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Gary Farmer says the Tenet suit includes hundreds of thousands of South Floridians.

Hospital operator sued, pricing practices criticized

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by Stephen Van Drake

Tenet Healthcare Corp. (NYSE: THC), which operates 15 South Florida hospitals, will seek dismissal of a suit that alleges price gouging of uninsured patients.

Between 1999 and 2002, Tenet - the nation's second largest hospital chain with 114 facilities in 17 states - charged "twice the industry norm and higher than the actual cost of procedures," said Weston lawyer Gary Farmer, lead plaintiffs' counsel among nine law firms from Washington, D.C., to San Francisco, according to an amended November complaint.

Farmer said the suit includes hundreds of thousands of South Floridians and millions of dollars.

The suit states Tenet's pricing was designed to drive up Medicare reimbursements and prop up its stock, which prompted insider profiteering.

Tenet flatly denied all wrongdoing, court records show, and will ask for the dismissal April 29 in Broward County Circuit Court.

But Allen Fuller, a Coral Gables health care fraud lawyer, said the case is part of a broader industry pricing practice that promises to expand into legal battles affecting hospitals nationwide.

The pricing practice helps hike the overall cost of health care to insureds, said Richard Coorsh, spokesman for the Federation of American Hospitals in Washington, D.C., a nonprofit organization that includes hospital and consumer interests.

In its Dec. 19 motion to kill the potential class action suit, Tenet lawyer Peter Prieto of Holland & Knight in Miami argued that courts have no business meddling with legislative health care regulators. He wrote that the suit, with two uninsured South Floridians as lead plaintiffs, isn't permitted under the traditional constitutional separation of powers between judicial and legislative functions.

Yet similar suits in California and North Carolina, plus an ongoing investigation by the U.S. Department of Justice paralleling the Broward lawsuit, could cost Tenet millions of dollars, according to Farmer and public documents.

Tenet is no stranger to litigation with the

federal government.

In August, it paid \$54 million to settle claims it performed unnecessary cardiac procedures in California, according to a Department of Justice (DOJ) press release. Tenet admitted no wrongdoing.

"In general, we don't comment on matters of pending litigation," said Tenet spokesman Steven Campanini from its Santa Barbara, Calif., headquarters.

Campanini, however, said Tenet in January settled a similar Medicare reimbursement/price-gouging suit by 10 uninsured California plaintiffs for an undisclosed sum, again admitting no liability.

He said despite efforts to settle with the DOJ, the department's investigation into Tenet's Medicare pricing practices continues.

DOJ spokesman Charles Miller said he would neither confirm nor deny such an ongoing investigation, but added: "We've had enumerable cases with Tenet."

"This case is symptomatic of the epidemic that has come about from big corporate control over health care," Farmer said.

In the November complaint, Farmer and the plaintiffs' legal team allege Tenet deliberately hiked sticker prices of certain outlier, or complicated, medical practices. And when averaged over a year, Medicare runs a formula that reimburses Tenet for its additional costs.

In the Broward suit, pending before Circuit Judge Ilona Holmes, Farmer claimed "Tenet executives got rich" while the uninsured and those with coverage paid higher co-payments. Medicare outlier payments boosted Tenet's bottom line from \$351 million in 2000 to \$765 million 2002, according to the suit.

In December, law firm Milberg Weiss, co-counsel in the Broward suit, filed a similar class action against Tenet in California.

Milberg Weiss is one of the nation's biggest class action law firms, with offices in San Francisco and Boca Raton.

Such suits are expected in other states, Farmer said.

In the Broward action, Farmer detailed three uninsured patients, who received bills of \$5,200 to \$14,000 for from two to five hours of outpatient ER care at three South Florida Tenet hospitals.

"Hospitals believe they can charge self-pays [the uninsured] anything they want; these admission statements are ridiculous," Fuller said, adding he's not suing Tenet, but other hospital chains, for fraud and price gouging.

Farmer said Tenet on statements agreed to charge normal and reasonable charges.

But hospitals treating insured patients pay a contract rate, reflecting between 40 percent and 50 percent of the sticker price, Fuller said. His suit claims Tenet is guilty of violating the state's unfair and deceptive trade law, breach of contract, unfair competition, receiving unjust enrichment and breach of an implied agreement to deal fairly and in good faith.

The impact of the suit affects millions of Floridians.

"More and more people are turning to the ER for urgent and primary care," said Coorsh of the Federation of American Hospitals. He said hospitals face increasing pressure and at the same time are hit with increasing costs for new drugs and technology.

He pointed to the Institute of Medicine of the National Academies' report that said 20.6 percent of Floridians remain uninsured. He said hospitals have to address Medicare outlier payments pricing and reimbursements, the focus of extensive litigation and the DOJ's investigation.

Since January 2003, Tenet initiated a new policy not to collect unpaid bills by uninsureds without ability to pay.

Tenet spokesman Campanini said the company - as soon as federal regulators approve its plan - would charge self-pays what it gets under HMO contracts. This would reduce monthly Tenet network-wide revenues from self-pays from

\$32 million to \$8 million, according to an October SEC filing.