UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 15-20426 CR-WILLIAMS

18 U.S.C. § 1349
18 U.S.C. § 1347
18 U.S.C. § 371
42 U.S.C. § 1320a-7b(b)(1)(B)
18 U.S.C. § 2
18 U.S.C. § 982

MAGISTRATE JUDGE SIMONTON

UNITED STATES OF AMERICA

vs.

YAMILE DUAIN PORRO,

Defendant.
_____/

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times material to this Indictment:

The Medicare Program

1. The Medicare Program ("Medicare") was a federally funded program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. The benefits available under Medicare were governed by federal statutes and regulations. The United States Department of Health and Human Services ("HHS"), through its agency, the Centers for Medicare and Medicaid Services ("CMS"), oversaw and administered Medicare. Individuals who received benefits under Medicare were commonly referred to as Medicare "beneficiaries."

2. Medicare was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b) and a Federal health care program, as defined by Title 42, United States Code, Section 1320a-7b(f).

3. Medicare programs covering different types of benefits were separated into different program "parts." "Part A" of the Medicare program covered certain eligible home health care costs for medical services provided by a home health agency ("HHA"), also referred to as a "provider," to persons who already qualified for Medicare and who additionally required home health services because of an illness or disability that caused them to be homebound.

4. CMS did not directly pay Medicare Part A claims submitted by Medicare-certified HHAs. CMS contracted with different private companies to administer the Medicare Part A program throughout different parts of the United States. In the State of Florida, CMS contracted with Palmetto Government Benefits Administrators ("Palmetto"). As administrator, Palmetto was to receive, adjudicate and pay claims submitted by HHA providers under the Part A program for home health claims. Additionally, CMS separately contracted with companies in order to review HHA providers' claims data. CMS first contracted with TriCenturion, a Program Safeguard Contractor. Subsequently, on December 15, 2008, CMS contracted with SafeGuard Services, a Zone Program Integrity Contractor. Both TriCenturion and SafeGuard Services safeguarded the Medicare Trust Fund by reviewing HHA providers' claims for potential fraud, waste, and/or abuse.

5. Physicians, clinics and other health care providers, including HHAs, that provided services to Medicare beneficiaries were able to apply for and obtain a "provider number." A health care provider that received a Medicare provider number was able to file claims with

Medicare to obtain reimbursement for services provided to beneficiaries. A Medicare claim was required to set forth, among other things, the beneficiary's name and Medicare information number, the services that were performed for the beneficiary, the date that the services were provided, the cost of the services, and the name and provider number of the physician or other health care provider who ordered the services.

Part A Coverage and Regulations

Reimbursements

6. The Medicare Part A program reimbursed 100% of the allowable charges for participating HHAs providing home health care services only if the patient qualified for home health benefits. A patient qualified for home health benefits only if the patient:

(a) was confined to the home, also referred to as homebound;

(b) was under the care of a physician who specifically determined there was a need for home health care and established the Plan of Care ("POC."); and

(c) the determining physician signed a certification statement specifying that the beneficiary needed intermittent skilled nursing, physical therapy, speech therapy, or a continued need for occupational therapy; the beneficiary was confined to the home; that a POC for furnishing services was established and periodically reviewed; and that the services were furnished while the beneficiary was under the care of the physician who established the POC.

Record Keeping Requirements

7. Medicare Part A regulations required HHAs providing services to Medicare patients to maintain complete and accurate medical records reflecting the medical assessment and diagnoses of their patients, as well as records documenting the actual treatment of patients to whom services were provided and for whom claims for reimbursement were submitted by the

HHA. These medical records were required to be sufficiently complete to permit Medicare, through Palmetto and other contractors, to review the appropriateness of Medicare payments made to the HHA under the Part A program.

8. Among the written records required to document the appropriateness of home health care claims submitted under Part A of Medicare were a: (i) POC that included the physician order, diagnoses, types of services/frequency of visits, prognosis/rehab potential, functional limitations/activities permitted, medications/treatments/nutritional requirements, safety measures/discharge plans, goals, and the physician's signature; and (ii) a signed certification statement by an attending physician certifying that the patient was confined to his or her home and was in need of the planned home health services.

9. Medicare Part A regulations required provider HHAs to maintain medical records of every visit made by a nurse, therapist, and home health aide to a beneficiary. The record of a nurse's visit was required to describe, among other things, any significant observed signs or symptoms, any treatment and drugs administered, any reactions by the patient, any instruction provided to the patient and the understanding of the patient, and any changes in the patient's physical or emotional condition. The home health nurse, therapist, and aide were required to document the hands-on personal care provided to the beneficiary as the services were deemed necessary to maintain the beneficiary's health or to facilitate treatment of the beneficiary's primary illness or injury. These written medical records were generally created and maintained in the form of "clinical notes" and "home health aide notes/observations."

10. Medicare regulations allowed Medicare certified HHAs to subcontract home health care services to nursing companies, therapy staffing services agencies, registries, or groups (nursing groups), which would bill the certified home health agency. The Medicare certified

HHA would, in turn, bill Medicare for all services rendered to the patient. The HHA's professional supervision over subcontracted-for services required the same quality controls and supervision as of its own salaried employees.

The Defendant and Related Individuals and Companies

11. **YAMILE DUAIN PORRO**, a resident of Miami-Dade County, was a medical doctor admitted to practice in the State of Florida.

12. Suncare Home Health Services, Inc. ("Suncare") was a corporation organized under the laws of the State of Florida and located at 7360 West 20th Avenue, Hialeah, Florida 33016. Suncare was purportedly an HHA engaged in the business of home health care services to Medicare beneficiaries. Suncare had a Medicare provider number and was eligible to receive reimbursement from Medicare for home health care services provided to beneficiaries.

13. Alexander Gonzalez, a resident of Miami-Dade County, managed and operated Suncare.

14. Virgilio Zayas, a resident of Miami-Dade County, was a Medicare beneficiary.

15. Individual #1 was a resident of Miami-Dade County.

COUNT 1
Conspiracy to Commit Health Care Fraud and Wire Fraud
(18 U.S.C. § 1349)

1. Paragraphs 1 through 15 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From at least as early as in or around November of 2013, and continuing through in or around January of 2014, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

YAMILE DUAIN PORRO,

did knowingly and willfully combine, conspire, confederate and agree with Alexander Gonzalez, Virgilio Zayas, Individual #1, and others known and unknown to the Grand Jury, to commit offenses against the United States, that is:

a. to knowingly and willfully execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of said health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1347; and

b. to knowingly and with the intent to defraud devise and intend to devise a scheme and artifice to defraud and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing the scheme and artifice, did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, signals, and sounds, in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for the defendant and her co-conspirators to unjustly enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to Medicare; (b) concealing the submission of false and fraudulent claims to Medicare and the receipt and transfer of fraud proceeds; and (c) diverting fraud proceeds for the personal use and benefit of themselves and others, and to further the fraud.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendant and her co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among other things, the following:

4. Alexander Gonzalez offered and paid kickbacks and bribes to patient recruiters, including Individual #1, in return for referring beneficiaries to Suncare so that Suncare could bill Medicare for home health care services that were not medically necessary and that were not provided to Medicare beneficiaries.

5. Individual #1, Virgilio Zayas, and others recruited patients and offered and paid kickbacks and bribes to these Medicare beneficiaries who agreed to serve as patients at Suncare to be used to submit claims to Medicare for home health care services which were not medically necessary and were not provided.

6. **YAMILE DUAIN PORRO** provided home health care prescriptions and POCs for Medicare beneficiaries purportedly treated at Suncare and other Miami-Dade HHAs in exchange for kickbacks paid in cash by Individual #1 and other patient recruiters.

7. **YAMILE DUAIN PORRO** signed prescriptions and POCs which falsely and fraudulently represented that Medicare beneficiaries, including Virgilio Zayas and others, who were billed for home health services by Suncare and other Miami-Dade HHAs, qualified for home health care services when, in fact, they did not qualify for home health care services.

8. **YAMILE DUAIN PORRO**, Alexander Gonzalez, Virgilio Zayas, Individual #1, and their co-conspirators caused Suncare and other Miami-Dade HHAs, through the use of interstate wires, to submit false and fraudulent claims to Medicare for home health care services which were not provided and were not medically necessary.

9. As a result of such false and fraudulent claims, **YAMILE DUAIN PORRO**,

Alexander Gonzalez, Virgilio Zayas, Individual #1, and their co-conspirators caused Medicare to make payments to Suncare and other Miami-Dade HHAs.

All in violation of Title 18, United States Code, Section 1349.

COUNTS 2-4
Health Care Fraud
(18 U.S.C. § 1347)

1. Paragraphs 1 through 15 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From at least as early as in or around November of 2013, and continuing through in or around January of 2014, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

YAMILE DUAIN PORRO,

in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud Medicare, a health care benefit program affecting commerce, as defined by Title 18, United States Code, Section 24(b), and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, Medicare.

PURPOSE OF THE SCHEME AND ARTIFICE

3. It was the purpose of the scheme and artifice for the defendant and her accomplices to unjustly enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to Medicare; (b) concealing the submission of false and fraudulent claims to Medicare and the receipt and transfer of fraud proceeds; and (c) diverting fraud proceeds for the personal use and benefit of themselves and others, and to further the fraud.

The Scheme and Artifice

4. The allegations contained in paragraphs 4 through 9 of the Manner and Means section of Count 1 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

Acts in Execution or Attempted Execution of the Scheme and Artifice

5. On or about the dates set forth below as to each count, in Miami-Dade County, in the Southern District of Florida, the defendant, **YAMILE DUAIN PORRO**, in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, the above-described scheme and artifice to defraud a health care benefit program affecting commerce, that is, Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit program, in that the defendant caused the submission of false and fraudulent Medicare claims, representing that various HHAs, as described below, had provided various home health care services to beneficiaries pursuant to **YAMILE DUAIN PORRO**'s POC:

Count	Medicare Beneficiary	Approx. Date of Submission of Claim	Medicare Claim Number	Service Claimed; Approximate Amount Paid
2	A.G.	01/08/2013	21400800831804FLR	Physical Therapy; $4,044
3	Virgilio Zayas	01/29/2014	21334500663904FLR	Physical Therapy; $4,016

In violation of Title 18, United States Code, Sections 1347 and 2.

COUNT 4
Conspiracy to Defraud the United States and to Pay and Receive Health Care Kickbacks (18 U.S.C. § 371)

1. Paragraphs 1 through 15 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From at least as early as in or around November of 2013, and continuing through in or around January of 2014, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

YAMILE DUAIN PORRO,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate, and agree with Individual #1, Virgilio Zayas, and others known and unknown to the Grand Jury, to commit certain offense against the United States, that is:

a. to defraud the United States by impairing, impeding, obstructing, and defeating through deceitful and dishonest means, the lawful government functions of the United States Department of Health and Human Services in its administration and oversight of the Medicare program;

b. to violate Title 42, United States Code, Section 1320a-7b(b)(2)(A), by knowingly and willfully offering and paying remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to a person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole or in part under a Federal health care program, that is, Medicare;

c. to violate Title 42, United States Code, Section 1320a-7b(b)(1)(A), by knowingly and willfully soliciting and receiving remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for referring an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole or in part under a Federal health care program, that is, Medicare;

d. to violate Title 42, United States Code, Section 1320a-7b(b)(2)(B) by knowingly and willingly offering and paying remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to a person to induce such person to purchase, lease, order, and arrange for and recommend purchasing, leasing, or ordering any good, facility, service, and item for which payment may be made in whole or in part under a Federal health care program, that is, Medicare; and

e. to violate Title 42, United States Code, Section 1320a-7b(b)(1)(B) by knowingly and willfully soliciting and receiving any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash or in kind in return for purchasing, leasing, ordering and arranging for and recommending purchasing, leasing, and ordering any good, facility, and service, and item for which payment may be made in whole and in part under a Federal health care program, that is, Medicare.

Purpose of the Conspiracy

3. It was the purpose of the conspiracy for the defendant and her co-conspirators to unlawfully enrich themselves by: (1) offering, paying, soliciting, and receiving kickbacks to ensure that beneficiaries would serve as patients of Suncare and other Miami-Dade HHAs, and that a doctor would write prescriptions and POCs home health care services for these beneficiaries; and

(2) submitting claims for Medicare items and services, primarily home health care services, that Suncare and other Miami-Dade HHAs purportedly provided to these beneficiaries.

Manner and Means of the Conspiracy

The manner and means by which the defendant and her co-conspirators sought to accomplish the object and purpose of the conspiracy included, among others, the following:

4. Alexander Gonzalez paid patient recruiters, including Individual #1, kickbacks for referring beneficiaries to Suncare for home health care services.

5. Patient recruiters paid beneficiaries kickbacks for attending Suncare for home health care services.

6. **YAMILE DUAIN PORRO** solicited and accepted kickbacks and bribes from co-conspirators in return for writing prescriptions and POCs for home health care services.

7. **YAMILE DUAIN PORRO** and her co-conspirators caused Suncare and other Miami-Dade HHAs to submit claims to Medicare for home health care services purportedly provided to Medicare beneficiaries.

8. **YAMILE DUAIN PORRO** and her co-conspirators caused Medicare to pay Suncare and other Miami-Dade HHAs based on home health care services alleged to have been provided to Medicare beneficiaries which were not medically necessary and/or never provided.

OVERT ACTS

In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one of the co-conspirators committed and caused to be committed, in the Southern District of Florida, at least one of the following overt acts, among others:

1. On or about November 8, 2013, **YAMILE DUAIN PORRO** solicited and accepted a kickback from Individual #1 in the approximate amount of $450.

2. On or about November 27, 2013, YAMILE DUAIN PORRO solicited and accepted a kickback from Individual #1 in the approximate amount of $600.

3. On or about December 18, 2013, YAMILE DUAIN PORRO solicited and accepted a kickback from Individual #1 in the approximate amount of $300.

4. On or about January 10, 2014, **YAMILE DUAIN PORRO** solicited and accepted a kickback from Individual #1 in the approximate amount of $300.

COUNTS 5-8
Receipt of Kickbacks in Connection with a Federal Health Care Program
(42 U.S.C. § 1320a-7b(b)(1)(B))

1. Paragraphs 1-15 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about the dates enumerated below as to each count, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

YAMILE DUAIN PORRO,

did knowingly and willfully solicit and receive remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for purchasing, leasing, ordering and arranging for and recommending purchasing, leasing, ordering and arranging for any good, facility, service and item, that is, home health services, for which payment may be made in whole and in part under a Federal health care program, that is, Medicare, as set forth below:

Count	Approximate Date	Approximate Kickback Amount
5	11/08/2013	$450
6	11/28/2013	$600
7	12/18/2013	$300
8	01/10/2014	$300

In violation of Title 42, United States Code, Section 1320a-7b(b)(1)(B) and Title 18, United States Code, Section 2.

FORFEITURE
(18 U.S.C. § 982 (a)(7))

1. The allegations contained in this Indictment are re-alleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendant **YAMILE DUAIN PORRO** has an interest.

2. Upon conviction of any violation of Title 18, United States Code, Section 1347 or Title 42, United States Code, Section 1320a-7b, or any conspiracy to commit such violations, as alleged in this Indictment, the defendant so convicted shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense pursuant to Title 18, United States Code, Section 982(a)(7).

All pursuant to Title 18, United States Code, Section 982(a)(7), and the procedures set forth in Title 21, United States Code, Section 853, made applicable by Title 18, United States Code, Section 982(b).

A TRUE BILL

_____
FOREPERSON

_____, Chief, Crim Div
WIFREDO A. FERRER
UNITED STATES ATTORNEY

_____
JAMES V. HAYES
ASSISTANT U.S. ATTORNEY