AO 91 (Rev. 11/11) Criminal Complaint

AUSA Timothy J. Storino (312) 353-5347

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

ZENAIDA DIMAILIG

CASE NUMBER: UNDER SEAL 15CR 337

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief. From no later than on or about April 24, 2014 and continuing until on or about January 23, 2015, at Chicago, in the Northern District of Illinois, Eastern Division, the defendant violated:

Code Section	*Offense Description*
Title 18, United States Code, Section 1347	Did participate in a scheme to defraud a health care benefit program, namely, Medicare, and to obtain, by means of materially false and fraudulent representations, money under the custody and control of Medicare in connection with the delivery of or payment for health care services, and, in execution of the scheme, on or about July 8, 2014, did knowingly and willfully cause to be submitted a false claim, specifically, a claim that certain previously-provided home health services qualified for payment, when defendant knew that the services did not qualify for payment.

FILED
6-8-15
JUN - 8 2015
THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

This criminal complaint is based upon these facts:

X Continued on the attached sheet.

JAMES AARON WOODILL
Special Agent, Federal Bureau of Investigation (FBI)

Sworn to before me and signed in my presence.

Date: June 8, 2015

Judge's signature

City and state: Chicago, Illinois

JEFFREY T. GILBERT, U.S. Magistrate Judge
Printed name and Title

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS | ss

AFFIDAVIT

I, JAMES AARON WOODILL, being duly sworn, state as follows:

1. I am a Special Agent with the Federal Bureau of Investigation. I have been so employed since approximately August 2009. As part of my law enforcement training, I have attended specialized training courses related to health care fraud investigations. As a Special Agent, I investigate, and have received training in the investigation of, fraud perpetrated against federal health care programs, including Medicare, Medicaid, and private insurance providers. I investigate criminal violations relating to individuals and businesses alleged to have violated federal criminal statutes including violations of Title 18, United States Code, Sections 1341, 1343, and 1347, as well as Title 42, United States Code, Section 1320a-7b(b), which relate to health care fraud, wire and mail fraud, and illegal kickback payments.

2. Through my training and experience, I have become familiar with the methods by which individuals and entities conduct health care fraud and the manner in which to investigate such violations, including consensual monitoring, surveillance, data analysis, and interviewing witnesses, informants, and others who have knowledge of fraud perpetrated against Medicare.

3. This affidavit is submitted in support of a criminal complaint alleging that ZENAIDA DIMAILIG has violated Title 18, United States Code, Section 1347

(health care fraud). Because this affidavit is being submitted for the limited purpose of establishing probable cause in support of a criminal complaint charging DIMAILIG with health care fraud, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that the defendant committed the offense alleged in the complaint.

4. The information contained in this Affidavit is based upon my personal training and experience, participation in this investigation, information that I have obtained from other federal law enforcement agents, and information from other sources including but not limited to witness interviews, consensually recorded conversations, Medicare records, public record databases, and bank records.

FACTS SUPPORTING PROBABLE CAUSE

Summary of investigation

5. As set forth in more detail below, DIMAILIG has paid cash to Medicare-covered patients in exchange for those patients' agreement, demonstrated through their signing documents provided to them by DIMAILIG, to allow DIMAILIG to utilize their Medicare information and provide that information to a home health care agency ("HHC"), for the purpose of billing unnecessary and non-rendered home health services to Medicare. In particular, DIMAILIG billed Medicare for home health care services for Medicare patients who, DIMAILIG knew, were not home bound and for services that she knew were not provided.

General Background

6. According to Illinois Department of Financial and Professional Regulation, DIMAILIG is a registered nurse who resides in Bensenville, Illinois, and whose license is active through May 31, 2016. According to law enforcement databases, DIMAILIG became a licensed nurse in April 1968.

7. According to Charter One bank records, DIMAILIG and her husband, Individual A, are both listed as Presidents of Berzen Home Care Services. According to Chase bank records, DIMAILIG and Individual A, are listed as Secretary and President respectively of Berzen Home Care Services. According to Chase bank records, DIMAILIG is listed as an authorized signer and Individual A is listed as a Manager for Assertive Consultants, LLC. Also, according to Chase bank records, there are no other managers, authorized signers or officers listed on the accounts of Assertive Consultants, LLC. According to Chase Bank and Charter One bank records, DIMAILIG and her husband, Individual A, are the owners and operators of Assertive Consultants, LLC and Berzen Home Care Services.

8. According to Medicare provider enrollment records, Home Health Care Agency 1 ("HHC1") is an agency located in Glenview, Illinois. HHC1 has been enrolled as a provider since approximately April 17, 2006, and was assigned a unique provider number under which HHC1 submits claims to the Medicare program for reimbursement. According to Medicare provider enrollment records, Home Health Care Agency 2 ("HHC2") is an agency located in Lincolnwood, Illinois. According to Medicare provider enrollment records, HHC2 has been enrolled as a

provider since approximately July 1, 2012, and was assigned a unique provider number under which HHC2 submits claims to the Medicare program for reimbursement.

9. On or about April 4, 2014, a Medicare beneficiary became a cooperating source working with law enforcement (hereinafter "CS").[1] As further detailed below, from beginning in or around approximately April 2014 and continuing until in or around March 2015, DIMAILIG paid kickbacks in the form of cash of approximately $20 to $50 to the CS, a Medicare beneficiary, to induce the CS to sign blank home health visit notes for home health services that did not occur, and to allow DIMAILIG to provide the CS's personal identifying information to HHC1 and HHC2 for the purpose of commencement of an initial episode of Medicare home health care services (defined by Medicare as a 60-day period) and, for recertification of the Medicare beneficiary for continued Medicare home health services through HHC1 and HHC2 that did not occur.

Medicare Program

10. Based on my training and experience, I know the following about the Medicare program:

- Medicare is a program administered by the Department of Health and Human Services that provides free or below-cost health care benefits

[1] The CS is being paid for his/her cooperation in the instant investigation. The CS has been cooperating with the FBI in relation to this investigation since on or about April 4, 2014, and has been paid approximately $400 for that cooperation. The CS has only cooperated with the FBI in relation to this case, and has not been paid in relation to any prior investigation. The CS has no prior felony convictions. FBI has made no promises to the CS in exchange for his/her cooperation.

for, among others, persons aged 65 and older, certain younger people with disabilities, and people with end-stage renal disease. Individuals who receive Medicare benefits are often referred to as Medicare beneficiaries.

- Medicare has several components, one of which is primarily relevant here. Medicare Part A covers expenses of health care services furnished in an institutional setting, such as a hospital or skilled nursing facility, or provided by a home health care agency or hospice. Medicare will only reimburse claims for services that are reasonable, medically necessary, and actually rendered.
- The Centers for Medicare and Medicaid Services ("CMS"), a federal agency within the Department of Health and Human Services, administers the Medicare program. CMS contracts with public and private organizations, usually health insurance carriers, to process Medicare claims and perform administrative functions. CMS currently contracts with Palmetto GBA to administer and pay Part A claims from the Medicare Trust Fund. The Medicare Trust Fund is a reserve of monies provided by the federal government.
- Enrolled providers of medical services to Medicare recipients are eligible for reimbursement for covered medical services. By becoming a participating provider in Medicare, enrolled providers agree to abide by the rules, regulations, policies and procedures governing

reimbursement, and to keep and allow access to records and information as required by Medicare.

- Providers of health care services to Medicare beneficiaries seeking reimbursement under the program must submit a claim form known as a CMS 1500, containing certain required information pertaining to the Medicare beneficiary, including the beneficiary's name, health insurance claim number, date the subject service was rendered, location where the services were rendered, type of services provided, and the number of procedures rendered. The claim form must also include the procedure code, the International Classification of Diseases, ninth revision ("ICD-9") code reflecting the patient's diagnosis, and the charges for each service provided, as well as the provider's assigned provider number, and a certification that such services were personally rendered by the provider.
- Under Medicare Part A, a patient is eligible for home health care coverage if a patient is homebound. A patient is homebound when an illness or injury restricts his ability to leave his place of residence except with the aid of supporting devices or if he has a condition which is such that leaving his home is medically contraindicated.
- As of November 19, 2013, the Medicare Benefit Policy Manual was revised so that a person is not considered "confined to the home" unless both of the following criteria are met:

- First, the patient must either (a) because of illness or injury, need the aid of supportive devices such as crutches, canes, wheelchairs, and walkers; the use of special transportation; or the assistance of another person in order to leave their place of residence, OR (b) have a condition such that leaving his or her home is medically contraindicated; and

- Second, there must exist a normal inability to leave the home, AND leaving home must require a considerable and taxing effort.

- To illustrate the factors used to determine whether a homebound condition exists, the Medicare Benefit Policy Manual provides the following examples of patients who would be considered "confined to the home":

  - "A patient paralyzed from a stroke who is confined to a wheelchair or requires the aid of crutches in order to walk";

  - "A patient who is blind or senile and requires the assistance of another person in leaving their place of residence";

  - "A patient who has lost the use of their upper extremities and, therefore, is unable to open doors, use handrails on stairways, etc., and requires the assistance of another individual to leave their place of residence"; and

  - "A patient who has just returned from a hospital stay involving surgery who may be suffering from resultant weakness and pain and, therefore, their actions may be restricted by their physician to certain specified and limited activities such as getting out of bed only for a specified period of time, walking stairs only once a day, etc."

- According to 42 C.F.R. § 484 and the Medicare Benefit Policy Manual, the Medicare Home Health Care Program operates as follows:

  - A Form 485 must be completed and signed by an attending physician in order for a home health provider to bill Medicare. The Form 485 is a plan of care and physician verification that

details, among other things, the home health certification time period, patient demographics, home health provider information, patient diagnoses, physician orders for discipline and treatment, and the goals of the treatment. The attending physician must sign the document to attest to the medical necessity of the care, and to certify the plan of treatment;

- A service must be rendered by the claimant-home health care provider to the patient before a claim is made for reimbursement for a home health service;

- Prior to submitting a claim, the claimant-home health care provider must assess the patient and complete an Outcome and Assessment Information Set ("OASIS") form in order to identify if the patient is homebound, the severity of symptoms, and the reimbursement rate to the home health care provider;

- The OASIS form contains an Activities of Daily Living section that is completed by a nurse during a patient's initial assessment. The ADL section includes information about whether or not a patient needed assistance or could do certain activities independently such as combing hair, shaving, dressing one's own self, using the bathroom, shopping and other activities;

- The OASIS form also contains a Nurse's Assessment section. In this section, the examining nurse assesses the patient's condition based upon her examination, observations, and discussions with the patient;

- The OASIS form is used to collect information on home health patient status and selected services. The Medicare Conditions of Participation for Home Health Agencies require agencies to collect the OASIS data set as part of their comprehensive patient assessment for all adult, non-maternity Medicare/Medicaid patients receiving skilled services;

- Home health care providers are required to enter the information collected from the OASIS forms into a software program available from CMS or software that conforms to CMS standard electronic record layout;

- The software program will identify the rate of reimbursement for a patient for a 60-day period episode of home health care.

After services have been rendered, the claimant-home health care provider submits a Request for Anticipated Payment claim for services using the reimbursement rate identified from the OASIS form;

- Medicare processes the RAP claim and generally pays 60% of the identified reimbursement rate to the claimant-home health care provider. After the 60-day episode is completed the provider will notify the claims contractor, and the contractor will be reimbursed the remaining 40% payment to the claimant-home health care provider. Medicare makes a payment on a claim by check or wire (electronic funds transfer-EFT) to the claimant-home health care provider or his/her designee; and

- The rate of reimbursement to the provider depends on the severity of the symptoms, a patient's daily living activities, and diagnosis collected from the OASIS form.

- Medicare typically approves home health care for a 60-day period of time. The 60-day periods are referred to as cycles. An initial cycle of home health care is known as a Start of Care ("SOC"). After the SOC, a patient must be "recertified" by a physician to receive additional 60-day cycles of home health care. These new cycles are known as "recertifications."

Statutory Framework

11. Based on my training and experience, I know the following:

- Title 42, United States Code, Section 1320a-7b(b)(2)(A) prohibits health care providers, including home health agencies, from offering or paying kickbacks in exchange for the referral of Medicare and Medicaid patients or other federally insured beneficiaries. Specifically, the statute provides in pertinent part:

> Whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to induce such person –
>
> . . .
>
> to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program . . . shall be guilty of a felony.

- Title 18, United States Code, Section 1347, provides that whoever knowingly and willfully executes a scheme or artifice to defraud any health care program or to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program, in connection with the delivery of or payment for health care benefits, shall be guilty of a felony.
- The Medicare program qualifies as a Federal Health Care Program for purposes of 42 U.S.C. § 1320(a)-7(b)(2). *See* 42 U.S.C. § 1320b-7b(f).

HHC3 and Historical Background to Investigation

12. According to Medicare provider enrollment records, Home Health Care Agency 3 ("HHC3") is a Medicare enrolled home health agency that is located in Chicago, Illinois. Information provided by another cooperating source ("CS2")[2]

[2] CS2 worked in the home health care industry and has provided information to law enforcement since at least 1995. Between 1995 and 2002, CS2 was paid approximately $8,000 by the FBI in exchange for CS2's information and assistance. CS2 was closed as a source in November 2010 because of concerns that CS2 had failed to disclose to the government that he/she had been involved in paying kickbacks to home health patients in connection with the investigation of a different home health agency. CS2 was reopened as a source a few months later, after further debriefings of CS2, which suggested that the issue

indicated that individuals at HHC3 were engaged in a scheme to defraud Medicare by creating false information on Medicare documentation and by billing home health services to Medicare for care that was either medically unnecessary or not provided, and did not qualify for payment. Further, in order to obtain patients, CS2 reported that individuals at HHC3 paid kickbacks to marketers, patients, and other referral sources in order to provide Medicare beneficiary information to the agency.

13. During the course of the investigation, agents learned from CS2 as well as from records recovered from a court-authorized search of HHC3's business that one of the primary referral sources to HHC3 was a nurse, that is, DIMAILIG. Interviews of CS2, Medicare beneficiaries, and former employees of HHC3, as well as the review of documents obtained from a search of HHC3's business premises pursuant to a search warrant approved by a federal magistrate judge, revealed that DIMAILIG did not regularly provide skilled nursing services to her patients but that Medicare was billed for those services. Additionally, law enforcement further learned from beneficiaries that DIMAILIG also paid cash to Medicare beneficiaries in order to coerce them to allow her to use their Medicare information, and to falsify home health documentation used, in part, to bill Medicare.

14. According to bank records for HHC3, DIMAILIG, Individual A, and Berzen Home Care Services, between May 2008 and September 2012, HHC3 paid a total of approximately $821,506 directly to DIMAILIG, Berzen Home Care Services, and Individual A.

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had been due to a misunderstanding between CS2 and law enforcement. CS2 has no criminal history.

15. Law enforcement has interviewed multiple patients of HHC3, many of which stated that they were patients recruited and seen by DIMAILIG. Law enforcement identified DIMAILIG's patients from documents recovered from the search of HHC3's business premises. The documents contained lists of patients and a notation indicating the HHC3 nurse assigned to visit the patient and DIMAILIG was identified as a nurse for certain patients. As detailed below, when interviewed the majority of those patients indicated that DIMAILIG never provided them with any skilled nursing care and often paid them to sign false documentation.

16. Law enforcement interviewed Patient GN.[3] Patient GN stated he/she met DIMAILIG in approximately 2008. Patient GN stated that DIMAILIG signed him/her up for home health services in or around 2008 or 2009. Patient GN further explained that DIMAILIG is a nurse, but switches home health agencies frequently. Patient GN stated that he/she knew that DIMAILIG should have been visiting Patient GN and his/her partner, Patient RB, once per week as part of the home

[3] Patient GN has been cooperating with the FBI in relation to this investigation since on or about January 15, 2014, and has been paid approximately $400 for that cooperation. Patient GN's cooperation ended on or about February 6, 2015. During that time, Patient GN voluntarily recorded multiple calls and approximately three in-person meetings with DIMAILIG and DIMAILIG paid Patient GN approximately $75 in those meetings in exchange for Patient GN signing false visit notes and other home health documents. Patient GN has only cooperated with the FBI in relation to this case, and has not been paid in relation to any prior investigation. According to a law enforcement database, Patient GN has two convictions, one for larceny (Retail Theft) and one for driving under the influence. Patient GN has additional arrests for DUI, traffic offenses, dangerous drugs, larceny and obstruction of justice. In May 2015, law enforcement interviewed Patient GN, who stated that, after he stopped cooperating with law enforcement, DIMAILIG has continued to pay Patient RB between $20 and $30 per visit and also gave Patient RB $20 on his/her birthday. Law enforcement admonished Patient GN that it was illegal for him/her or Patient RB to take payments for being a patient, and Patient GN stated that he/she understood.

health care plan, but visited only once per month. Patient GN stated that Patient RB was also signed up for home health services by DIMAILIG. When DIMAILIG visited, she instructed both Patient GN and Patient RB to sign four visit notes. In exchange, DIMAILIG paid each of them $20. Patient GN further recalled DIMAILIG instructed them that, if they were ever asked by anyone, to tell the authorities that she saw them once per week. Patient GN estimated DIMAILIG's visits lasted ten minutes, during which time she checked Patient GN's and Patient RB's blood pressure and breathing.

17. According to claims data, from approximately March 2010 to July 2011, Medicare paid approximately $12,005 to HHC3 for home health related services purportedly provided to Patient GN.

18. Federal law enforcement also interviewed Patient RB.[4] Like Patient GN, Patient RB stated that DIMAILIG typically visited once per month, but instructed him/her to sign four visit notes. Patient RB explained that DIMAILIG instructed both Patients GN and RB to sign the documentation in order to make it appear that she provided services even though those services never really happened. Patient RB further stated that DIMAILIG moved him/her and his/her

[4] Patient RB has been cooperating with the FBI in relation to this investigation since on or about January 8, 2014, and has been paid approximately $400 for that cooperation. Patient RB's cooperation ended on or about February 6, 2015. During that time, Patient RB voluntarily recorded multiple calls and three in-person meetings with DIMAILIG and DIMAILIG paid Patient RB approximately $75 in those meetings in exchange for Patient RB signing false visit notes and other home health documents. Patient RB has only cooperated with the FBI in relation to this case, and has not been paid in relation to any prior investigation. According to a law enforcement database, Patient RB has two convictions, one for larceny/theft and one for possession of a controlled substance. Patient RB has additional arrests for possession of a controlled substance, scalping, theft by deception, and theft.

partner (Patient GN) to other home health agencies at times. Patient RB did not consider himself/herself confined to the home at the time of the interview; for example, GN explained how he/she and RB regularly took public transportation to see their primary care physician and further explained that they take public transportation on a regular basis.

19. According to claims data, from approximately March 2010 to October 2011, Medicare paid approximately $19,351 to HHC3 for home health related services purportedly provided to Patient RB.

Search of HHC3's business office

20. On or about July 27, 2012, pursuant to a search warrant authorized by a magistrate judge in the Northern District of Illinois, law enforcement agents conducted a search of the offices of HHC3 located in Chicago, Illinois.

21. Relevant here, law enforcement seized numerous documents indicating that DIMAILIG was paid kickbacks for the referral of patients. For example, a hand-written note recovered from a folder labeled "Dimailig, Zenaida RN" and dated January 17, 2011 read as follows:

Referral (Admission)	=	~~$550.00~~	=	600.00
Recert	=	~~$150.00~~	=	175.00
Re admission	=	$200.00		

The document was approved/signed by Individual A and another person.

22. Located in the same folder taken during the search was invoice #0021 from Berzen Homecare Services Inc., with an address in Bensenville ("Bensenville

Residence"), and a telephone number. The invoice appeared to be printed from a computer. The invoice contained the following four columns: "Description, Quantity, Rate, and Amount." Under the Description column was "S.O.C."; under the Quantity column was "2"; under the Rate column was "600"; and under the Amount column was "1200." The invoice included a second line indicating Berzen Homecare Services Inc., billed HHC3 for an additional $180 for conducting two admission nursing visits. The invoice requested total payment of $1,380 and was dated January 6, 2012. Attached to the invoice was a HHC3 Home Healthcare Weekly Schedule form. The form bore the employee name, "Berzen Home Care Servs," and appeared to be signed by DIMAILIG, and dated January 6, 2012. The Weekly Schedule indicated that on January 6, 2012, Berzen Home Care Services conducted a S.O.C. for two patients. The document was recovered with a sticky note attached. Handwritten on the note was, "Berzen 2 – SOC/Referral." Also attached to the invoice was a check stub from HHC3's Chase bank account ending in 7654. The check number was 11701. The check was made payable to Berzen Home Care Services, Inc., in the amount of $1,380, and was dated January 6, 2012. Written on the check was "invoice #0021." Based on my training and experience, my knowledge of the instant investigation, and review of the records, the above-described document appears to represent an invoice from Berzen Home Care Services, a company associated with DIMALIG, requesting $1,200 in referral fees or kickbacks for the referral of two patients to HHC3 and $180 for two patient visits. HHC3, in

turn, wrote a check, check # 11701, in the amount of $1,380 for the invoiced services.

23. Law enforcement also recovered documents from the same search indicating that DIMAILIG at times may have forged patient's signatures on weekly nursing visit notes. Agents recovered an "Employee Verbal Counseling Document" and the section entitled "Employee Conduct" read as follows: "Employee has been noted to sign patients' names on the weekly RN visit notes (see attached notes). Employee has not reported whether the visit notes done were actual patient visits or falsified notes. This is ground for Fraudulent Documentation and actions and subject to termination of employment." In addition, the "Actions To Be Taken" section read: "RN involved will not sign for patient's signatures. If proven guilty again, RN is liable for fraud and can be reported to Medicare, IDPH, and IDPR." The document was signed and dated by DIMAILIG and an HHC3 RN supervisor. Attached to the document were numerous Nursing Clinical Progress Reports, some with the question, "pt sig?" Based on my training and experience, as well as my knowledge with respect to the instant investigation, the question "pt sig?" appears to relate to the authenticity of the patient signatures located on the forms.

Consensually-recorded conversations between DIMAILIG and CS[5]

24. As set forth in greater detail below, evidence gathered during the investigation shows that DIMAILIG paid the CS, a Medicare beneficiary working with federal law enforcement, cash payments in exchange for the CS becoming and remaining a home health patient. DIMAILIG also instructed the CS to sign certain documents each time she visited the CS so that she could document visiting the CS on days that she did not actually visit the CS.

On April 25, 2014, DIMAILIG visited the CS and paid $50 to the CS

25. In or around March or April 2014, Patients GN and RB referred DIMAILIG to the CS. On April 25, 2014, at the direction of law enforcement, the CS conducted a consensually-recorded meeting with DIMAILIG in the CS's home. As reflected in the audio/video recording and discussed in more detail below, DIMAILIG paid $50 in cash to the CS, and had the CS sign up for home health in addition to signing additional documents.

26. On April 25, 2014, prior to the CS's meeting with DIMAILIG, federal agents searched the CS and found $17.50 on his/her person but no contraband or other money. The CS received an unrecorded telephone call from DIMAILIG.

[5] The recorded conversations throughout this affidavit have been summarized. The content of the conversations are preliminary summaries and not final transcriptions of the consensually-recorded meetings. At points following a quotation, I have included my interpretation of words and phrases used in the recorded conversations. My interpretations are based on information received from the CS, the contents and context of the recorded conversation, my knowledge of the investigation as a whole, my experience and training, and the experience and training of other law enforcement agents in this investigation. The summaries below do not include all statements or topics covered during the course of the consensually-recorded meetings and conversations, and not all telephone conversations and meetings between DIMAILIG and the CS have been recorded.

According to the CS, DIMAILIG informed the CS that she was 1.5 miles away. Law enforcement then placed hidden audio/video recording devices in the living room of the CS's home and activated those devices.

27. Based on law enforcement surveillance, DIMAILIG arrived at the CS's home about 20 minutes later. As reflected in the audio/video recording, DIMAILIG met with the CS in the living room area of the CS's house. Shortly after entering the CS's home, DIMAILIG paid $50 to the CS. The CS told DIMAILIG, "Yeah, I was worried about you, cause I have to be somewhere ... soon." DIMAILIG responded, "Yeah I know, but I give you money first."

28. According to the audio/video recording, after the exchange, DIMAILIG explained to the CS that she would see the CS once per month, but instructed the CS to tell the doctor that DIMALIG visits the CS once per week. DIMAILIG stated, "Yeah, you know what, ah, so when the doctor's see you, you'll always say if the doctor asks you, I see you every week." The CS clarified, "I should say that you see me every week?" DIMAILIG explained that the CS would need to sign multiple documents, but advised the CS that if anyone asked, the CS was to state that he/she signed only one document: "Yeah. And also ah, I just let you sign, just one paper. You just tell him that. And I'll see you in a month. I give you another, $25 dollars." The CS responded, "Oh great, okay, yeah cause [Patient GN], told me that you would have something for me."

29. According to the audio/recording, DIMAILIG offered to pay the CS if the CS referred anyone to her. The CS clarified, "And so, if you need a

recommendation, they would have to be, um, 55 years old or older?" DIMAILIG responded, "Yeah, they have to have blue and white card," which I understood to be a reference to a Medicare card, which is blue and white.

30. According to the audio/recording, the CS and DIMAILIG then engaged in small talk, and the audio/video recording captured DIMAILIG completing paperwork and having the CS sign multiple documents. While the CS did so, DIMAILIG instructed the CS to not write the date on the document. After the CS signed the paperwork, DIMAILIG took the CS's blood pressure and then reminded the CS, "Just when the doctors see you again, don't say that you drive, Okay?"[6] The CS and DIMAILIG discussed the CS's medical conditions and DIMAILIG informed the CS that she will be back in a month. The CS asked DIMAILIG to call first because he/she is not home very often. DIMAILIG responded, "Yeah, okay, and then if they call you in Medicare, or in the office, then I see you every week ... Also with the doctor, I'm just sign one note when I come." The CS again clarified, "Okay, I see you once a month, but if anyone asks I should say once a week?" DIMAILIG responded, "Yeah." DIMAILIG then left the CS's residence.

31. Shortly thereafter, law enforcement deactivated the recording devices. Law enforcement searched the CS and discovered $17.50 on his/her person as well as $50, which the agents seized and which the CS reported was handed to him/her by DIMAILIG during the recorded meeting.

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[6] Based on my training and experience, DIMAILIG encouraged the CS to advise his/her doctor(s) that the CS cannot drive in order to help establish that the CS was home bound.

32. According to claims data, HHC1 submitted a final claim to Medicare on July 8, 2014, for an episode of home health care that began on April 25, 2014 and ended on June 23, 2014. Medicare paid HHC1 approximately $2,264 based upon the claim. The details of the claim indicate that HHC1 billed for nine home nursing visits during that episode.

33. According to the CS, after the April 25, 2014 but before June 18, 2014, the CS did not meet with DIMALIG again. During that same time frame, according to the CS, the CS did not meet with any other nurse from HHC1.

On June 18, 2014, DIMAILIG visited the CS and paid $20 to the CS

34. On June 18, 2014, at the direction of law enforcement, the CS conducted a consensually-recorded meeting with DIMAILIG in the CS's home. As reflected in the audio/video recording and discussed in more detail below, DIMAILIG paid $20 to the CS, and instructed the CS to sign certain documents.

35. After April 25, 2014, and prior to June 18, 2014, CS had approximately two recorded telephone conversations with DIMAILIG to set up the June 18, 2014, meeting.

36. Prior to the CS's meeting with DIMAILIG, law enforcement searched the CS and found $61 on his/her person but no contraband or other money. Law enforcement then placed hidden audio and video recording devices in living room of the CS's home and activated those devices.

37. As reflected in the audio/video recording, DIMAILIG arrived at the CS's home, and met with the CS in the living area of the CS's home. After

DIMAILIG entered the residence, she asked the CS if he/she had been seen by a doctor recently. The CS replied that the doctor had been trying to call to make an appointment, but the CS worked most weekends which was when the doctor wanted to visit the CS. DIMAILIG responded, "You don't tell them that you work?" The CS asked if he/she should tell the doctor that he/she worked, and DIMAILIG responded "no" and asked the CS if he/she was paid by a check or "under the table." The CS answered, "Uhhmm, some under the table, some by check, it's all part time," and DIMAILIG reiterated that the CS should not mention his/her work to the doctors.[7]

38. According to the recording, DIMAILIG then handed documents to the CS to sign. The CS indicated that there were four documents to sign, and DIMAILIG confirmed she required four signatures. The audio/video recording captured as the CS signed certain documents and returned the documents to DIMAILIG. Upon returning the documents, the audio/video recording captured DIMAILIG handing currency to the CS, who stated, "$20." DIMAILIG confirmed: "Yes."

39. According to the recording, the CS and DIMAILIG engaged in small talk, and the audio/video recording captured DIMAILIG completing paperwork. Toward the end of the meeting, DIMAILIG confirmed she will pay $20 to the CS each time she meets with him/her. After confirming the amount, DIMAILIG advised the CS, "If they call you in the office, I see you every week ... If they ask you I see you every week." DIMAILIG again advised the CS not to tell the doctor that he/she

[7] Based on my training and experience, DIMAILIG directed the CS not to advise the doctor(s) that the CS worked in order to help establish that the CS was home bound.

worked. Near the end of the meeting, the CS asked DIMAILIG when he/she will see her next, and she informed him/her in one month. DIMAILIG then left the residence.

40. Shortly after DIMAILIG left, law enforcement deactivated the recording devices. Law enforcement searched the CS and discovered $61 on his/her person as well as $20, which the agents seized and which the CS stated was handed to him/her by DIMAILIG during the recorded meeting.

41. According to claims data, HHC1 submitted a claim to Medicare on September 12, 2014 for an episode of home health care that began on June 24, 2014 and ended on August 21, 2014. Medicare paid HHC1 approximately $2,264 based upon the claim. The details of the claim indicate that HHC1 billed for nine home nursing visits during that episode.

42. According to the CS, after the June 18, 2014, visit but before September 24, 2014, the CS did not meet with DIMALIG again, and the CS did not meet with any other nurse from HHC1 during that same time frame.

On September 24, 2014, DIMAILIG paid $30 to the CS

43. On September 24, 2014, at the direction of law enforcement, the CS conducted a consensually-recorded meeting with DIMAILIG in the CS's home. As reflected in the audio/video recording and as discussed in more detail below, DIMAILIG paid $30 to the CS, had the CS sign up for home health services with a new home health care company, and instructed the CS to sign certain documents.

44. After June 18, 2014, and prior to September 24, 2014, CS had multiple recorded telephone conversations with DIMAILIG to schedule an in-person meeting, which ultimately occurred on September 24, 2014.

45. Prior to the CS's meeting with DIMAILIG, law enforcement searched the CS and found $62 on his/her person but no contraband or other money. Law enforcement then placed hidden audio and video recording devices in the living room of the CS's home and activated those devices.

46. According to the recording, upon her arrival, DIMAILIG provided the CS with a new home health book from HHC2, and she explained that the CS was discharged from the last company after the episode finished. The CS informed DIMAILIG that he/she recently saw a doctor and that he/she advised the doctor that he/she wanted a cane. The CS stated: "I told her about the cane that you, had said to get and she said she could get that." DIMAILIG replied, "Yeah." The audio-video recording captured as DIMAILIG filled out numerous documents and asked the CS to sign several of the documents. DIMAILIG instructed the CS not to date the forms. DIMAILIG took the CS's blood pressure and reviewed the CS's medications. While filling out paperwork, DIMAILIG handed $30 to the CS.

47. According to the recording, the CS inquired why he/she had to be seen every month by a doctor: "And I was wondering why I need to be, ah, visited every month?" DIMAILIG replied, "Medicare, yeah it's Medicare. That's what Medicare wants okay? So it means to say you're qualified." The CS asked, "So anyway, ah, if

I'm kind of okay, I was wondering why I need to be seen every month?" DIMAILIG replied, "Yeah it's ah, it's routine."[8]

48. According to the recording, for the remainder of the meeting, DIMAILIG inquired about the CS's medical history and wrote notes as the CS spoke to her. DIMAILIG then left the residence.

49. Shortly after DIMAILIG left, law enforcement deactivated the recording equipment. Law enforcement searched the CS and discovered $62 on his/her person as well as $30, which the agents seized and which the CS reported was handed to him/her by DIMAILIG during the recorded meeting.

50. According to claims data, HHC2 submitted a claim to Medicare on October 1, 2014, for an episode of home health care that began on September 26, 2014, and ended on November 24, 2014. Medicare paid HHC2 approximately $1,975 based upon the claim. The details of the claim indicate that HHC2 billed for nine home nursing visits during that episode.

51. According to the CS, after the September 24, 2014, visit but before January 23, 2015, the CS did not meet with DIMALIG again, and the CS did not meet with any other nurse for HHC1 during that same time frame.

On January 23, 2015, DIMAILIG paid $30 to the CS

52. On January 23, 2015, at the direction of law enforcement, the CS conducted a consensually-recorded meeting with DIMAILIG in the living room of the CS's home. As reflected in the audio/video recording and as discussed in more

[8] Based on my training and experience, no Medicare requirement mandating a specific number of doctor visits exists.

detail below, DIMAILIG paid $30 to the CS, and instructed the CS to sign certain documents.

53. After September 24, 2014, and prior to January 23, 2015, CS had multiple recorded telephone conversations with DIMAILIG to schedule an in-person meeting, which ultimately occurred on January 23, 2015.

54. Prior to the CS's meeting with DIMAILIG, law enforcement searched the CS and found $4 on his/her person but no contraband or other money. Federal agents then placed hidden audio and video recording devices in the living room of the CS's home and activated those devices.

55. As reflected in the audio/video recording, DIMAILIG arrived at the CS's home, and met with the CS in the living room. After DIMAILIG entered the residence, she exchanged small talk with the CS, and placed a blood pressure cuff on the CS's wrist. DIMAILIG also requested the CS's home health folder.[9] The CS explained that he/she was not sure what happened to the folder.

56. Later, the audio/video recording captured DIMAILIG remove currency from a wallet and hand it to the CS, who stated, "Thank you." DIMAILIG then began completing paperwork, asking the CS how much he/she weighs. DIMAILIG then handed the CS a document to sign. The CS asked, "What is this for?" DIMAILIG explained, "Your note, that's the note." The CS then stated, "And the date is?" DIMAILIG instructed, "Don't put it." The CS clarified, "Don't put it?"

[9] Based on my knowledge of the investigation, the home health folder referred to by DIMAILIG contained a visit log and other home health documentation. The CS had previously provided the folder to law enforcement.

DIMAILIG responded, "No."[10] DIMAILIG thanked the CS for signing documents, and exited the residence.

57. After DIMAILIG left, law enforcement deactivated the audio-video recording. Law enforcement searched the CS and discovered $4 on his/her person as well as $30, which the agents seized and which CS reported was handed to him/her by DIMAILIG during the recorded meeting.

58. Law enforcement has not yet obtained claims data related to DIMAILIG's visit with the CS on or about January 23, 2015.

Additional meeting between DIMAILIG and CS

59. Since January 23, 2015, CS met with DIMAILIG on the following dates: March 6, 2015, March 23, 2015, and May 8, 2015. On March 6, 2015, DIMAILIG paid CS $50 during a consensually-recorded meeting. According to the CS, on March 23, 2015, DIMAILIG showed up unannounced at CS's residence and paid CS $30 to sign several forms during an unrecorded meeting. On May 8, 2015, DIMAILIG paid CS $25 during a consensually-recorded meeting.

DIMAILIG's bank records

60. According to Chase and Charter One bank records for the personal bank accounts of DIMAILIG and her husband, between 2012 and 2014, the accounts received approximately $343,862 in payments from HHC1 and $118,044 in payments from HHC2.

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[10] Based on my training and experience, DIMAILIG instructed the CS not to date the form so she (DIMAILIG) could date it with false service dates chosen by herself or the home health agency to support the Medicare billing.

CONCLUSION

61. Based on the foregoing, I respectfully submit that there is probable cause to believe that ZENAIDA DIMAILIG has violated Title 18, United States Code, Section 1347 (Health Care Fraud), in that DIMAILIG did knowingly and willfully participate in a scheme to defraud a health care benefit program, namely, Medicare, and to obtain, by means of false and fraudulent representations, money under the control of Medicare in connection with the delivery of or payment for health care services, and, in execution of the scheme, on or about July 8, 2014, did knowingly cause to be submitted a false claim, specifically, a claim that certain home health services previously-provided to a patient qualified for payment, when, in fact, defendant knew that the services did not qualify for payment.

FURTHER AFFIANT SAYETH NOT.

JAMES AARON WOODILL
Special Agent, Federal Bureau of Investigation

SUBSCRIBED AND SWORN to before me on June 8, 2015.

JEFFREY T. GILBERT
United States Magistrate Judge