reported revenues of $333 million and net income of $20.29 million. In the VITAS segment, the Company reported net revenues of $243 million, net income of $18.6 million, and patient admissions of 15,294 for the quarter. The press release described the reasons for revenue growth in VITAS, stating, in pertinent part, as follows:

> ***Net revenue for VITAS was $243 million in the second quarter of 2011***, which is an increase of 7.3% over the prior-year period. Excluding the impact of Medicare Cap, revenue increased 7.4%. ***This revenue growth was the result of increased ADC of 5.8%, driven by an increase in admissions of 6.0%, combined with Medicare price increases of approximately 2.1%***. This growth was partially offset by geographic and level of acuity mix shift of the patient base.
>
> ***Average revenue per patient per day in the quarter***, excluding the impact of Medicare Cap, ***was $200.99***, which is 1.6% above the prior-year period. Routine home care reimbursement and high acuity care averaged $158.67 and $696.00, respectively, per patient per day in the second quarter of 2011. During the quarter, high acuity days of care were 7.9% of total days of care, 20 basis points lower than the prior-year quarter.

179. The next day, on July 27, 2011, Chemed held a conference call for analysts and investors to discuss the Company's earnings release and operations. Defendants McNamara, Williams and O'Toole participated in the conference call and spoke positively about the Company's businesses and prospects. Defendant McNamara made the following statements regarding VITAS' "success in achieving excellent admissions growth":

> In the second quarter of 2011, our admissions totaled 15,294, an increase of 6.0% over the prior year quarter. ***Our success in achieving excellent admissions growth is attributed to several factors***. We continue to expand our presence in local communities with new or refurbished in-patient units. This provides VITAS with increased visibility to our referral sources as well as increased capacity to provide hospice care to our high acuity patients.

* * *

> We've also continued to expand our marketing and community liaison structure in terms of staffing, training and support. These ***investments in personnel, coupled with our in-patient units have resulted in a significant improvement in over all admissions trends***.

Defendant O'Toole also commented on VITAS' admissions, stating, in pertinent part, as follows:

> . . . As most of you are aware, ***we continue to put significant efforts into our admission focus and initiatives. One of the most important aspects to increased admissions is appropriately focused field-based sales and marketing personnel.*** As of June 30, 2011, we have 305 sales representatives, 143 admissions coordinators, 342 admission nurses, 111 community liaisons and 23 long-term care liaisons. Sales representatives and admissions personnel have expanded 6.8% compared to the second quarter of 2010.
>
> ***This focus has resulted in VITAS generating 15,294 admissions in the quarter, an increase of 6% over the second quarter of 2010.*** At this rate, VITAS is on track to provide end-of-life care to more than 76,000 patients in 2011.
>
> ***During the quarter, our largest state, Florida, increased admissions 8.4% and our second largest state presence, California, expanded admissions 2.7%.*** We were able to expand admissions in 13 of the 16 states plus the District of Columbia in which VITAS operates.
>
> ***Admissions have increased in three of our four largest referral categories. During the second quarter of 2011, home-based admissions increased 7.6%, assisted care living facilities increased 12.5% and hospital referred admissions increased 5.2%.*** Nursing home admissions decreased by 5.2%.

180. During the conference call, Defendants responded to questions about the OIG hospice report that was released in July 2011 and downplayed the issues raised in the report and their applicability to Chemed.

181. For example, Brian Zimmerman, an analyst with Deutsche Bank, posed the following question during the conference call:

> Hi. Thanks and good morning. This is Brian Zimmerman in for Darren. Last week the Office of Inspector General came out with a report focusing on Medicare hospices that focus on nursing facility residents. Do you see the government's interest in this area as a potential risk? And the second part of that question is, we've noticed a decline year-over-year in average daily census in nursing facilities, has that changed from competition, from skilled nursing facilities or are you de-emphasizing growth in that setting?

182. The first response to Mr. Zimmerman's question came from Defendant McNamara, who stated that Chemed had grown less dependent on nursing facilities as they started operating their own in-house hospice facilities.

183. Defendant O'Toole then responded to both questions posed by Mr. Zimmerman, responding first to his question about the decline in year-over-year census in nursing facilities and the impact that has on VITAS:

> Yes, just a couple of things. As Kevin highlights, the trend in the nursing homes census for us have been mirroring the reduction and overall nursing home facility beds in the country. There are more ALF beds being built and that's really -- we are just following the industry. Our percentage of nursing home patients, very similar to what it's been in the past, around 30% and we are very pleased with that and think our future there is very good.

184. Defendant O'Toole then responded to Mr. Zimmerman's first question, concerning the OIG report and the potential risk to VITAS and Chemed of the government's focus on Medicare hospices serving nursing homes:

> Briefly speaking about the OIG report, as Kevin mentioned. They sensed some issues there. I think what we would say is hospices are very, very important service that's provided to nursing home patients and just because someone happens to have their residence in a nursing home should not mean they are not entitled to their hospice benefit.
>
> We feel very strongly about that. They raised some concerns about captives, where some companies have maybe two-thirds or more of their census from nursing home patients that they own the nursing home. That may be something they need to look at.
>
> ***VITAS is independent. We don't have that issue at all. We are very comfortable with where we sit.*** Also keep in mind, hospice is additional services. The OIG report indicates some comments about there's care givers already there. Those care givers are not allowed to do hospice services and hospice provides additional services and keep in mind that because hospice is provided for nursing home patients, those patients can stay in the nursing home and aren't shifted aggressively to a higher acuity facility, aka a hospital, where their cost structure would be much higher.
>
> So there's parts of the OIG report I disagree with. Some of the comments are not new. They've been focused on it for a long time. CMS has already responded to the OIG report and they said they will call the issue to the attention of the auditors and so forth about the self-referrals. And as far as the change in the payment system, the

> OIG highlights that they are already looking at changing the system for a U-shaped curve. They are gathering a lot of data. This is one period they will look at but I will not see any changes there soon.

185. The statements referenced above in ¶¶178-84 were materially false and misleading when made for the reasons stated in ¶143. In addition, because VITAS was improperly enrolling ineligible patients – including nursing home patients – for hospice services, Defendants had no basis for their statements that they "are comfortable with where [they] sit" with regard to the OIG investigation and "don't have that issue at all."

14. August 5, 2011 2Q11 Form 10-Q

186. On August 5, 2011, the Company filed its quarterly report for the second quarter of 2011 on Form 10-Q and reiterated the financial results reported on July 26, 2011. Additionally, the quarterly report discussed "Legal and Regulatory Matters" and stated, in pertinent part, as follows:

> In May 2009, VITAS received an administrative subpoena from the U.S. Department of Justice requesting VITAS deliver to the Office of Inspector General ("OIG") for the Department of Health and Human Services documents, patient records, and policy and procedure manuals for headquarters and its Texas programs concerning hospice services provided for the period January 1, 2003 to the date of the letter. In August 2009, the OIG selected medical records for 59 past and current patients from a Texas program for review. In February 2010, VITAS received a companion civil investigative demand ("CID") from the State of Texas Attorney General's Office, seeking related documents. In September 2010, it received a second CID and a second administrative subpoena seeking related documents. In April 2011, the U.S. Attorney provided the Company with a copy of a qui tam complaint filed under seal in U.S. District Court for the Northern District of Texas. In June 2011, the U.S. Attorney provided the company with a partially unsealed second qui tam complaint filed under seal in the U.S. District Court for the Western District of Texas. In June 2011, the U.S. Attorney also provided the Company with a partially unsealed third qui tam complaint filed under seal in the Northern District of Illinois, Eastern Division. The complaint and all the filings in each of these actions remain under seal. The U.S. Attorney has not decided whether to intervene in any of the actions. We are conferring with the U.S. Attorney regarding the Company's defenses to each complaint's allegations. We can neither predict the outcome of this investigation nor estimate our potential liability, if any. ***We believe that we are in compliance with Medicare and Medicaid rules and regulations applicable to hospice providers.***

187. The statements referenced above in ¶186 that VITAS is "in material compliance with Medicare and Medicaid rules and regulations" were materially false and misleading when made

because, at the time they were made, Defendants were knowingly (or recklessly), violating Medicare and Medicaid rules and regulations by admitting patients who did not qualify for hospice care, recertifying patients who were not qualified for hospice treatment under Medicare laws and guidelines and improperly billing the government for inappropriate services rendered to hospice patients.

15. October 25, 2011 and October 26, 2011 Statements Regarding 3Q11 Results

188. On October 25, 2011, Chemed issued a press release announcing its financial results for the third quarter of 2011, the period ended September 30, 2011. For the quarter, the Company reported revenues of $341 million and net income of $21.89 million. In the VITAS segment, the Company reported net revenues of $253 million, net income of $21 million, and patient admissions of 14,879 for the quarter. The press release described the reasons for revenue growth in VITAS, stating, in pertinent part, as follows:

> ***Net revenue for VITAS was $253 million in the third quarter of 2011***, which is an increase of 8.1% over the prior-year period. Excluding the impact of Medicare Cap, revenue increased 7.9%. ***This revenue growth was the result of increased ADC of 6.2%, driven by an increase in admissions of 2.7%, combined with Medicare price increases of approximately 2.1%***. This growth was partially offset by geographic and level of acuity mix shift of the patient base.
>
> ***Average revenue per patient per day in the quarter***, excluding the impact of Medicare Cap, ***was $201.00***, which is 1.6% above the prior-year period. Routine home care reimbursement and high acuity care averaged $158.83 and $704.73, respectively, per patient per day in the third quarter of 2011. During the quarter, high acuity days of care were 7.7% of total days of care, 22 basis points lower than the prior-year quarter.

189. The next day, on October 26, 2011, Chemed held a conference call for analysts and investors to discuss the Company's earnings release and operations. Defendants McNamara, Williams and O'Toole participated in the conference call and spoke positively about the Company's businesses and prospects. Defendant McNamara made the following statements regarding VITAS' "success in achieving excellent admissions growth":

> In the third quarter of 2011 our admissions totaled 14,879, an increase of 2.7% over the prior year quarter. On a year-to-date basis admissions have increased 5.1%. ***Our success in achieving excellent admissions growth is attributed to several factors. We continue to expand our presence in local communities with new or refurbished inpatient units. This provides VITAS with increased visibility to our referral sources as well as increased capacity to provide hospice care to our high acuity patients.***
>
> * * *
>
> We continue to expand our marketing and community liaison structure in terms of staffing, training and support. The head count for this group has increased 12.4% when compared to the prior year. ***These investments in personnel coupled with our inpatient units have resulted in significant momentum and overall improvement in the aggregate admission trends.***

Defendant O'Toole also commented on VITAS' admissions, stating, in pertinent part, as follows:

> ***We continue to put significant efforts into our marketing and admission initiatives. One of the most important aspects of these initiatives is appropriately focused field based sales and marketing personnel.*** As of September 30, 2011, we have 317 sales representatives, 155 admissions coordinators, 363 admission nurses, 170 community liaisons and 26 long term care liaisons. Staffing in these areas has expanded 12.4% compared to the third quarter of 2010. ***This focus has resulted in VITAS generating 45,971 admissions in the first nine months of 2011, an increase of 5.1% over the prior year period.*** At this rate VITAS will provide end of life care to more than 75,000 patients in 2011.
>
> ***Admissions have increased in all four of our largest referral categories. During the third quarter of 2011, home based admissions increased 2.8%. Assisted care living facilities increased 5.1%. Nursing home admissions increased 1.7%, and hospital referred admissions increased 0.1%.***

190. The statements referenced above in ¶¶188-89 were materially false and misleading when made for the reasons set forth in ¶143.

16. November 4, 2011 3Q11 Form 10-Q

191. On November 4, 2011, the Company filed its quarterly report for the third quarter of 2011 on Form 10-Q and reiterated the financial results reported on October 25, 2011. Additionally, the quarterly report discussed "Legal and Regulatory Matters" and stated, in pertinent part, as follows:

> In May 2009, VITAS received an administrative subpoena from the U.S. Department of Justice requesting VITAS deliver to the Office of Inspector General ("OIG") for

> the Department of Health and Human Services documents, patient records, and policy and procedure manuals for headquarters and its Texas programs concerning hospice services provided for the period January 1, 2003 to the date of the letter. In August 2009, the OIG selected medical records for 59 past and current patients from a Texas program for review. In February 2010, VITAS received a companion civil investigative demand ("CID") from the State of Texas Attorney General's Office, seeking related documents. In September 2010, it received a second CID and a second administrative subpoena seeking related documents. In April 2011, the U.S. Attorney provided the Company with a copy of a qui tam complaint filed under seal in U.S. District Court for the Northern District of Texas. In June 2011, the U.S. Attorney provided the company with a partially unsealed second qui tam complaint filed under seal in the U.S. District Court for the Western District of Texas. In June 2011, the U.S. Attorney also provided the Company with a partially unsealed third qui tam complaint filed under seal in the Northern District of Illinois, Eastern Division. The complaint and all the filings in each of these actions remain under seal. The U.S. Attorney has not decided whether to intervene in any of the actions. We are conferring with the U.S. Attorney regarding the Company's defenses to each complaint's allegations. We can neither predict the outcome of this investigation nor estimate our potential liability or range of potential loss, if any. ***We believe that we are in compliance with Medicare and Medicaid rules and regulations applicable to hospice providers.***

192. The statements referenced above in ¶191 that VITAS is "in material compliance with Medicare and Medicaid rules and regulations" were materially false and misleading when made because, at the time they were made, Defendants were knowingly (or recklessly), violating Medicare and Medicaid rules and regulations by admitting patients who did not qualify for hospice care, recertifying patients who were not qualified for hospice treatment under Medicare laws and guidelines and improperly billing the government for inappropriate services rendered to hospice patients.

193. On November 16, 2011, prior to the close of the market, a *Bloomberg News* article titled "Whistleblower Accuses Chemed Unit of Medicare HMO Conspiracy" disclosed that a former VITAS general manager accused Chemed of defrauding the federal government by conspiring with health insurers to enroll Medicare patients who were not dying. According to the former VITAS general manager, VITAS conspired with two HMOs to admit their unprofitable patients into hospice even though they were not facing imminent death and thus were not eligible for hospice care under

Medicare rules. This benefitted VITAS by increasing its hospice customers and enabled the HMOs "to dump non-profitable patients onto hospice, regardless of their qualifications." The article also discussed a U.S. Department of Justice investigation into fraudulent conduct by VITAS. The article stated, in pertinent part, as follows:

> A former Vitas Healthcare Corp. manager has accused the hospice chain of defrauding the federal government by conspiring with health insurers to enroll Medicare patients who weren't dying.
>
> Vitas, a unit of Cincinnati-based Chemed Corp. (CHE), is the largest U.S. provider of hospice care, which has attracted government scrutiny as its Medicare-covered patients have doubled to 1.1 million over the last decade.
>
> Chemed fell 15 percent, the most since April 2008, to $49.10 at 10:37 a.m. in New York.
>
> The allegations came in a lawsuit unsealed last week in U.S. District Court in Dallas. Vitas spokeswoman Kal Mistry said the company "cannot comment on pending litigation."
>
> In the same court, the Department of Justice is seeking internal Vitas documents in an investigation focused on alleged abuses of federal health-insurance programs. **The government has told the court it suspects Vitas of "an extensive scheme" to defraud Medicare and Medicaid of "hundreds of millions of dollars" by falsifying records and hospice certifications.**
>
> Vitas has "consistently been in compliance with Medicare and Medicaid rules," Mistry said.
>
> The newly unsealed suit was filed by Michael Rehfeldt, a former branch manager for Vitas in San Antonio, who is seeking damages for the government as a whistleblower under the U.S. False Claims Act, which entitles him to part of any recoveries. Such claims are also called qui tam suits.
>
> **"False certifications, fraudulent billing and cost shifting to the United States constitute a widespread, systematic practice endemic to Vitas,"** Rehfeldt's suit alleges.
>
> **Investigation Continuing**
>
> The Justice Department said in a court filing that it is "not intervening at this time" in the whistleblower suit, although "its investigation of the allegations will continue." The Texas Attorney General's office filed an identical notice.
>
> Vitas has been Chemed's main engine of growth, accounting for 74 percent of the company's $341.4 million of revenue in the third quarter, when it reported net

income of $21.9 million. Chemed also operates the Roto-Rooter drain-cleaning and plumbing chain.

Rehfeldt, who left Vitas in 2009, also named as defendants WellMed Medical Management Group and Care Level Management LLC, health-maintenance organizations acquired in March by Minnetonka, Minnesota-based UnitedHealth Group Inc. (UNH)

Vitas conspired with the two HMOs to admit their unprofitable patients into hospice, though they weren't facing imminent death and thus weren't eligible for hospice under Medicare rules, the lawsuit says. It says the arrangement allegedly benefitted Vitas by providing hospice patients, while allowing "the HMO defendants to dump non-profitable patients onto hospice, regardless of their qualifications."

'Strong Message'

WellMed and Care Level spokesmen denied Rehfeldt's allegations. The HMOs said the Justice Department and the Texas Attorney General's office have told the companies that they are not joining in the case against WellMed or Inspiris, the UnitedHealth unit that owns Care Level.

"We believe their decisions are correct and send a strong message regarding the merits of this suit," said David Canniff, chief financial officer of Inspiris.

Rehfeldt told his bosses about the misconduct and they ignored him, according to the lawsuit, which says top Vitas executives knew about the illegal arrangement.

A former Vitas executive in Texas, Keith Becker, teamed up with Justo Cisneros, a former Vitas medical director who also worked for the HMOs, "both large referral sources for Vitas," according to the whistleblower complaint. Cisneros referred, enrolled and recertified patients at Vitas who weren't terminally ill, the suit says.

'Paradigm Shift'

To be eligible for hospice, Medicare requires patients must have six months or less to live, certified by two doctors. Yet a patient can stay on hospice indefinitely, as long as a hospice doctor recertifies their terminal diagnosis every 60 days.

"Cisneros signed, wholesale, hundreds or perhaps thousands of certifications without examining patients or even reviewing their charts," Rehfeldt claims in the suit.

Both Becker and Cisneros now work for Inspiris, which owns a hospice in San Antonio. Becker did not return phone messages.

Cisneros denied conspiring to enroll ineligible patients at Vitas. The company's San Antonio operation got caught in a government "paradigm shift," he said in a telephone interview.

> After encouraging hospices to enroll more patients with diagnoses such as dementia and "general debility," Medicare cracked down on the long stays that resulted from admitting them, according to Cisneros.
>
> "These patients were sick," he said. "Yes, they were on longer, but they were needy."
>
> **'Rules Changed'**
>
> In 2008, 22 percent of Vitas's 560 patients in San Antonio were on hospice for at least 500 days, according to Rehfeldt's suit. The average length of stay for all Medicare hospice patients in 2008 was 83 days.
>
> After a Medicare audit of the Vitas San Antonio office in 2007, the company discharged 295 live patients in 2007 and 2008, compared to a total of 64 live discharges in 2005 and 2006, the suit alleges.
>
> "They changed the rules in the middle of the game," Cisneros said. "There was a lot of confusion."

194. The *Bloomberg News* article, and the newly unsealed *qui tam* complaint revealed to investors for the first time that the scope of the government investigation, and the claims raised in the *qui tam* suit, were not limited to a specific VITAS facility and were not discontinued practices. As alleged in the newly unsealed *qui tam* complaint, the wrongdoing was part of a widespread, systematic pattern and practice of knowingly submitting or causing to be submitted false claims to the United States through fraudulent certification and recertification of hospice patients and fraudulent billing of the United States through Medicare or Medicaid. As stated in the *Bloomberg News* article, the government's investigation into VITAS' "extensive scheme" was proceeding separately from the *qui tam* action.

195. In response to the announcements set forth in ¶193, shares of the Company's stock fell $6.87 per share, or 11%, to close at $50.65 per share on November 16, 2011, on extremely heavy trading volume. Chemed securities, however, remained artificially inflated as a result of materially false and misleading statements and omissions made by Defendants during the Class Period.

17. February 27, 2012 Form 10-K for FY2011

196. On February 27, 2012, Chemed filed its annual report for the year ended December 31, 2011 on Form 10-K ("2011 10-K"), which was signed by Defendants McNamara and Williams and reported the Company's financial results for fiscal year 2011. The 2011 10-K described Medicare's billing audits and claims review process, stating, in pertinent part, as follows:

> Billing Audits/Claims Reviews. The Medicare program and its fiscal intermediaries and other payors periodically conduct pre-payment or post-payment reviews and other reviews and audits of health care claims, including hospice claims. There is pressure from state and federal governments and other payors to scrutinize health care claims to determine their validity and appropriateness. In order to conduct these reviews, the payor requests documentation from Vitas and then reviews that documentation to determine compliance with applicable rules and regulations, including the eligibility of patients to receive hospice benefits, the appropriateness of the care provided to those patients and the documentation of that care. Vitas' claims have been subject to review and audit. We make appropriate provisions in our accounting records to reduce our revenue for anticipated denial of payment related to these audits and reviews. ***We believe our hospice programs comply with all payor requirements at the time of billing.*** However, we cannot predict whether future billing reviews or similar audits by payors will result in material denials or reductions in revenue.

197. The 2011 10-K also discussed "Regulatory Matters," stating, in pertinent part, as follows:

> In May 2009, Vitas received an administrative subpoena from the U.S. Department of Justice requesting Vitas deliver to the OIG documents, patient records, and policy and procedure manuals for headquarters and its Texas programs concerning hospice services provided for the period January 1, 2003 to the date of the letter. In August 2009, the OIG selected medical records for 59 past and current patients from a Texas program for review. In February 2010, VITAS received a companion civil investigative demand ("CID") from the State of Texas Attorney General's Office, seeking related documents. In September 2010, it received a second CID and a second administrative subpoena seeking related documents. In April 2011, the U.S. Attorney provided the Company with a copy of a qui tam complaint filed under seal in U.S. District Court for the Northern District of Texas. The Court unsealed this complaint in November 2011. The U.S. Attorney and the Attorney General for the State of Texas filed a notice in November 2011 that they had decided not to intervene at that time in the case. They continue to investigate its allegations. It was brought by Michael Rehfeldt, a former VITAS San Antonio program general manager, against VITAS, the program's former Regional Vice President Keith Becker, its former Medical Director Justo Cisneros, and their current employers: WellMed Medical Management, Care Level Management LLC, and Inspiris Inc. It alleges admission and recertification of inappropriate patients, backdating revocations, and

> conspiring with HMO defendants to admit inappropriate patients to hospice. In June 2011, the U.S. Attorney provided the Company with a partially unsealed second qui tam complaint filed under seal in the U.S. District Court for the Western District of Texas. In June 2011, the U.S. Attorney also provided the Company with a partially unsealed third qui tam complaint filed under seal in the Northern District of Illinois, Eastern Division. We are conferring with the U.S. Attorney regarding the Company's defenses to each complaint's allegations. We can neither predict the outcome of this investigation nor estimate our potential liability or range of potential loss, if any. ***We believe that we are in compliance with Medicare and Medicaid rules and regulations applicable to hospice providers.***

198. The statements referenced above in ¶¶196-97 that VITAS' "hospice programs comply with all payor requirements at the time of billing" and "are in material compliance with Medicare and Medicaid rules and regulations" were materially false and misleading when made because, at the time they were made, Defendants were knowingly (or recklessly), violating Medicare and Medicaid rules and regulations by admitting patients who did not qualify for hospice care, recertifying patients who were not qualified for hospice treatment under Medicare laws and guidelines, and improperly billing the government for inappropriate services rendered to hospice patients.

18. April 30, 2012 1Q12 Form 10-Q

199. On April 30, 2012, the Company filed its quarterly report for the first quarter of 2012 filed with the SEC on Form 10-Q, which discussed "Legal and Regulatory Matters" and stated, in pertinent part, as follows:

> In May 2009, VITAS received an administrative subpoena from the U.S. Department of Justice requesting VITAS deliver to the OIG documents, patient records, and policy and procedure manuals for headquarters and its Texas programs concerning hospice services provided for the period January 1, 2003 to the date of the letter. In August 2009, the OIG selected medical records for 59 past and current patients from a Texas program for review. In February 2010, VITAS received a companion civil investigative demand ("CID") from the State of Texas Attorney General's Office, seeking related documents. In September 2010, it received a second CID and a second administrative subpoena seeking related documents. In April 2011, the U.S. Attorney provided the Company with a copy of qui tam complaint filed under seal in the U.S. District Court for the Northern District of Texas. The Court unsealed this complaint in November 2011. The U.S. Attorney and the Attorney General for the State of Texas filed a notice in November 2011 that they had decided not to intervene at that time in the case. They continue to investigate its allegations. It was brought by Michael Rehfelt, a former Vitas San Antonio program general manager, against Vitas, the program's former Regional Vice President Keith Becker, its former

> Medical Director Justos Cisneros, and their current employers: Wellmed Medical Management, Care Level Management LLC, and Inspiris Inc. Plaintiff dismissed his case against their current employers in March of 2012. The case alleges admission and recertification of inappropriate patients, backdating revocations, and conspiring to admit inappropriate patients to hospice. In June 2011, the U.S. Attorney provided the Company with a partially unsealed second qui tam complaint filed under seal in the U.S. District court for the Western District of Texas. In June 2011, the U.S. Attorney also provided the Company with a partially unsealed third qui tam complaint filed under seal in the Northern District of Illinois, Eastern Division. We are conferring with the U.S. Attorney regarding the Company's defenses to each complaint's allegations. We can neither predict the outcome of this investigation nor estimate our potential liability, if any. ***We believe that we are in compliance with Medicare and Medicaid rules and regulations applicable to hospice providers.***

200. The statement referenced above in ¶199 that VITAS is "in compliance with Medicare and Medicaid rules and regulations" was materially false and misleading when made because, at the time they were made, Defendants were knowingly (or recklessly), violating Medicare and Medicaid rules and regulations by admitting patients who did not qualify for hospice care, recertifying patients who were not qualified for hospice treatment under Medicare laws and guidelines, and improperly billing the government for inappropriate services rendered to hospice patients.

19. July 26, 2012 Statements Regarding 2Q12 Results

201. On July 26, 2012, Chemed held a conference call for analysts and investors to discuss the Company's earnings release and operations for the second quarter of 2012. Defendants McNamara, Williams and O'Toole participated on the conference call and spoke positively about the Company's business and prospects. Defendant McNamara made the following statements regarding VITAS' admissions programs and systems:

> On the litigation front, we've had no significant developments on preexisting claims. However, in June 2012, we received an administrative subpoena from the office of the Inspector General of the US Department of Health and Human Services, focusing on our southern California hospice program's Medicare claims and seeking documents from January 2007. The OIG has requested information related to procedures and policies surrounding admission, recertification, and documentation of long-stay patients. We also received a subpoena from the state of Florida in July of 2012 that seeks documents concerning similar issues over the same time period. We are unable to estimate the timing or outcome of these investigations or our potential liability, if any, with respect to these matters. ***VITAS takes great pride in its systems, admissions programs, and patient documentation policies. This is the***

> ***foundation for supporting our Medicare and Medicaid billings. We have invested significant resources in creating and maintaining this infrastructure that maintains detailed, contemporaneous documentation for every patient. We believe this is the most appropriate way to ensure all our patients receive appropriate care and our Medicare and Medicaid billings are appropriately supported.***

202. The statements referenced above in ¶201 were materially false and misleading when made because, at the time they were made, Defendants were knowingly (or recklessly), violating Medicare and Medicaid rules and regulations by admitting patients who did not qualify for hospice care, recertifying patients who were not qualified for hospice treatment under Medicare laws and guidelines, and improperly billing the government for inappropriate services rendered to hospice patients.

203. On August 2, 2012, the Company filed its Form 10-Q for 2Q12. In the 2Q12 Form 10-Q, the Company described an additional federal investigation, this time into VITAS' Southern California programs for a period of time that included the Class Period, regarding patient eligibility for hospice care:

> In June 2012, VITAS received an administrative subpoena from the Office of the Inspector General ("OIG") of the U.S. Department of Health and Human Services in connection with an investigation of possible improper claims submitted to the Medicare and Medicaid Programs. It seeks production to the OIG of various categories of documents concerning the provision of hospice services, for headquarters and its Southern California programs, for the period January 1, 2007 through the date of the subpoena. The categories of documents include policy, procedure and training manuals; documents concerning patient eligibility for hospice care, including referrals, admissions, certification, revocations and census information; documents concerning claims submitted to government programs; certain information concerning employees and their compensation; and documents concerning VITAS' financial performance. We are conferring with the U.S. Attorney's Office for the Central District of California regarding the document requests. We cannot predict the timing or outcome of this investigation, or estimate our potential liability, if any.

204. The statements referenced above in ¶203 were materially false and misleading when made because, at the time they were made, Defendants were knowingly (or recklessly), violating Medicare and Medicaid rules and regulations by admitting patients who did not qualify for hospice care, recertifying patients who were not qualified for hospice treatment under Medicare laws and

guidelines, and improperly billing the government for inappropriate services rendered to hospice patients.

205. The OIG's investigation into VITAS' operations in California was preceded by the filing of a *qui tam* complaint on January 27, 2012, by Dr. Charles Gonzales, who was employed by VITAS Los Angeles from 2004 until May, 2011. During Dr. Gonzales' tenure with VITAS, he alleged that the Company submitted "thousands" of false certifications of hospice eligibility to Medicare for patients in Los Angeles. While employed by VITAS, Dr. Gonzales was subjected to "constant and strong pressure" from management to certify and/or recertify patients as eligible for hospice care who were not eligible, and cited 34 separate, specific cases where patients were improperly certified or recertified as eligible for hospice care under Medicare's rules and regulations. The average hospice stay for the 34 patients listed in his complaint was two years, seven months. His complaint, initially filed in the Central District of California, was transferred to the Western District of Missouri on April 5, 2013 and unsealed on April 6, 2013. On May 2, 2013, the DOJ filed a notice of intervention in Dr. Gonzales' case.

206. On November 2, 2012, the Company issued its Form 10-Q for 3Q12. In the 3Q12 Form 10-Q, the Company announced its receipt of a subpoenas from the Florida Attorney General's office, the unsealing of two additional *qui tam* complaints, and details surrounding its receipt of additional subpoenas from the OIG:

> In July 2012, VITAS received an investigative subpoena from the Florida Attorney General seeking documents previously produced in the course of prior government investigations as well as, for the period January 1, 2007 through the date of production, billing records and procedures; information concerning business results, plans, and strategies; documents concerning patient eligibility for hospice care; and certain information concerning employees and their compensation. We are conferring with the Attorney General regarding those document requests.
>
> In June 2011, the U.S. Attorney provided the Company with a partially unsealed qui tam complaint filed under seal in the U.S. District Court for the Western District of Texas, *United States, et al. ex rel. Urick v. Vitas HME Solutions, Inc. et al.*, 5:08-cv-0663. The U.S. Attorney filed a notice in May 2012 stating that it had decided not to

intervene in the case at that time but indicating that it continues to investigate the allegations. In June 2012, the complaint was unsealed. The complaint asserts violations of the federal False Claims Act and the Texas Medicaid Fraud Prevention Act based on allegations of a conspiracy to submit to Medicare and Medicaid false claims involving hospice services for ineligible patients, unnecessary medical supplies, failing to satisfy certain prerequisites for payment, and altering patient records, including backdating patient revocations. The suit was brought by Barbara Urick, a registered nurse in VITAS's San Antonio program, against VITAS, certain of its affiliates, and several former VITAS employees, including physicians Justo Cisneros and Antonio Cavasos and nurses Sally Schwenk, Diane Anest, and Edith Reed. In September 2012, the plaintiff dismissed all claims against the individual defendants. The complaint has yet to be served on any of the VITAS entities.

Also in June 2011, the U.S. Attorney provided the Company with a partially unsealed qui tam complaint filed under seal in the U.S. District Court for the Northern District of Illinois, *United States, et al. ex rel. Spottiswood v. Chemed Corp.*, 1:07-cv-4566. In April 2012, the complaint was unsealed. The U.S. Attorney and Attorney General for the State of Illinois filed notices in April and May 2012, respectively, stating that they had decided not to intervene in the case at that time but indicating that they continue to investigate the allegations. The complaint asserts violations of the federal False Claims Act and the Illinois Whistleblower Reward and Protection Act based on allegations that VITAS fraudulently billed Medicare and Medicaid for providing unwarranted continuous care services. The suit was brought by Laura Spottiswood, a former part-time pool registered nurse at VITAS, against Chemed, VITAS, and a VITAS affiliate. The complaint has yet to be served.

In June 2012, VITAS received an administrative subpoena from OIG in connection with an investigation of possible improper claims submitted to the Medicare and Medicaid programs. It seeks production of various categories of documents concerning the provision of hospice services, for headquarters and its Southern California programs, for the period January 1, 2007 through the date of the subpoena. The categories of documents include policy, procedure and training manuals; documents concerning patient eligibility for hospice care, including referrals, admissions, certifications, revocations and census information; documents concerning claims submitted to government programs; certain information concerning employees and their compensation; and documents concerning VITAS's financial performance.

In August 2012, the OIG also subpoenaed medical records for 268 patients from three Southern California programs. We are conferring with the U.S. Attorney's Office for the Central District of California regarding those document requests.

207. The statements referenced above in ¶206 were materially false and misleading when made because, at the time they were made, Defendants were knowingly (or recklessly), violating Medicare and Medicaid rules and regulations by admitting patients who did not qualify for hospice care, recertifying patients who were not qualified for hospice treatment under Medicare laws and

guidelines, and improperly billing the government for inappropriate services rendered to hospice patients.

20. February 27, 2013 Form 10-K for FY2012

208. On February 27, 2013, Chemed filed its annual report for the year ended December 31, 2012 on Form 10-K ("2012 10-K"), which was signed by Defendants McNamara and Williams and reported the Company's financial results for fiscal year 2012. The 2012 10-K described Medicare's billing audits and claims review process, stating, in pertinent part, as follows:

> Billing Audits/Claims Reviews. ***The Medicare program and its fiscal intermediaries and other payors periodically conduct pre-payment or post-payment reviews and other reviews and audits of health care claims, including hospice claims***. There is pressure from state and federal governments and other payors to scrutinize health care claims to determine their validity and appropriateness. In order to conduct these reviews, the payor requests documentation from Vitas and then reviews that documentation to determine compliance with applicable rules and regulations, including the eligibility of patients to receive hospice benefits, the appropriateness of the care provided to those patients and the documentation of that care. Vitas' claims have been subject to review and audit. We make appropriate provisions in our accounting records to reduce our revenue for anticipated denial of payment related to these audits and reviews. ***We believe our hospice programs comply with all payor requirements at the time of billing***. However, we cannot predict whether future billing reviews or similar audits by payors will result in material denials or reductions in revenue.

209. The statements referenced above in ¶208 that VITAS' "hospice programs comply with all payor requirements at the time of billing" were materially false and misleading when made because, at the time they were made, Defendants were knowingly (or recklessly), violating Medicare and Medicaid rules and regulations by admitting patients who did not qualify for hospice care, recertifying patients who were not qualified for hospice treatment under Medicare laws and guidelines, and improperly billing the government for inappropriate services rendered to hospice patients.

21. April 26, 2013 1Q13 Form 10-Q

210. On April 26, 2013, the Company filed its quarterly report for the first quarter of 2013 on Form 10-Q. On February 27, 2013, in its 2012 Form 10-K, the Company announced that it received additional subpoenas from the OIG seeking medical records of VITAS patients. The Form 10-Q also stated, in pertinent part, as follows:

> As of March 31, 2013, VITAS has approximately $1.1 million in unbilled revenue included in accounts receivable (December 31, 2012 - $457,000). The unbilled revenue at VITAS relates to hospice programs currently undergoing various patient file reviews. Surveyors working on behalf of the U.S. Federal government review certain patient files for compliance with Medicare regulations. During the time the patient file is under review, we are unable to bill for care provided to those patients. We make appropriate provisions to reduce our accounts receivable balance for any governmental or other payer reviews resulting in denials of patient service revenue. ***We believe our hospice programs comply with all payer requirements at the time of billing.*** However, we cannot predict whether future billing reviews or similar audits by payers will result in material denials or reductions in revenue.

211. The statements referenced above in ¶210 that VITAS' "hospice programs comply with all payor requirements at the time of billing" were materially false and misleading when made because, at the time they were made, Defendants were knowingly (or recklessly, violating Medicare and Medicaid rules and regulations by admitting patients who did not qualify for hospice care, recertifying patients who were not qualified for hospice treatment under Medicare laws and guidelines, and improperly billing the government for inappropriate services rendered to hospice patients.

212. In the 1Q13 Form 10-Q, the Company reported the voluntary dismissal of the *Rehfeldt* action. The Company also reported that the Company had been served with the *qui tam* complaints filed in the Western District of Texas and the Northern District of Illinois.

213. The *Rehfeldt* action was voluntarily dismissed by Rehfeldt for procedural reasons. In an article entitled "Whistle-blower drops suit against hospice company" published by Patrick Danner

on April 16, 2013 on the "MY San Antonio" homepage,[4] Rehfeldt, through his attorney, stated: "We stand by every allegation in that complaint, and we look forward to those allegations coming to light." As the article explains, "[u]nder provisions of the federal False Claims Act, a whistle-blower is barred from bringing a claim if the same allegations already have been made in another lawsuit." Because the *Urick* complaint, referenced in ¶198, had been filed before Rehfeldt's complaint, alleging substantially the same fraudulent conduct by VITAS, Rehfeldt's complaint had to be dismissed.

214. On May 2, 2013, the DOJ filed a Complaint against Chemed and VITAS alleging that Chemed and VITAS had engaged in a widespread and pervasive scheme to inappropriately admit patients into hospice care and that Chemed and VITAS placed patients into continuous care who did not qualify, that this plan worked, and that Chemed and VITAS fraudulently billed Medicare for these inappropriate admissions. The Company discussed the filing of the DOJ Complaint in a Form 8-K filed on May 3, 2013:

> On May 2, 2013, the government filed a False Claims Act complaint against the Company and certain of its hospice-related subsidiaries in the Western District of Missouri, captioned as United States of America v. VITAS Hospice Services, LLC, et al., Case #4:13-cv-00449-BCW. The complaint alleges that, since at least 2002, Vitas, and since 2004, the Company, submitted or caused the submission of false claims to the Medicare program by (a) billing Medicare for crisis care services when the patients were not eligible, the services were not provided, or the medical care was inappropriate, and (b) admitting patients who were not eligible for the Medicare hospice benefit because they did not have a life expectancy of six months or less if their illnesses ran their normal course. The complaint seeks treble damages, statutory penalties, and the costs of the action, plus interest.

215. In response to the announcements set forth in ¶214 about the DOJ Complaint, shares of the Company's stock fell $13.79 per share, or 16.86%, to close at $68.00 per share on May 3, 2013, on extremely heavy trading volume.

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[4] http://www.mysanantonio.com/business/article/Whistle-blower-drops-suit-against-hospice-company-4442855.php

L. Additional Scienter Allegations

216. During the Class Period, Defendants were motivated to keep Chemed's stock price artificially inflated in order to line their own pockets. Chemed had a program that specifically incentivized the Individual Defendants to attain and sustain a target share price and rewarded them handsomely for meeting those stock price targets. This plan, called the Executive Long-Term Incentive Plan ("LTIP") set stock price benchmarks for the Individual Defendants during the Class Period. If the stock price benchmark was achieved during 30 trading days out of any 60 trading day period between May 2009 and February 28, 2012, the Individual Defendants would be given a stock award from a pre-determined pool of shares. For each benchmark attained, the Individual Defendants would be rewarded as detailed below:

	May 2009 Price Targets for the three years ending February 28, 2012[5]		
Price target	$54.00	$58.00	$62.00
Number of shares in the pool	22,500	33,750	33,750
Shares awarded:			
From the pool	22,500	33,750	33,750
Discretionary shares	5,400	7,350	7,350
Total shares Awarded	**27,900**	**41,100**	**41,100**

217. During the Class Period, the Individual Defendants made false and misleading statements in order to boost Chemed's share price and keep it elevated so they could collect on the LTIP. In fact, Chemed's stock price exceeded the targets listed above, and the Individual Defendants were awarded LTIP benefits in April 2010, December 2010, January 2011 and February

[5] 2012 Form 10-K at 15.

2011.[6] In total, the Individual Defendants reaped benefits of $3,693,764 due to the artificial inflation of Chemed's stock.

LTIP Benefits Awarded to the Individual Defendants During the Class Period

Name	LTIP Benefit Grant Date	Number of Shares of Stock	Closing Market Price On Grant Date ($/Share)	Grant Date Fair Value of Award ($)[7]
McNamara	4/16/2010[8]	5,000	56.40	283,050
	12/9/2010[3]	7,000	62.57	439,670
	1/14/2011[9]	7,000	63.33	441,980
	2/18/2011[10]	8700	65.32	566,979
TOTAL				**$1,731,679**
Williams	4/16/2010[3]	2,550	56.40	144,356
	12/9/2010[3]	3,660	62.57	226,116
	1/14/2011[4]	3,600	63.33	227,304
	2/18/2011[11]	4,600	65.32	299,782
TOTAL				**$897,558**

[6] The awards issued on 4/2010, 12/2010 and 1/2011 were "fully vested Capital Stock"(*see* 2011 Proxy at 15). The 2/2011 LTIP award was a "time-based LTIP award of 42,000 shares of restricted stock" given to certain key employees including the Individual Defendants. *See* 2012 Form 10-K at 16.

[7] Amounts represent the aggregate grant date fair value of the awards determined in accordance with FASB's stock based compensation rules. *See* Note 4 to the Consolidated Financial Statements included as Exhibit 13 to the Company's 2010 and 2011 Annual Report on Form 10-K for a description of the assumptions used in determining the grant date fair value. *See* 2011 and 2012 Proxy at 21 respectively.

[8] 2011 Proxy at 15, 21.

[9] 2012 Proxy at 12, 2011 Proxy at 15.

[10] 2012 Proxy at 12, McNamara Form 4 for the period ending 2/18/2011, footnote 2. Unlike the "fully vested Capital Stock"issued in 4/2010, 12/2010 and 1/2011 (*see* 2011 Proxy at 15), this LTIP award is restricted stock vesting in full on 2/18/2015.

[11] 2012 Proxy at 12, Williams Form 4 for the period ending 2/18/11, footnote 2. Unlike the "fully vested Capital Stock"issued in 4/2010, 12/2010 and 1/2011 (*see* 2011 Proxy at 15), this LTIP award is restricted stock vesting in full on 2/18/2015.

Name	LTIP Benefit Grant Date	Number of Shares of Stock	Closing Market Price On Grant Date ($/Share)	Grant Date Fair Value of Award ($)[7]
O'Toole	4/16/2010[3]	3,500	56.40	198,135
	12/9/2010[3]	5,000	62.57	314,050
	1/14/2011[4]	4,000	63.33	252,560
	2/18/2011[12]	4,600	65.32	299,782
TOTAL				**$1,064,527**
Defendants TOTAL LTIP Benefit During the Class Period				**$3,693,764**

218. When information concerning Chemed's fraud was revealed to the market on November 16, 2011, the stock price dropped from a Class Period high of $72.25 to $50.65. Notably, when the market partially corrected Chemed's artificial inflation, it brought Chemed's stock price down below even the initial stock price benchmark of $54.00. Without the Individual Defendants' deception, they would not have collected on the LTIP at all. Notably, Defendants did not meet any of their LTIP goals in 2008 and the Company has announced that it does not expect to meet them in 2012.

219. Defendants' scienter is further evidenced by their insider trading, as set forth in the chart below:

[12] 2012 Proxy at 12, O'Toole Form 4, footnote 2 for the period ending 2/18/11. Unlike the "fully vested Capital Stock"issued in 4/2010, 12/2010 and 1/2011 (*see* 2011 Proxy at 15), this LTIP award is restricted stock vesting in full on 2/18/2015.

Chemed Corp.
(CHE)
Insider Sales: 2/15/10 - 5/2/13

Filer Name	Title	Date	Shares	Price	Proceeds
McNamara	Chief Executive				
(Kevin J)	Officer	27-Apr-2010	15,000	$54.76	$821,400
		28-Oct-2010	10,000	$59.13	$591,300
		04-May-2011	5,000	$69.44	$347,200
		04-Aug-2011	10,000	$56.64	$566,400
		08-Nov-2011	5,000	$58.98	$294,900
		17-Feb-2012	8,000	$62.75	$502,000
		22-Feb-2012	4,000	$62.30	$249,200
		06-Aug-2012	10,000	$61.56	$615,600
		21-Aug-2012	6,000	$66.38	$398,280
		11-Sep-2012	6,000	$69.03	$414,180
		07-Nov-2012	7,000	$68.08	$476,560
		20-Nov-2012	6,000	$66.54	$399,240
		18-Dec-2012	5,000	$69.09	$345,450
		22-Feb-2013	4,000	$78.26	$313,040
		22-Apr-2013	12,000	$77.61	$931,320
			113,000		$7,266,070
O'Toole	Officer				
(Timothy S)		25-Mar-2010	108	$55.20	$5,962
		25-Mar-2010	669	$55.24	$36,956
		25-Mar-2010	723	$55.22	$39,924
		25-Mar-2010	2,000	$55.16	$110,320
		05-May-2010	5,000	$54.09	$270,450
		11-Nov-2010	4,000	$62.32	$249,280
		12-Jan-2011	6,000	$63.31	$379,860
		08-Mar-2011	3,000	$66.72	$200,160
		11-May-2011	8,000	$70.91	$567,280
		29-Feb-2012	3,700	$62.20	$230,140
		24-Sep-2012	6,000	$71.51	$429,060
		23-Apr-2013	12,000	$78.44	$941,280
			51,200		$3,460,671
Williams	Chief Financial				
David Patrick	Officer	30-Apr-2010	3,000	$55.77	$167,310
		09-Dec-2010	7,000	$62.64	$438,480
		22-Feb-2011	15,000	$65.33	$979,950
		08-Aug-2012	5,000	$62.45	$312,250
		11-Sep-2012	5,000	$69.17	$345,850
		09-Nov-2012	10,000	$66.66	$666,600
		28-Feb-2013	10,000	$76.77	$767,700
			55,000		$3,678,140
		Totals:	**219,200**		**$14,404,881**

220. In addition, while Defendant O'Toole exercised 20,000 stock options for the 39 month period before the Class Period and did not exercise any stock options after the Class Period, he exercised a total of 128,750 stock options during the Class Period.[13] Defendant Williams exercised 518,750 stock options during the Class Period[14] and 70,000[15] in the 39 month time frame before the Class Period but has not exercised any stock options since the end of the Class Period. Defendant McNamara exercised 290,000[16] stock options during the Class Period and 126,400[17] in the 39 month time frame before the Class Period and did not exercise any stock options since the end of the Class Period.

221. In addition, as alleged herein, Defendants acted with scienter in that Defendants knew, or were reckless in not knowing, that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of their receipt of information reflecting the true facts regarding Chemed, their control over, and/or receipt and/or modification of Chemed's allegedly materially misleading misstatements and/or their associations with the Company, which made them privy to confidential proprietary information concerning Chemed, participated in the fraudulent scheme alleged herein.

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13 *See* O'Toole Form 4s for 2/27/07, 2/24/10, 6/4/10, 5/5/11, 11/9/11, 8/8/12, 12/19/12, 3/1/13 and 4/24/13.

14 *See* Williams Form 4s for 12/9/10, 2/22/11, 9/12/12, 2/22/13 and 4/26/13.

15 *See* Williams Form 4s for 11/11/08 and 8/11/09 (pre-class period).

16 *See* McNamara Form 4s for 4/26/10, 10/29/10, 5/3/11, 11/9/11, 2/16/12, 8/7/12, 8/22/12, 9/11/12, 11/7/12, 11/20/12, 12/18/12, 2/25/13 and 4/23/13.

17 *See* McNamara Form 4s for 10/24/08, 11/10/08, 8/3/09 and 11/3/09.

222. The DOJ Complaint also provides additional evidence of scienter. *See* ¶¶90-91, 130-32.

M. Loss Causation/Economic Loss

223. During the Class Period, as detailed herein, Defendants engaged in a scheme to deceive the market and a course of conduct which artificially inflated the prices of Chemed common stock and operated as a fraud or deceit on Class Period purchasers of Chemed common stock. When Defendants' prior misrepresentations and ongoing, widespread fraudulent conduct were disclosed and became apparent to the market, the price of Chemed common stock fell precipitously as the prior artificial inflation came out. As a result of their purchases of Chemed common stock during the Class Period, Plaintiffs and the other Class members suffered economic loss, *i.e.*, damages, under the federal securities laws.

224. Defendants' false and misleading statements had the intended effect and caused Chemed common stock to trade at artificially inflated levels throughout the Class Period.

225. As a direct result of the revelations set forth above, and the corresponding drop in the price of Chemed's common stock, Lead Plaintiffs and Class members suffered real economic loss.

226. On November 16, 2011, among other things, it was disclosed that a former VITAS general manager revealed that the Company was engaging in an extensive scheme to defraud the federal government by enrolling Medicare patients in hospice who were not eligible. In addition, the scope of the ongoing federal investigations came to light. In response to these announcements, shares of the Company's stock fell $6.87 per share, or 11%, to close at $50.65 per share on November 16, 2011, on extremely heavy trading volume.

227. On May 2, 2013, among other things, it was disclosed that the DOJ filed the DOJ Complaint alleging violations of the federal False Claims Act against Chemed and VITAS, among

others. In response to these announcements, shares of the Company's stock price fell $13.79 per share to close at $68.00 per share, or 16.86%, on May 3, 2013, on extremely heavy trading volume.

228. The declines in the prices of Chemed common stock after the disclosures set forth above came to light were a direct result of the nature and extent of Defendants' fraud being revealed to investors and the market. The timing and magnitude of the price declines in Chemed common stock negate any inference that the losses suffered by Plaintiffs and the other Class members were caused by changed market conditions, macroeconomic or industry factors or Company-specific facts unrelated to Defendants' fraudulent conduct. During the Class Period, Defendants consistently touted VITAS' compliance with Medicare and Medicaid rules and regulations. On July 27, 2011, in response to a direct question from an analyst about similar wrongdoing discussed in an OIG report, Defendant O'Toole unequivocally stated: "We don't have that issue at all. We are very comfortable with where we sit." Accordingly, the information contained in the November 16, 2011 Bloomberg News article, and the news of the filing of the DOJ Complaint on May 2, 2013, came as a shock to the market, and the Company's stock drops reflected that. The economic loss, *i.e.*, damages, suffered by Plaintiffs and the other Class members was a direct result of Defendants' fraudulent scheme to artificially inflate the price of Chemed common stock and the subsequent significant declines in the value of Chemed common stock when Defendants' prior misrepresentations and other fraudulent conduct were revealed.

N. Applicability of Presumption of Reliance: Fraud on the Market Doctrine

229. At all relevant times, the market for Chemed common stock was an efficient market for the following reasons, among others:

(a) Chemed's stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;

(b) as a regulated issuer, Chemed filed periodic public reports with the SEC and the NYSE;

(c) Chemed regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) Chemed was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

230. As a result of the foregoing, the market for Chemed common stock promptly digested current information regarding Chemed from all publicly-available sources and reflected such information in the price of Chemed stock. Under these circumstances, all purchasers of Chemed common stock during the Class Period suffered similar injury through their purchase of Chemed common stock at artificially inflated prices and a presumption of reliance applies.

231. The market for Chemed common stock was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, Chemed common stock traded at artificially inflated prices during the Class Period. Plaintiffs and other members of the Class purchased or otherwise acquired Chemed common stock relying upon the integrity of the market price of Chemed common stock and market information relating to Chemed, and have been damaged thereby.

232. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of Chemed common stock, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make Defendants' statements, as set forth herein,

not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, as alleged herein.

233. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiffs and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false or misleading statements about Chemed's business, prospects and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Chemed and its business, prospects and operations, thus causing the Company's common stock to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in Plaintiffs and other members of the Class purchasing the Company's common stock at artificially inflated prices, thus causing the damages complained of herein. When the true facts about the Company were revealed to the market, the inflation in the price of Chemed stock was removed and the price of Chemed stock declined dramatically, causing loss to Plaintiffs and the other members of the Class.

O. No Safe Harbor

234. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are

liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Chemed who knew that those statements were false when made.

COUNT I

Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against Chemed

235. Plaintiffs incorporate by reference and reallege each and every allegation contained above as if fully set forth herein.

236. During the Class Period, officers, management, and agents of Chemed carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public regarding Chemed's business, operations, management and the intrinsic value of Chemed's common stock; (ii) enable Chemed to artificially inflate the price of Chemed's common stock; and (iii) cause Plaintiffs and other members of the Class to purchase Chemed's common stock at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendant Chemed took the actions set forth herein.

237. Officers, management, and agents of Chemed directly and indirectly, by the use of means and instrumentalities of interstate commerce, the mails, and/or the facilities of a national securities exchange: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements made not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's common stock in an effort to maintain artificially high market prices for Chemed's common stock in violation of Section 10(b) of the Exchange Act and SEC Rule 10b-5. Defendant Chemed is sued as a primary participant in the wrongful and illegal conduct charged herein.

238. Defendant Chemed, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal the truth about Chemed's VITAS segment, as specified herein.

239. Officers, management, and agents of Chemed employed devices, schemes, and artifices to defraud while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Chemed's value and performance, which included the making of untrue statements of material facts and omitting material facts necessary in order to make the statements made about Chemed's operations and financial condition, in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein. Officers, management, and agents of Chemed did not have a reasonable basis for their alleged false statements and engaged in transactions, practices, and a course of business which operated as a fraud and deceit upon the purchasers of Chemed common stock during the Class Period.

240. Chemed is liable for all materially false and misleading statements and omissions made during the Class Period, as alleged above, including the false and misleading statements and omissions included in Form 10-Q, 10-K, and 8-K filings.

241. Chemed is further liable for the false and misleading statements made by Chemed's officers, management, and agents in press releases and during conference calls and at conferences with investors and analysts, as alleged above, as the maker of such statements and under the principle of respondeat superior.

242. In addition to the duties of full disclosure imposed on Chemed as a result of the affirmative statements and reports made by its officers, management, and agents, or participation in the making of their affirmative statements and reports to the investing public, Chemed had a duty to

promptly disseminate truthful information that would be material to investors, in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulations, including truthful, complete and accurate information with respect to the Company's operations and financial condition so that the Company's share price would be based on truthful, complete and accurate information.

243. The allegations above establish a strong inference that Chemed, as an entity, acted with corporate scienter throughout the Class Period, as its officers, management, and agents had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth because they failed to ascertain and to disclose such facts, even though such facts were available to them. Such material misrepresentations and/or omissions were done knowingly or with recklessness, and without a reasonable basis. By concealing these material facts from investors, Chemed maintained its artificially inflated share price throughout the Class Period.

244. In ignorance of the fact that Chemed's share price was artificially inflated, and relying directly or indirectly on the false and misleading statements and omissions made by Chemed, or upon the integrity of the market in which the stock traded, and/or on the absence of material adverse information that was known to or recklessly disregarded by Chemed but not disclosed in public statements by Chemed during the Class Period, Lead Plaintiffs and the other members of the Class purchased or acquired Chemed stock during the Class Period at artificially high prices and were damaged when that artificial inflation was removed from the price of Chemed stock as the truth about the Company's practices was revealed.

245. At the time of said misrepresentations and omissions, Lead Plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had Lead Plaintiffs, the other members of the Class, and the marketplace known of the truth concerning VITAS' admissions growth and revenues and its scheme to enroll, and keep enrolled, ineligible

patients in hospice and fraudulently bill Medicare for inappropriate hospice services, Lead Plaintiffs and other members of the Class would not have purchased or acquired their Chemed stock, or, if they had purchased or acquired such stock during the Class Period, they would not have done so at the artificially inflated prices which they paid.

246. By virtue of the foregoing, Chemed has violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

247. As a direct and proximate result of Chemed's wrongful conduct, Lead Plaintiffs and the other members of the Class suffered damages in connection with their respective purchases and/or acquisitions of Chemed stock during the Class Period.

COUNT II

Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against the Individual Defendants

248. Plaintiffs incorporate by reference and reallege each and every allegation contained above as if fully set forth herein. This claim is asserted against Defendants McNamara, Williams and O'Toole.

249. During the Class Period, the Individual Defendants McNamara, Williams and O'Toole carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public regarding Chemed's business, operations, management and the intrinsic value of Chemed's common stock; (ii) enable Chemed to artificially inflate the price of Chemed's common stock, and (iii) cause Plaintiffs and other members of the Class to purchase Chemed's common stock at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, these Defendants took the actions set forth herein.

250. The Individual Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements made not misleading; and (c) engaged in acts, practices, and a course of business

which operated as a fraud and deceit upon the purchasers of the Company's common stock in an effort to maintain artificially high market prices for Chemed's common stock in violation of Section 10(b) of the Exchange Act and SEC Rule 10b-5. The Individual Defendants are sued as primary participants in the wrongful and illegal conduct charged herein and/or as controlling persons as alleged below.

251. The Individual Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal the truth about Chemed's VITAS segment, as specified herein.

252. The Individual Defendants employed devices, schemes, and artifices to defraud while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Chemed's value and performance, which included the making of untrue statements of material facts and omitting material facts necessary in order to make the statements made about Chemed's operations and financial condition, in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices, and a course of business which operated as a fraud and deceit upon the purchasers of Chemed common stock during the Class Period.

253. The Individual Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Chemed's practices from the investing public and supporting the artificially inflated price of its common stock. As demonstrated by these Defendants' misstatements and omissions of the Company's VITAS business throughout the Class Period, these

Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

254. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Chemed's common stock was artificially inflated during the Class Period. In ignorance of the fact that market prices of Chemed's publicly-traded common stock were artificially inflated, and relying directly or indirectly on the false and misleading statements made by these Defendants, or upon the integrity of the market in which the common stock trades, and/or on the absence of material adverse information that was known to or recklessly disregarded by these Defendants but not disclosed in public statements during the Class Period, Plaintiffs and the other members of the Class acquired Chemed's common stock during the Class Period at artificially high prices and were damaged when the value of their common stock declined upon disclosure of the truth about the Company's false and misleading statements and omissions.

255. At the time of said misrepresentations and omissions, Lead Plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had Lead Plaintiffs, the other members of the Class, and the marketplace known of the truth concerning VITAS' admissions growth and revenues and its scheme to enroll, and keep enrolled, ineligible patients in hospice and fraudulently bill Medicare for inappropriate hospice services, Lead Plaintiffs and other members of the Class would not have purchased or acquired their Chemed stock, or, if they had purchased or acquired such stock during the Class Period, they would not have done so at the artificially inflated prices which they paid.

256. By virtue of the foregoing, the Individual Defendants have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

257. As a direct and proximate result of Chemed's wrongful conduct, Lead Plaintiffs and the other members of the Class suffered damages in connection with their respective purchases and/or acquisitions of Chemed stock during the Class Period.

COUNT III

Violation of Section 20(a) of the Exchange Act
Against the Individual Defendants

258. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

259. The Individual Defendants acted as controlling persons of Chemed within the meaning of Section 20(a) of the Exchange Act as alleged herein. By reason of their positions as officers and/or directors of Chemed, and their ownership of Chemed stock, the Individual Defendants had the power and authority to cause Chemed to engage in the wrongful conduct complained of herein. By reason of such conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

A. Determining that this action is a proper class action, certifying Plaintiffs as class representatives and designating Lead Counsel as Class Counsel under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of Plaintiffs and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

DATED: March 25, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2014, I caused the foregoing Second Amended Complaint to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice.

/s/ Jonathan Gardner
JONATHAN GARDNER