

FILED  
CLERK, U.S. DISTRICT COURT  
09/15/2020  
CENTRAL DISTRICT OF CALIFORNIA  
BY: DM DEPUTY

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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

January 2020 Grand Jury

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
JOHN PAUL THROPAY, M.D.,  
  
Defendant.

CR 2:20-cr-00418-JFW  
  
I N D I C T M E N T  
  
[18 U.S.C. § 1347: Health Care  
Fraud; 18 U.S.C. § 982: Criminal  
Forfeiture]

The Grand Jury charges:

COUNTS ONE THROUGH FOUR  
[18 U.S.C. §§ 1347, 2]

A. INTRODUCTORY ALLEGATIONS

At times relevant to this Indictment:

1. Blue Sky Hospice, Inc. ("Blue Sky"), was a hospice care provider located at 16935 Vanowen Street, Suite 205, Van Nuys, California 91406, in Los Angeles County, within the Central District of California.
2. Defendant JOHN PAUL THROPAY, M.D., was a resident of Arcadia, California, within the Central District of California. Defendant THROPAY was a physician licensed in California who worked for Blue Sky from approximately October 2014 to October 2016. From

1 at least July 2015 to July 2016, defendant THROPAY was the Medical  
2 Director of Blue Sky. Defendant THROPAY was also the Medical  
3 Director associated with several other hospice companies.

4 3. OWNER 1 was a co-owner of Blue Sky.

5 4. OWNER 2 was a co-owner of Blue Sky, a registered nurse  
6 licensed in California, and the Director of Nursing ("DON") at Blue  
7 Sky.

8 5. NURSE 1 was a licensed vocational nurse licensed in  
9 California who worked for Blue Sky.

10 The Medicare Program

11 6. Medicare was a federal health care benefit program,  
12 affecting commerce, that provided benefits to individuals who were  
13 65 years and older or disabled. Medicare was administered by the  
14 Centers for Medicare and Medicaid Services ("CMS"), a federal agency  
15 under the United States Department of Health and Human Services.  
16 Medicare was a "health care benefit program" as defined by Title 18,  
17 United States Code, Section 24(b).

18 7. Individuals who qualified for Medicare benefits were  
19 referred to as Medicare "beneficiaries." Each Medicare beneficiary  
20 was given a Health Identification Card Number ("HICN") unique to that  
21 beneficiary.

22 8. Hospices, physicians, and other health care providers who  
23 provided services to beneficiaries that were reimbursed by Medicare  
24 were referred to as "providers."

25 9. To become eligible to participate in Medicare, Medicare  
26 required prospective providers to be licensed by a state or local  
27 agency. After obtaining the applicable license, Medicare required  
28 prospective hospice providers to submit an application in which the

1 prospective provider agreed to: (a) comply with all Medicare-related  
2 laws and regulations, including the Anti-Kickback Statute, 42 U.S.C.  
3 § 1320a-7b(b), which prohibits the offering, paying, soliciting, or  
4 receiving of any remuneration for the referral of Medicare  
5 beneficiaries; and (b) not submit claims for payment to Medicare  
6 knowing they were false or fraudulent or with deliberate ignorance or  
7 reckless disregard of their truth or falsity. If Medicare approved  
8 the application, Medicare assigned the provider an identifying  
9 number, which enabled the provider to submit claims to Medicare for  
10 reimbursement for services provided to Medicare beneficiaries.

11 10. To qualify for reimbursement for hospice services, Medicare  
12 required: (1) a physician to certify that the beneficiary was  
13 terminally ill; and (2) the beneficiary to sign an election form  
14 statement choosing hospice care instead of other Medicare benefits.  
15 Medicare considered a beneficiary to be "terminally ill" if the  
16 beneficiary's life expectancy was six months or less if the  
17 beneficiary's illness ran its normal course. Hospice services  
18 reimbursed by Medicare were palliative in nature and included, but  
19 were not limited to, medications to manage pain symptoms, necessary  
20 medical equipment, and bereavement services to surviving family  
21 members. Once a beneficiary chose hospice care, Medicare would not  
22 cover treatment intended to cure the beneficiary's terminal illness.  
23 The election form was required to include an acknowledgement that the  
24 beneficiary had been given a full understanding of hospice care,  
25 including the palliative rather than curative nature of treatment,  
26 and an acknowledgement that the beneficiary understood that certain  
27 Medicare services were waived by the election.

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1           11. If the beneficiary had a primary care physician ("PCP"),  
2 Medicare required the PCP and a physician at a hospice to certify in  
3 writing that the beneficiary was terminally ill with a life  
4 expectancy of six months or less, if the terminal illness ran its  
5 normal course.

6           12. Medicare was divided into different program "parts": Part  
7 A, Part B, Part C, and Part D. Medicare covered hospice services for  
8 those beneficiaries who were eligible for Medicare Part A (hospital-  
9 related services). When a Medicare beneficiary elected hospice  
10 coverage, the beneficiary waived all rights to Medicare Part B  
11 (outpatient physician services and procedures) coverage of services  
12 to treat or reverse the beneficiary's terminal illness while the  
13 beneficiary was on hospice.

14           13. A beneficiary could elect to receive hospice benefits for  
15 two periods of 90 days and, thereafter, additional service for  
16 periods of 60 days per period.

17           14. After the second 90-day period, for the beneficiary to  
18 continue to receive hospice benefits, Medicare required that a  
19 physician re-certify that the beneficiary was terminally ill and  
20 include clinic findings or other documentation supporting the  
21 diagnosis of terminal illness. For re-certifications, Medicare  
22 required a hospice physician or nurse practitioner to meet with the  
23 beneficiary in person and conduct a face-to-face evaluation before  
24 signing a certification of terminal illness.

25           15. Most providers, including Blue Sky, submitted their claims  
26 electronically pursuant to an agreement with Medicare that they would  
27 submit claims that were accurate, complete, and truthful.

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1 B. THE FRAUDULENT SCHEME

2 16. Beginning no later than in or around October 2014, and  
3 continuing through at least in or around October 2016, in Los Angeles  
4 County, within the Central District of California, and elsewhere,  
5 defendant THROPAY, together with others known and unknown to the  
6 Grand Jury, aiding and abetting each other, knowingly, willfully, and  
7 with intent to defraud, executed, and attempted to execute, and  
8 willfully caused to be executed a scheme and artifice: (1) to defraud  
9 a health care benefit program, namely, Medicare, as to material  
10 matters in connection with the delivery of and payment for health  
11 care benefits, items, and services; and (2) to obtain money from  
12 Medicare by means of material false and fraudulent pretenses,  
13 representations, and promises, and the concealment of material facts  
14 in connection with the delivery of and payment for health care  
15 benefits, items, and services.

16 C. MEANS TO ACCOMPLISH THE SCHEME TO DEFRAUD

17 17. The fraudulent scheme operated, in substance, in the  
18 following manner:

19 a. In operating Blue Sky, OWNER 1 and OWNER 2 paid  
20 recruiters, known as "marketers" or "cappers," including NURSE 1,  
21 illegal kickbacks in exchange for referring beneficiaries to Blue  
22 Sky. The amount of the kickback varied, but was approximately \$800  
23 per beneficiary per month the beneficiary remained on hospice care  
24 with Blue Sky. The recruiters often paid the Blue Sky beneficiaries  
25 they recruited a portion of this kickback, usually approximately \$300  
26 to \$400 per month that the beneficiary remained on hospice care with  
27 Blue Sky.

28

1           b.    If the beneficiary recruited was eligible to receive  
2 hospice benefits from Medicare, OWNER 1 or OWNER 2 directed a nurse  
3 or physician, such as defendant THROPAY, to conduct an evaluation of  
4 the beneficiary. Blue Sky paid defendant THROPAY for performing  
5 evaluations of Medicare beneficiaries.

6           c.    During these evaluations, defendant THROPAY often  
7 conducted only a cursory examination, without consulting medical  
8 records or the beneficiary's PCP about the beneficiary's conditions,  
9 diagnoses, or prognoses, before falsely certifying that the  
10 beneficiaries were terminally ill. In fact, and as defendant THROPAY  
11 knew from his purported examinations of the beneficiaries, the  
12 overwhelming majority of the Blue Sky hospice beneficiaries he saw  
13 were not terminally ill.

14           d.    In order to induce beneficiaries to continue to sign  
15 up for the unnecessary hospice care for which Blue Sky would receive  
16 payment from Medicare, defendant THROPAY would fail to explain to the  
17 beneficiaries either that he was certifying them as having a terminal  
18 illness that would likely cause them to die in six months or less or  
19 the nature of hospice services, including that accepting services  
20 from Blue Sky hospice would affect the beneficiaries' ability to  
21 receive services from other providers, including their PCPs.

22           e.    Once the beneficiary was admitted to hospice, OWNER 1  
23 and OWNER 2 caused Blue Sky to fraudulently bill Medicare for  
24 medically unnecessary hospice services for beneficiaries obtained  
25 through the payment of illegal kickbacks.

26           18.   Between October 2014 and October 2016, Blue Sky submitted  
27 to Medicare approximately \$3,002,443 in claims for hospice services  
28 provided to beneficiaries with defendant THROPAY listed as the

1 referring or attending physician on the claims, and was paid  
2 approximately \$1,761,401 based on these claims.

3 C. EXECUTIONS OF THE FRAUDULENT SCHEME

4 19. On or about the dates set forth below, within the Central  
5 District of California, and elsewhere, defendant THROPAY, together  
6 with others known and unknown to the Grand Jury, aiding and abetting  
7 each other, knowingly and willfully executed, attempted to execute,  
8 and willfully caused the execution of the fraudulent scheme described  
9 above by falsely certifying that the beneficiaries identified below  
10 were terminally ill, and causing to be submitted to Medicare the  
11 following false and fraudulent claims for payment of hospice  
12 services:

COUNT	CLAIM NO.	DATE CLAIM PAID	AMOUNT OF CLAIM BILLED	BENEFICIARY
ONE	21524600280004CAR	9/17/2015	\$7,989	P.L.
TWO	21524600302104CAR	9/28/2015	\$7,989	E.L.
THREE	21527800321504CAR	10/19/2015	\$7,095	M.L.
FOUR	21530800182404CAR	11/18/2015	\$6,474	F.C.

FORFEITURE ALLEGATION

[18 U.S.C. § 982]

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3 1. Pursuant to Rule 32.2(a), Fed. R. Crim. P., notice is  
4 hereby given that the United States will seek forfeiture as part of  
5 any sentence, pursuant to Title 18, United States Code, Section  
6 982(a)(7) and Title 28, United States Code, Section 2461(c), in the  
7 event of the defendant JOHN PAUL THROPAY, M.D.'s conviction of the  
8 offenses set forth in any of Counts One through Four of this  
9 Indictment.

10 2. Defendant THROPAY, if so convicted, shall forfeit to the  
11 United States of America the following:

12 (a) All right, title, and interest in any and all  
13 property, real or personal, that constitutes or is derived, directly  
14 or indirectly, from the gross proceeds traceable to the commission of  
15 any offense of conviction; and

16 (b) To the extent such property is not available for  
17 forfeiture, a sum of money equal to the total value of the property  
18 described in subparagraph (a).

19 3. Pursuant to Title 21, United States Code, Section 853(p),  
20 as incorporated by Title 18, United States Code, Section 982(b),  
21 defendant THROPAY, if so convicted, shall forfeit substitute  
22 property, up to the total value of the property described in the  
23 preceding paragraph if, as a result of any act or omission of  
24 defendant THROPAY, the property described in the preceding paragraph,  
25 or any portion thereof (a) cannot be located upon the exercise of due  
26 diligence; (b) has been transferred, sold to or deposited with a  
27 third party; (c) has been placed beyond the jurisdiction of the  
28 Court; (d) has been substantially diminished in value; or (e) has

1 been commingled with other property that cannot be divided without  
2 difficulty.

3  
4 A TRUE BILL

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6 /S/

7 \_\_\_\_\_  
Foreperson

8  
9 NICOLA T. HANNA  
United States Attorney

10 

11 BRANDON D. FOX  
12 Assistant United States Attorney  
Chief, Criminal Division

13 RANEE A. KATZENSTEIN  
14 Assistant United States Attorney  
Chief, Major Frauds Section

15  
16 KRISTEN A. WILLIAMS  
Assistant United States Attorney  
17 Deputy Chief, Major Frauds Section

18 DANIEL KAHN  
Acting Chief, Fraud Section  
19 U.S. Department of Justice

20 ALLAN MEDINA  
Deputy Chief, Fraud Section  
21 U.S. Department of Justice

22  
23 NIALL M. O'DONNELL  
Assistant Chief, Fraud Section  
24 U.S. Department of Justice

25 EMILY Z. CULBERTSON  
Trial Attorney, Fraud Section  
26 U.S. Department of Justice