

UNITED STATES DISTRICT COURT
for the
Eastern District of Michigan

United States of America

v.

Alphonso Berry, M.D.,
Marcus Jenkins,
Elizabeth Jenkins

Case: 2:11-mj-30480
Judge: Unassigned,
Filed: 08-31-2011 At 10:58 AM
SEALED MATTER (LCB)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of April 1, 2004 until Present in the county of Wayne County in the
Eastern District of Michigan, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. § 1349	Conspiracy to Commit Health Care Fraud

This criminal complaint is based on these facts:
See attached affidavit.

Continued on the attached sheet.



Complainant's signature

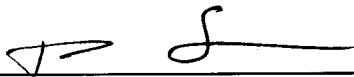
Marc Heggemeyer, Special Agent, HHS-OIG

Printed name and title

Sworn to before me and signed in my presence.

Date: August 31, 2011

City and state: Detroit, Michigan



Judge's signature

Hon. R. Steven Whalen, United States Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

The undersigned, Marc Heggemeyer, being first duly sworn, hereby deposes and states as follows:

I. Affiant's Background and Qualifications

1. I, Marc Heggemeyer, hereinafter referred to as the Affiant, am a Special Agent employed by the United States Department of Health and Human Services (HHS), Office of Inspector General (OIG), Office of Investigations (OI). I have been so employed since July 2010. I am an investigative or law enforcement officer of the United States within the meaning of Section 2510 (7) of Title 18, United States Code, in that I am empowered by law to conduct investigations and to make arrests for federal felony offenses.

2. As part of my duties, I am authorized to conduct investigations, audits and inspections in connection with the administration and enforcement of laws, regulations, orders, contracts and programs in which HHS is, or may be, a party of interest, and perform other duties on behalf of the Secretary of HHS. My chief responsibility is the investigation of fraud involving federally-funded health care programs, including the Medicare program. As a Special Agent with HHS-OIG-OI, I have received basic criminal investigator training as well as specialized training in the investigation of fraud and financial crime. Previously, I was employed as a Medicare Fraud Analyst and Health Care Fraud Investigator for government-funded Medicare/Medicaid contractors as well as a Criminal Investigator with the Maryland Attorney General's Office, Medicaid Fraud Control Unit. I held those positions for approximately 25 months. Overall, I have spent

the last seven-and-a-half years investigating health care fraud against the federally-funded health care programs commonly known as Medicare and Medicaid.

3. The affidavit sets forth facts in support of a complaint alleging that Alphonso Berry, M.D. (Dr. Berry), Marcus Jenkins and Elizabeth Jenkins conspired to commit Medicare fraud in violation of 18 U.S.C. §1349. The offense occurred while the defendants owned and/or were associated with two psychotherapy clinics, Quality Recreation and Rehabilitation, Inc. (QRR) and Procure Rehabilitation, Inc. (Procure).

4. I have knowledge of the facts set forth in this Affidavit as a result of my participation in the investigation, as well as information provided to me by other law enforcement agents. I have not included in this affidavit each and every fact known to me concerning this investigation.

II. The Medicare Program

5. The Medicare Program (Medicare) is a federally-funded health care program providing benefits to persons who are over the age of sixty-five or disabled. Medicare is administered by the Centers for Medicare and Medicaid Services (CMS), a federal agency within HHS. Individuals who receive Medicare benefits are referred to as Medicare “beneficiaries.”

6. Medicare is a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b).

7. Medicare has four parts: hospital insurance (Part A), medical insurance (Part B), Medicare Advantage (Part C), and prescription drug benefits (Part D).

Medicare Part B helps pay the cost of physician services, medical equipment and supplies, and other health services and supplies not paid by Part A.

8. This investigation involves outpatient psychotherapy services, which are therapy services to treat mental illness. Outpatient psychotherapy services are covered by Medicare Part B.

9. Medicare claims for Part B are processed and paid by private companies, known as carriers, who contract with CMS to administer their specific part of the Medicare program.

III. Procedure Codes

10. The American Medical Association assigns and publishes numeric codes, known as the Current Procedural Terminology (CPT) and Health Care Procedure Common Coding System (HCPCS) codes. The codes are a systematic listing, or universal language, used to describe the procedures and services performed by health care providers.

11. The procedures and services represented by the CPT and HCPCS codes are health care benefits, items, and services within the meaning of 18 U.S.C. § 24(b). They include codes for office visits, diagnostic testing and evaluation, and other services. Health care providers use CPT and HCPCS codes to describe the services rendered in their claims for reimbursement to health care benefit programs.

12. Health care benefit programs, including Medicare, use these codes to understand and evaluate the claims submitted by providers and to decide whether

to issue or deny payment. Each health care benefit program establishes a fee or reimbursement level for each service described by a CPT or HCPCS code.

13. Health care providers often seek reimbursement from insurance carriers on CMS Form 1500. On the form, the provider identifies itself by Provider Identification Number (PIN) or Tax Identification Number (TIN), identifies the beneficiary who received the services, describes the illness or injury that makes the services medically necessary, and identifies the services provided by CPT and HCPCS codes. In response to each claim, the insurance carrier issues a payment or denial.

14. Medicare coverage for mental health services and psychotherapy is limited to services provided either “incident to” services provided by a physician’s practice or services provided by certain non-physician clinicians that meet specific licensing criteria and are registered Medicare providers. *See generally* 42 C.F.R. § 410. If the services are provided incident to a physician’s practice, a physician must be present in the office when the psychotherapy services are provided. Psychotherapy may be provided independently by a clinical psychologist, licensed social worker, clinical nurse specialist, nurse practitioner or physician’s assistant *only* if they meet specific licensing and training requirements as set forth in 42 C.F.R. §§ 410.71-410.76.

15. The Medicare Claims Processing Manual is issued by CMS, is publicly available, and offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives for Medicare Part B. The manual specifies the expected period of time a physician will spend with a patient and/or their family during psychotherapy sessions. Specifically, the

Medicare Claims Processing Manual states the following regarding the codes at issue in this investigation:

- a. Procedure Code 90801; Psychiatric Diagnostic Interview Examination, the elicitation of a complete medical and psychiatric history, a mental status examination, establishment of a tentative initial diagnosis for those patients who will be receiving subsequent psychotherapy, and an evaluation of the patient's ability and capacity to respond to treatment on an initial plan of treatment. The medical record must reflect the elements outlined in the above description and must be rendered by a qualified provider.
- b. Procedure Code 90806; Individual Psychotherapy, the treatment for mental illness and behavioral disturbances in which the clinician establishes a professional contract with the patient and thorough definitive therapeutic communication, attempts to alleviate the emotional disturbances, reverse or change maladaptive patterns of behavior and encourage personality growth and development or support current evaluation of functioning. The medical record must indicate the time spent in the psychotherapy encounter and the therapeutic maneuvers, such as behavior modification, supportive or interpretive interactions that were applied to produce a therapeutic change. Approximately 45 to 50 minutes face-to-face with the patient.
- c. Procedure Code 90809; Individual Psychotherapy, the treatment for mental illness and behavioral disturbances in which the clinician establishes a professional contract with the patient and through definitive therapeutic communication, attempts to alleviate the emotional disturbances, reverse or change maladaptive patterns of behavior and encourage personality growth

and development or support current evaluation of functioning. The medical record must indicate the time spent in the psychotherapy encounter and the therapeutic maneuvers, such as behavior modification, supportive or interpretive interactions that were applied to produce a therapeutic change. Approximately 75 to 80 minutes face-to-face with the patient.

- d. Procedure Code 90853; Interactive Group Psychotherapy, psychotherapy administered in a group setting with a trained therapist simultaneously providing therapy to several patients. Personal and group dynamics are discussed and explored in a therapeutic setting allowing emotional catharsis, instruction, insight, and support. When covered by Medicare the group size should be of a size that can be successfully led (*i.e.*, maximum of 12 people). Approximately 45 to 60 minutes in duration. Medicare does not cover support groups that bring people together to talk or socialize or that are run by individuals that do not satisfy the requirements set forth in 42 C.F.R. § 410.

IV. QRR and Procure Health Care Fraud Scheme

A. General Background

16. Agents initiated this investigation based upon information received from TrustSolutions, LLC, a private company that contracts with HHS to perform investigations and audits designed to protect the Medicare program from fraud, waste and abuse. TrustSolutions informed law enforcement that Procure and its associated clinicians might have billed Medicare for psychotherapy services that were not medically necessary and not rendered. Upon further investigation, agents determined that a predecessor company operated by the same subjects at the same premises, QRR, may have engaged in similar conduct, *i.e.*, billing for psychotherapy services that were not medically necessary and not rendered.

17. As set forth below, Marcus and Elizabeth Jenkins (1) owned, controlled and benefitted from the operations at QRR and Procure, and (2) caused QRR and Procure to submit false or fraudulent claims to Medicare for psychotherapy services that were not rendered and that were not medically necessary. The evidence also established that Dr. Alphonso Berry participated in and facilitated the fraudulent scheme by agreeing to sign patient charts and allow the use of his Medicare billing privileges by QRR and Procure – regardless of whether the Medicare beneficiaries actually needed or received the treatment billed – in exchange for payments from Marcus and Elizabeth Jenkins. To effectuate the scheme, Marcus and Elizabeth Jenkins billed the Medicare program for services they purported to provide, using the Medicare numbers of beneficiaries entrusted to their care that were residing in adult foster care homes Marcus and Elizabeth Jenkins owned and operated.

1. QRR

18. Marcus Jenkins incorporated QRR on or around February 4, 2004. The corporate records list 2641 West Grand Boulevard, Detroit, Michigan 48208 as QRR's business address.

19. Elizabeth Jenkins signed and submitted a Medicare enrollment application on behalf of QRR. QRR was certified as a Medicare provider on or around September 14, 2004 and received the group provider number (PIN) 0N96630, which became retroactively effective on or around April 1, 2004.

20. Between in or around April 2004 and in or around September 2008, QRR billed Medicare approximately \$6 million for purported psychotherapy services. Medicare paid QRR approximately \$1.8 million on those claims.

21. The vast majority of the psychotherapy services billed by QRR – approximately \$5.8 million of the approximately \$6 million billed – were purportedly performed by two clinicians, Dr. Berry and Physician A.

22. Dr. Berry was assigned the QRR-related PIN 0N9663004, which became effective on or around July 1, 2006. For services purportedly provided between on or around January 2005 and on or around August 2008, QRR submitted approximately 36,731 claims to Medicare for approximately \$2.7 million, of which Medicare paid approximately \$870,000, using Dr. Berry's PIN.

23. Between in or around January 2005 and in or around August 2008, QRR sought payment for the following services purportedly performed by Dr. Berry: (A) one psychiatric diagnostic interview exam, Procedure Code 90801, (B) 11,686 individual psychotherapy, insight oriented behavior sessions Procedure Code 90806, and (C) 25,044 group psychotherapy sessions Procedure Code 90853. Dr. Berry admitted to law enforcement agents that he never performed or supervised psychotherapy services purportedly provided by QRR. And, as set forth below in Sec. IV(B)(1), it was impossible for Dr. Berry to have performed the services billed to Medicare using his PIN.

24. Physician A was assigned the QRR-related provider identification number (PIN) 0N9663xxx2, which became effective on or around April 4, 2004. Between in or around February 2005 and in or around May 2008, QRR submitted approximately 38,193 claims to Medicare for approximately \$2.9 million, of which Medicare paid approximately \$905,000 using Physician A's PIN.

25. Between in or around February 2005 and in or around May 2008, QRR sought payment for the following services purportedly performed by Physician A: (A) 35 psychiatric diagnostic interview exams, Procedure Code 90801, (B) 84 individual psychotherapy, insight-oriented behavior sessions Procedure Code 90804, (C) 12,078 individual psychotherapy, insight oriented behavior sessions Procedure Code 90806, (D) 25,980 group psychotherapy sessions Procedure Code 90853, (E) 4 units of Procedure Code 99203, (F) 2 units of Procedure Code 99204, and (G) 1 unit of Procedure Code 99214. Physician A admitted to law enforcement agents that he never performed or supervised psychotherapy services purportedly provided by QRR. And, as set forth below Sec. IV(B)(1), it was impossible for Physician A to have performed the services billed to Medicare using his PIN.

2. Procure

26. Owner A incorporated Procure on or around October 14, 2008. Owner A is related to Elizabeth Jenkins. The corporate records list 2641 West Grand Boulevard, Detroit, Michigan 48208 as Procure's business address, the same address as QRR. Procure moved its operations from that location to 8255 Second Avenue, Detroit, Michigan 48202 on or around June 8, 2011.

27. Owner A submitted and signed a provider application on behalf of Procure. Procure was certified as a Medicare provider on or around January 20, 2009 and was issued the group provider identification number (PIN) MI1248, which became retroactively effective on or around October 14, 2008.

28. Dr. Berry was assigned the Procure-related PIN MI1248001, which became effective on or around October 14, 2008. Between in or around October 2008 and in or around April 2011, Procure submitted approximately 71,652 claims to Medicare for approximately \$4.8 million, of which Medicare paid approximately \$2

million, using Dr. Berry's PIN. Overall, Procure billed Medicare approximately \$5.5 million and was paid approximately \$2.5 million.

29. Between in or around October 2008 and in or around September 2010, Procure sought payment for the following services purportedly performed by Dr. Berry: (A) 18,648 individual psychotherapy, insight oriented behavior sessions lasting 45 to 50 minutes, Procedure Code 90806; (B) 33,353 group psychotherapy sessions, Procedure Code 90853; (C) 40 psychiatric diagnostic interview exams, Procedure Code 90801; and (D) one individual psychotherapy, insight oriented behavior session lasting seventy-five (75) to eighty (80) minutes, Procedure Code 90809. Dr. Berry admitted to law enforcement agents he never performed or supervised any psychotherapy services purportedly provided by Procure and billed under his PIN. And, as set forth below in Sec IV(B)(2), it was impossible for Dr. Berry to have performed the services billed to Medicare using his PIN.

3. Procure Financial/Bank Records Analysis

30. An analysis of corporate and financial records for Procure shows that Marcus and Elizabeth Jenkins were the primary financial beneficiaries of both companies.

31. Both Owner A and Marcus Jenkins were signors on the Procure account. While Owner A was listed as the owner of Procure, she was not the principal financial beneficiary of the clinic. Owner A only withdrew approximately \$6900 in monies from the Procure accounts for herself.

32. By contrast, Marcus Jenkins and Elizabeth Jenkins received approximately \$500,000 in wire transfers and withdrawals either personally or through entities they owned or controlled, including Jenkins AFC, LLC (Jenkins AFC). Jenkins AFC is a corporation owned by Marcus and Elizabeth Jenkins that owns and

operates adult foster care facilities in the Detroit, Michigan-area. As set forth below in Sec. IV(B)(4), Jenkins AFC was the source of the Medicare beneficiaries used by QRR and Procure to bill Medicare for the fraudulent psychotherapy services.

33. In addition, bank records for the accounts associated with Procure show extensive personal use of the Medicare funds deposited in them, including charges for vacations (approximately \$38,000) and luxury car payments (approximately \$24,500 in payments to Mercedes Benz).

B. Medicare Billing Data Analysis

34. As set forth in further detail below, the evidence shows that QRR and Procure billed (1) routinely in excess of twenty-four hours worth of therapy in a day by Dr. Berry and Physician A; and (2) for psychotherapy allegedly given to Medicare beneficiaries who were deceased on the purported dates of service.

1. Billing for Services in Excess of Twenty-Four Hours A Day at QRR

35. A review and analysis of claims submitted to Medicare under Dr. Berry's PIN (0N96630004) shows that, on several occasions, QRR billed Medicare using Dr. Berry's PIN for Procedure Codes 90806 and 90853 in excess of twenty-four (24) hours per day.

- a) From in or around January 2005 through in or around August 2008, QRR billed Procedure Codes 90806 and 90853 a total of 413 days to Medicare using PIN 0N96630004 (Dr. Berry). During this time, QRR claimed that Dr. Berry performed 11,686 units of CPT 90806 (45-50 minute individualized psychotherapy session) and 25,044 sessions of Procedure

Code 90853 (45-60 minutes of group psychotherapy sessions). That averages out to 25.22 hours of combined individual and group therapy sessions each day.

- b) On or around June 26, 2007, QRR submitted claims using Dr. Berry's PIN for 91 psychotherapy sessions for Procedure Code 90806 (individual 45-50 minute sessions), which required approximately sixty-eight (68) hours to complete. Medicare paid QRR approximately \$3941.74 for services allegedly rendered on this date.
- c) On or around April 11, 2007, QRR submitted claims using Dr. Berry's PIN for 90 psychotherapy sessions for Procedure Code 90806 (individual 45-50 minute sessions), which required approximately sixty-seven (67) hours to complete. Medicare paid QRR approximately \$3893.67 for services allegedly rendered on this date.
- d) On or around June 21, 2007, QRR submitted claims using Dr. Berry's PIN for 90 psychotherapy sessions for Procedure Code 90806 (individual 45-50 minute sessions), which required approximately sixty-seven (67) hours to complete. Medicare paid QRR approximately \$3941.74 for services allegedly rendered on this date.

36. A review and analysis of claims submitted to Medicare under Physician A's PIN (0N9663xxx2) shows that, on several occasions, QRR billed Medicare using Physician A' PIN for Procedure Codes 90806 and 90853 in excess of twenty-four (24) hours per day.

- a) From on or around February 21, 2005 through on or around May 30, 2008, QRR billed Procedure Codes 90806 and 90853 a total of 473 days to Medicare using PIN 0N9663xxx2 (Physician A). During this time, QRR claimed that Physician A performed 12,078 units of CPT 90806 (45-50 minute individualized psychotherapy session) and 25,980 sessions of Procedure Code 90853 (45-60 minutes of group psychotherapy sessions). That averages out to 22.87 hours of combined individual and group therapy sessions each day.

- b) The number of psychotherapy visits QRR billed using Physician A's PIN exceeded the number of hours in a specific day on numerous occasions. For example, on or around May 22, 2006, QRR submitted billings for Physician A's PIN for 82 psychotherapy sessions for Procedure Code 90806, which required approximately sixty-one and a half (61.5) hours to complete. Medicare paid QRR approximately \$3830.01 for services allegedly rendered on this date.

- c) On or around May 30, 2006, QRR submitted claims using Physician A's PIN for 69 psychotherapy sessions for Procedure Code 90806 (individual 45-50 minute sessions), which required approximately fifty-one (51) hours to complete. Medicare paid QRR approximately \$3193.43 for services allegedly rendered on this date.

- d) On or around May 9, 2006, QRR submitted claims using Physician A's PIN for 68 psychotherapy sessions for Procedure Code 90806 (individual 45-50 minute sessions), which required approximately fifty-one (51)

hours to complete. Medicare paid QRR approximately \$3140.82 for services allegedly rendered on this date.

2. Billing for Services in Excess of Twenty-Four Hours A Day at Procure

37. A review and analysis of claims submitted to Medicare under Dr. Berry's PIN (MI1248001) shows that, on several occasions, Procure billed for Procedure Codes 90806 and 90853 in excess of twenty-four (24) hours per day both generally and on specific dates.

- a) From on or around October 14, 2008 through on or around September 24, 2010, Procure billed Procedure Codes 90806 and 90853 a total of 524 days to Medicare using PIN MI1248001 (Dr. Berry). During this time, Dr. Berry claimed to have performed 18,648 units of CPT 90806 (45-50 minute individualized psychotherapy sessions) and 33,353 sessions of Procedure Code 90853 (45-60 minutes of group psychotherapy sessions). That averages out to 32.55 hours of combined individual and group therapy sessions each day.
- b) The number of psychotherapy visits Procure and Dr. Berry billed exceeded the number of hours in a specific day on numerous occasions. For example, on or around April 10, 2009, Procure submitted claims using Dr. Berry's PIN for 70 psychotherapy sessions for Procedure Code 90806, which required approximately fifty-two (52) hours to complete. Medicare paid Procure approximately \$3243.90 for services allegedly rendered on this date.
- c) On or around April 17, 2009, Procure claims using Dr. Berry's PIN for 70 psychotherapy sessions for Procedure Code 90806 (individual 45-50

minute sessions), which required approximately fifty-two (52) hours to complete. Medicare paid Procure approximately \$3191.60 for services allegedly rendered on this date.

- d) On or around April 27, 2009, Procure submitted claims using Dr. Berry's PIN for 70 psychotherapy sessions for Procedure Code 90806, which required approximately fifty-two (52) hours to complete. Medicare paid Procure approximately \$3240.75 for services allegedly rendered on this date.
- e) On or around May 6, 2009, Procure submitted claims using Dr. Berry's PIN for 70 psychotherapy sessions for Procedure Code 90806, which required approximately fifty-two (52) hours to complete. Medicare paid Procure approximately \$3069.15 for services allegedly rendered on this date.
- f) On or around December 23, 2009, Procure submitted claims using Dr. Berry's PIN for 70 psychotherapy sessions for Procedure Code 90806, which required approximately fifty-two (52) hours to complete. Medicare paid Procure approximately \$2801.55 for services allegedly rendered on this date.

3. Billing for Dead Medicare Beneficiaries

38. Medicare data shows that QRR billed approximately 506 claims for psychotherapy services purportedly provided to Medicare beneficiaries who were deceased on the purported date of service. QRR billed approximately \$38,684 on these claims and was paid approximately \$10,902.34.

- a) QRR submitted billings for approximately one session of Procedure Code 90806 and two sessions of Procedure Code 90853 for Medicare beneficiary A.E. According to the claims submitted by QRR, these services were provided between on or around April 29, 2008 and on or around April 30, 2008. According to the State of Michigan, Department of Community Health, Division for Vital Records and Health Statistics, A.E. died on or around April 28, 2008. QRR billed Medicare approximately \$233 for these claims.

- b) QRR submitted billings for approximately two sessions of Procedure Code 90806 and six sessions of Procedure Code 90853 for Medicare beneficiary K.S. According to the claims submitted by QRR, these services were provided between on or around September 22, 2007 and on or around September 29, 2007. According to the State of Michigan, Department of Community Health, Division for Vital Records and Health Statistics, K.S. died on or around September 20, 2007. QRR billed Medicare approximately \$574 for these claims.

- c) QRR submitted billings for approximately 20 sessions of Procedure Code 90806 and 33 sessions of Procedure Code 90853 for Medicare beneficiary G.T. According to the claims submitted by QRR, these services were provided between on or around December 14, 2007 and on or around January 31, 2008. According to the State of Michigan, Department of Community Health, Division for Vital Records and Health Statistics, G.T. died on or around December 13, 2007. QRR billed Medicare approximately \$4282 for these claims.

39. Medicare data shows that Procure billed approximately 653 claims for psychotherapy services purportedly provided to dead Medicare beneficiaries who were deceased on the date of the purported service. Procure billed approximately \$44,800 on these claims and was paid approximately \$18,169.68.

- a) Procure submitted billings for approximately 12 sessions of Procedure Code 90806 and 20 sessions of Procedure Code 90853 for Medicare beneficiary M.R. According to the claims submitted by Procure, these services were provided between on or around February 1, 2010 and on or around February 26, 2010. According to the State of Michigan, Department of Community Health, Division for Vital Records and Health Statistics, M.R. died on or around January 30, 2010. Procure billed Medicare approximately \$2,200 for these claims.

4. Billing for Beneficiaries Residing at Jenkins AFC, LLC

40. The Medicare data also reveals that a significant majority of the beneficiaries billed by QRR and Procure resided at facilities owned and operated by Jenkins AFC, LLC, a company owned and operated by Marcus and Elizabeth Jenkins.

41. Jenkins AFC purported to operate adult foster care facilities. Adult foster care facilities (AFCs) are residential settings that provide 24-hour personal care, protection, and supervision for individuals who are developmentally disabled, mentally ill, physically handicapped or aged who cannot live alone but who do not need continuous nursing care.

42. Marcus and Elizabeth Jenkins received payment from the state of Michigan and other governmental entities for providing residence and other services to the Medicare beneficiaries under their care.

43. Marcus and Elizabeth Jenkins used the Medicare beneficiary numbers of the special-needs adults under their care to bill Medicare for psychotherapy services through another company they owned that, according to the data, *see infra*, and the witnesses, *see supra*, was not provided and/or was not medically necessary.

C. Interviews

1. Beneficiary Interviews

44. From in or around February 2011 through in or around March 2011, agents interviewed Medicare and Blue Cross Blue Shield Medicare Advantage beneficiaries regarding services billed by Procure.

- a) On or around February 8, 2011, agents interviewed Blue Cross Blue Shield Medicare Advantage beneficiary L.J. L.J. told law enforcement agents that she had never heard of Procure until she saw the Procure name on a bill submitted to Blue Cross Blue Shield of Michigan (hereinafter referred to as BCBS). L.J. told agents that a friend of hers told her about a doctor to call to receive home health services. L.J. stated someone picked her up at her residence in a van and drove her to a house at what she believed was 2640 West Grand Boulevard, Detroit, Michigan.¹ L.J. said that while there, she spoke with an Indian male for approximately one minute. L.J. told agents that no one from Procure ever provided any other services to her and that she never received any prescriptions from anyone at Procure. L.J. was shown copies of her medical chart received from Procure, which included her purported signature. L.J. told agents

¹ L.J. said she went to Procure's office located at 2640 West Grand Boulevard, Detroit, Michigan, but the actual address is 2641 West Grand Boulevard, Detroit, Michigan. Your Affiant has observed beneficiaries going into 2641 West Grand Boulevard and none going into 2640 West Grand Boulevard.

that her signature had been forged in the patient charts. Procure billed BCBS approximately \$125 for Procedure Code 90801, \$8,200 for Procedure Code 90806, and \$8,400 for Procedure Code 90853. Procure was paid approximately \$1,001.51 for these services.

- b) On March 9, 2011, agents interviewed Medicare beneficiary P.V. and members of her family. The family members of Medicare beneficiary P.V. told law enforcement agents that Procure was supposed to provide P.V. with a "house doctor," but that Dr. Berry only came to P.V.'s house once or twice. P.V.'s daughter told agents that she drove P.V. to Procure's offices on Grand Boulevard to sign paperwork. P.V. said she was evaluated by a doctor when she visited Procure, but that she was only at Procure once. P.V. stated she has never received any psychotherapy services from anyone. Procure billed approximately one session of diagnostic psychiatric interview examination, using Procedure Code 90801, 82 sessions of individual therapy, using Procedure Code 90806, and 172 sessions of group therapy, using Procedure Code 90853. Procure billed Medicare approximately \$16,925 for these services and was paid approximately \$6,895.53.
- c) On March 9, 2011, agents interviewed Medicare beneficiary A.W. A.W. advised agents that she received physical therapy services from Procure. A.W. said she only saw Dr. Berry three times when she went to Procure. A.W. said she uses Fentanyl patches and Dr. Berry could not write her scripts for the patches so she stopped going to Procure in the summer of 2009. A.W. stated she has never received any psychotherapy services from anyone. Procure billed approximately 132 individual psychotherapy

sessions, using Procedure Code 90806 and 221 group psychotherapy sessions using Procedure Code 90853. Procure billed Medicare approximately \$24,250 for these services and was paid approximately \$9,078.75.

2. Employee Interviews

45. Between in or around June 2011 through in or around August 2011, law enforcement agents interviewed current and former employees of QRR and Procure regarding the provision and billing of psychotherapy services billed to Medicare.

a) **Alphonso Berry, M.D.** On or around July 6, 2011, law enforcement agents interviewed Dr. Berry. Dr. Berry identified Marcus and Elizabeth Jenkins as the owners of both Procure and QRR.

Dr. Berry admitted to agents that he entered into an arrangement in 2006 with Marcus Jenkins, where he would be paid to sign patient charts at QRR and Procure. Dr. Berry told agents that the arrangement was for him to receive approximately \$5000 a month, but that he had had only been paid between \$2500 and \$5000 approximately 10 times, through a company he owned called B&M Visiting Physicians, Inc. (B&M). Bank records for Procure show that B&M has been paid at least \$25,000 by Procure. All of the checks bear a signature for Marcus Jenkins.

Dr. Berry admitted to agents that he did not see the patients whose charts he signed, that he did not know if he services on the charts were ever provided, and that he did not really read the patient charts.

Dr. Berry admitted that what he did “under the law” was fraud, and that he was responsible for all billings under his PIN.

Dr. Berry admitted that since 2008, he had only been to Procure 12-13 times. Dr. Berry further admitted that he had not been to Procure at all in 2011. There are numerous billings under his PIN for services he supposedly rendered in 2011.

- b) **Physician A.** On or around August 4, 2011, law enforcement agents interviewed Physician A. Physician A confirmed that he worked for QRR, and that QRR was owned by Marcus and Elizabeth Jenkins. Physician A told agents that Elizabeth Jenkins managed the operations at QRR, including filling out all the Medicare paperwork Physician A signed to obtain a Medicare PIN through QRR and discussing Medicare billing issues with him.

Despite almost \$3 million in billings for psychotherapy services using his PIN, Physician A told agents he never provided any individual or group psychotherapy or counseling services to any patients while working at QRR. Physician A also said that he never provided any oversight for group or individual psychotherapy services at QRR either.

- c) **Former Employee A.** On or around July 15, 2011 and on or around August 8, 2011, law enforcement agents interviewed former Procure social worker, Former Employee A. Former Employee A, like Dr. Berry, told agents that Procure is owned by Marcus and Elizabeth

Jenkins; he did not mention Owner A as being an owner or manager of Procure.

Former Employee A admitted to agents that he signed group therapy progress notes for patients he did not actually treat or see. He stated that he was instructed to do so by Procure's office manager. Former Employee A could not say whether the services reflected in the progress notes he signed actually occurred or not.

- d) **Former Employee B.** On or around July 28, 2011 and on or around August 21, 2011, law enforcement agents interviewed former Procure social worker, Former Employee B. Former Employee B told agents that she only worked for Elizabeth Jenkins and her "husband" for a few months in mid-2009 (receiving only 2-4 paychecks).

The Medicare data shows that services purportedly provided by Former Employee B were billed by Procure, although she did not recall working for a company with that name. Former Employee B was shown a Procure provider application purportedly filled out and signed by Former Employee B. Former Employee B told agents that her signature was forged on the Procure provider application shown to her.

Former Employee B identified Elizabeth Jenkins as the owner of the company for which she worked, and as someone who ran several staff meetings. Former Employee B told agents that she only conducted individual therapy sessions, only saw two-to-five patients

a day, and did not perform any group therapy sessions. Yet, Procure submitted over 4000 claims for group therapy sessions supposedly performed by Former Employee B.

46. In summary, the evidence shows (1) that Marcus and Elizabeth Jenkins owned and operated QRR and Procure, (2) that Marcus Jenkins, Elizabeth Jenkins and Alphonso Berry, M.D. submitted or caused the submission of fraudulent claims for psychotherapy services by QRR and Procure, and (3) that Marcus and Elizabeth Jenkins effectuated this scheme using the Medicare information of Medicare beneficiaries with special needs who resided at adult foster care facilities they owned and operated.

47. Based upon your affiant's training and experience and the facts presented herein, your Affiant respectfully submits there is probable cause to believe that Alphonso Berry, M.D., Marcus Jenkins, and Elizabeth Jenkins have violated 18 U.S.C. § 1349.

48. As such, your Affiant respectfully requests that an arrest warrant be issued for Alphonso Berry, M.D., Marcus Jenkins, and Elizabeth Jenkins.



Marc Heggenmeyer
Special Agent
U. S. Department of Health and Human Services
Office of Inspector General, Office of Investigations

Sworn to and subscribed to before me this 31st day of August, 2011.



United States Magistrate Judge
Detroit, Michigan