

SEALED

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

United States of America

v.

Jeremiah Faber

Case No.:

20-3150MTJ

CRIMINAL COMPLAINT

I, the undersigned complainant, being duly sworn, state that the following is true and correct to the best of my knowledge and belief:

Count 1: 18 U.S.C. § 1347

1. In or around March and April 2020, Harmony Healthcare, LLC dba Harmony Medical Care (Harmony) advertised on Facebook, television, and other forums that it was offering COVID-19 testing to Medicare and Medicaid beneficiaries as a part of Harmony's "Comprehensive Whole-body Assessment" (CWA) test in order to induce participants to complete the full CWA. D.L. encountered Harmony's posting on social media and contacted them in order to get a COVID-19 test and COVID-19 antibody test. On or about April 21, 2020, D.L. went to a Harmony clinic and had several tests administered by a technician that were routinely given as part of Harmony's CWA including, among others, bloodwork, an allergy scratch test, and bone density tests, none of which were pre-ordered by a qualified medical professional. As was Harmony's practice, D.L. was not required to make a co-pay and was told that Harmony would bill insurance carrier AHCCCS (Mercy Care) for the entire visit. Harmony submitted 15 claims for reimbursement for D.L.'s CWA testing including claims that falsely billed for services in the name of a physician that had no involvement with D.L.'s testing and billed for services that were medically unnecessary based on D.L.'s medical history. No codes were submitted for the COVID-19 testing. On May 12, 2020, Mercy Care issued payment to Harmony for the claims submitted in D.L.'s name.

2. On or about April 24, 2020, within the District of Arizona and elsewhere, the defendant, JEREMIAH FABER, dba Harmony Medical Care, and others both known and unknown, knowingly and willfully executed and attempted to execute the above described scheme and artifice to defraud the Arizona Health Care Cost Containment System (AHCCCS), a health care benefit program under 18 U.S.C. § 24(b), in connection with the delivery of and payment for health care benefits, items, and

SCANNED

services, in violation of Title 18, United States Code, Section 1347.

Count 2: 18 U.S.C. § 1957

3. On or about April 27, 2020, in the District of Arizona, the defendant, JEREMIAH FABER, and others both known and unknown, did knowingly engage and attempt to engage in a monetary transaction through a financial institution, affecting interstate or foreign commerce, in criminally derived property of a value greater than \$10,000.00, to wit: transacted a check for \$150,000.00 from Wellsprings Medical Services, LLC Gateway Bank account ending in X7794 to Premier Title Agency, such funds having been derived from the health care fraud activities set forth in Count 1, in violation of Title 18, United States Code, Section 1957.

I further state that I am a Special Agent from the Federal Bureau of Investigations and that this complaint is based on the following facts:

See Attached Statement of Probable Cause Incorporated By Reference Herein.

Continued on the attached sheet and made a part hereof: Yes No

AUTHORIZED BY: Monica Edelstein, AUSA *Monica Edelstein*

SA, Heather Rivera
Federal Bureau of Investigation

H Rivera

Signature of Complainant

Sworn to telephonically.
5-25-20 @ 5:25 p.m.
Date

Phoenix, Arizona
City and State

HONORABLE MICHAEL T. MORRISSEY
United States Magistrate Judge

M Morrissey

Signature of Judicial Officer

Statement of Probable Cause in Support of Criminal Complaint

I, Heather Rivera, a Special Agent (“SA”) with the Federal Bureau of Investigation (“FBI”), Phoenix Division, having been duly sworn, depose, and state the following:

1. I am a SA with the FBI and have been so employed for more than seven years. I am assigned to the FBI’s Phoenix Division, where I investigate Complex Financial Crimes. I trained at the FBI Academy, which included training related to both cyber and financial fraud investigations. I have gained experience in conducting such investigations through formal training and on-the-job training, as well as consultation with more experienced agents. During the course of my career, I have specialized in health care fraud investigations and have participated in the execution of numerous search warrants, seizure warrants, arrests, and trials of individuals for violations of federal law.

2. This Statement of Probable Cause is intended to show only that there is sufficient probable cause for the requested summons and does not set forth all of my knowledge about this matter. The facts in this Statement of Probable Cause come from my personal observations, my training and experience, and information obtained from other agents and witnesses.

3. In April 2020, the FBI received information that Harmony Healthcare, LLC dba Harmony Medical Care (“Harmony”) was offering COVID-19 tests to Medicare and Medicaid beneficiaries to induce these individuals to complete Harmony’s Comprehensive Whole-Body Assessment (“CWA”), a package of tests that represents Harmony’s main source of revenue. Harmony is owned and operated by Chief Executive Officer Jeremiah Faber (“FABER”).

4. At the time of the referral, the U.S. Department of Health and Human Services Office of Inspector General (“HHS-OIG”) had an ongoing investigation of Harmony related to a health care fraud scheme involving the submission of claims for medical services that were medically unnecessary and services that were never performed to the extent represented in the claims. Both the FBI and HHS-OIG are jointly investigating the present case. Based on a review of billing records, Harmony is billing for a battery of medical tests and services for individuals who have no prior relationship with Harmony and are medically unnecessary based on the patients’ reported

medical history. In addition, Harmony is performing the tests and services without charging a co-pay to incentivize beneficiaries to agree to the CWA.

5. The information set forth in this Statement is based on my personal knowledge, information received from other law enforcement personnel assisting in this investigation, and through interviews and other documents and sources. I have reviewed and am familiar with the information contained in this Affidavit and allege the facts contained herein to be accurate. I have not included each and every fact known to me concerning this investigation.

HARMONY MEDICAL CARE STRUCTURE AND OPERATION

6. FABER is not a medical doctor but has been actively involved in the medical field in Arizona for more than 12 years. According to disclosures made in a loan application, FABER states “[i]n 2008, Jeremiah Faber, CEO and founder of Harmony Medical Care started a medical staffing company call Samuel Staffing. It was during the first years of building the medical staffing business that Jeremiah realized the need for more comprehensive medical care for patients who were not doing well in the only health care system available to them. That system, that was more geared to treating single conditions than patients as a whole, was not working for the majority of patients. In 2010, Harmony Medical Care began operating its allergy clinics with locations throughout the Phoenix metropolitan area and surrounds. Services provided by the allergy clinics included allergy testing and immunotherapy.”

7. Harmony Medical Care’s primary office is located at 81 W. Guadalupe Rd., Ste. #111 in Gilbert and the practice includes a number of satellite locations in the metropolitan area and in Tucson. In addition, Harmony Medical Care operated a number of mobile medical clinics. FABER acknowledges that he saw an opportunity to increase the volume of individuals who were seen by his medical practice, and the number of tests administered, and in 2015, began to offer a package of tests Harmony called the Comprehensive Whole Body Assessment (“CWA”) at its facilities. The CWA included more than 10 specialized medically unnecessary tests, labs, and scans. According to Harmony’s website www.harmonymedicalcare.com, the CWA includes auditory, body composition, dermatology, cardiovascular, organ ultrasound, vision, balance, and peripheral neuropathy screening, as well as, allergy, bone density, and diabetes testing. At the end

of the CWA, individuals receive instructions on the next steps for improving their health and instructions to follow up with their primary care physicians. The material did not explicitly solicit the beneficiary to become a patient of Harmony Medical Care's primary care practice. Harmony offered CWA testing at its medical clinics and through the mobile clinics that traveled to high population such as mobile home parks, churches, and senior communities.

8. Medicaid is a federal health care benefit program designated to provide medical services, equipment, and supplies to certain individuals and families with low income. Individuals who receive Medicaid are commonly referred to as "recipients" or "beneficiaries." The Arizona Health Care Cost Containment System ("AHCCCS") administers the Medicaid program in Arizona. Arizona providers claim Medicaid reimbursement from AHCCCS pursuant to written provider agreements. AHCCCS receives, processes, and pays those claims according to Medicaid rules, regulations, and procedures. AHCCCS pays participating Medicaid providers on the basis of reasonable charges for covered services provided to recipients. In order to be paid for the provision of medical services provided to Medicare and Medicaid beneficiaries, a health care provider is first required to enroll in the program. Once a health care provider is enrolled, it can submit claims for payment for services rendered. Medicare and Medicaid reimburse health care providers only for services that are covered under preventive care guidelines or medically necessary to treat a specific diagnosis. Harmony is a registered provider. Health care programs, such as Medicare and Medicaid, will not make payments to health care providers for procedures or treatments that are not "medically necessary." As a condition to payment for services, health care providers must certify that the services for which they seek payment were necessary and can be supported by medical evidence.

9. When a health care provider provides medical services to an individual, the provider typically generates some type of documentation, commonly known as an "encounter form" detailing the services rendered. In a typical medical practice, the provider or the provider's employer utilize this documentation to prepare a charge document, often referred to as a "super-bill" which would include a number known as the Current Procedural Terminology ("CPT") code to identify the services provided. The American Medical Association created the CPT coding

system to standardize the way health care providers report medical services. Once created, this super-bill typically is given to either an in-house billing department or an outside billing company, which uses the information provided to generate a claim for reimbursement. Claims for reimbursement are typically submitted electronically by health care providers or by outside billing companies on their behalf. Harmony submitted claims electronically through its billing software.

HARMONY'S UNAUTHORIZED BILLING SCHEME

10. Since approximately 2017, Harmony's practice focuses almost exclusively on increasing the number of one-off CWAs the business performs. The revenue generated by the underlying tests and follow-up services associated with the CWAs accounts for approximately 95% of reimbursements Harmony receives from benefits programs including approximately 75% for the initial CWA testing and approximately 10% for follow-up services for allergy testing and Chronic Care Management Services. In order to increase CWA testing, Harmony posts flyers in community centers and churches and posts videos on YouTube and Facebook. FABER is frequently featured in videos promoting the CWA and Harmony's services. Within the last year, Harmony posted 18 videos on Harmony's YouTube page promoting the CWA. The flyers and videos offer the CWA testing with no co-pay.

11. The investigation determined that through its clinic locations and mobile units, Harmony fraudulently administered CWA tests to beneficiaries without charging a co-pay and subsequently submitted CPT codes for unnecessary tests based on the beneficiaries' medical history as part of the initial CWA testing and fraudulently billed for follow up testing that the beneficiaries never received. Based on interviews conducted with beneficiaries who signed up for Harmony's CWA testing, the investigation determined that the beneficiaries: 1) heard about the CWA through marketing material or at health fairs; 2) were never evaluated by a qualified medical professional or ordered to have the testing done during their CWA; 3) were not patients of Harmony's primary medical practice; 4) did not pay a co-pay to have the CWA and would not have agreed to take the CWA if they were required to make a co-pay; 5) most often were seen at a Harmony mobile clinic for a single visit; and 6) never met with or spoke to any of the physicians listed on the claims as having ordered the testing. In my training and experience, it is a common

scheme for providers to waive the co-pay as a way to entice beneficiaries into receiving unnecessary tests or services because the beneficiaries are assured that they are not responsible for any costs. In addition, Harmony's practices, including administering tests that are not based on a medical referral or medically indicated, and forgoing medical evaluation prior to testing are not "reasonable" charges as defined by Medicare/Medicaid rules and procedures. Based on a review of claims submitted, Harmony falsely billed for CWA services under a physician who had no involvement in the beneficiaries' CWA testing.

12. Based on interviews with beneficiaries, Harmony completes a high number of medically unnecessary allergy tests on individuals as part of the CWA. The allergy test performed as part of the CWA was a skin "scratch" test, however, Harmony fraudulently upcoded the claims submitted by billing for a more complex allergy test in order to obtain an higher reimbursement from the health insurance company. In addition, for individuals who tested positive on the allergy tests, Harmony offers allergy antigen injections as part of a follow-up immunotherapy program to treat the underlying allergy issues. Harmony employees working on the mobile units were encouraged to push individuals to sign up for allergy immunotherapy treatments as part of a bonus policy referred to as the "IT incentive program." The bonus program was established by Harmony's "corporate office" and FABER and others described the program to employees at Harmony's quarterly employee meetings. In addition, the bonus structure was discussed in emails and circulated on flyers that went to Harmony employees. Employees who were able to get individuals to sign up for allergy immunotherapy treatments based on the allergy test results were paid a \$100 bonus per patient that was divided equally by all employees in the mobile clinic. However, around early 2019, the bonus program changed and was paid directly to the employee who signed the individual up for allergy immunotherapy. Many beneficiaries who completed CWAs with Harmony stated that following their CWA, they received notices that Harmony submitted claims in their names for immunotherapy injections that they never received. Beneficiaries who received these notices often contacted Harmony and explained that they never received the immunotherapy treatments and requested to be removed from the program. Despite

contacting Harmony, multiple beneficiaries reported that they continued to receive notices that Harmony was billing for follow up services they never received.

13. In addition to the allergy immunotherapy, Harmony also enrolled a large number of beneficiaries in the Chronic Care Management (“CCM”) program after they completed a CWA. CCM is an “insurance-covered person-centered care plan that is delivered to people with two or more different types of chronic health conditions.” Examples of conditions covered by CCM include, among others: acquired hypothyroidism; Alzheimer’s disease and related dementia; anemia; arthritis; asthma; cancer; cardiovascular disease; depression; diabetes; and, substance abuse disorders. Beneficiaries who are enrolled into the program are told that they will have a Comprehensive Care Plan and an ongoing relationship with dedicated health care professionals. Based on my training and experience, enrollment in CCM is not common and is most often utilized when a beneficiary is suffering from multiple severe and complex issues that require consistent monitoring by physicians, treatment with medication, and constant adjustments to dosage and types of medications prescribed.

14. The beneficiaries who signed up for Harmony’s CWA testing had their own primary care physicians and stated that they did not sign up for the CWA to seek treatment for specific conditions or ailments including those associated with the CCM program. In almost every case, beneficiaries were not seen by a Harmony provider prior to receiving the CWA. Beneficiaries reported that following their CWA with Harmony they received notices that Harmony submitted claims in their names for follow-up CCM services not rendered. In one instance, a beneficiary reported that he had received multiple missed telephone calls from Harmony and that the dates of the voicemails corresponded to dates listed on explanation of benefits forms that were received. Beneficiaries who contacted Harmony to ask about the unauthorized billing for services they did not receive were told that the billing was for medical chart review or that the beneficiary should not worry because they would not be responsible for payment. Beneficiaries who requested that Harmony stop billing in their name reported that they continued to receive billing notices after they contacted Harmony and asked to be removed from the program.

15. Between January 2017 and April 2020, a comparative analysis of the top twelve CPT codes billed by Harmony as part of the CWA tests, the CCM services, and the allergy immunotherapy illustrates that Harmony was ranked as the highest or second highest paid provider in Arizona for all 12 CPT codes billed, and was the highest or second highest paid provider on 5 of the 12 CPT codes in the United States. Of note, Harmony was paid two to four times more than the second ranked provider in Arizona for 9 CPT codes. In my training and experience, it is extremely rare to be the top paid provider for more than one CPT code over a period of three years in any state or the United States as a whole; general practice health care providers who consistently ranked at the top of the list are likely providing medically unnecessary treatments or procedures to patients as a means of increasing their reimbursement from the government.

16. In December 2019, novel coronavirus SARS-CoV-2 (coronavirus) was first detected in Wuhan, China causing the disease COVID-19 that has since spread globally. On January 31, 2020, the Secretary of HHS declared a national public health emergency as a result of the spread of COVID-19 to and within the United States. On March 11, 2020, the Director-General of the World Health Organization (“WHO”) characterized COVID-19 as a pandemic. The Governor of Arizona issued a Declaration of Public Health Emergency to mitigate the spread of COVID-19 on March 11, 2020. (State of Arizona Executive Order 2020-07).

17. On March 30, 2020 Governor Ducey issued the “Stay home, Stay healthy, Stay connected” order closing Arizona schools for the remainder of the school year and effectively closing all non-essential businesses and services including elective surgeries and procedures. As of May 15, 2020, Arizona has 13,169 active COVID-19 cases and has reported 651 deaths. More than half of the reported cases and deaths are in Maricopa County. There are 4,508,435 confirmed COVID-19 cases; 305,395 deaths; and 1,621,489 recovered cases worldwide. In the United States there were 1,429,990 confirmed cases; 86,744 deaths; and 246,414 recovered cases.

18. Because 95% of Harmony’s practice is based on billing for CWA testing, the COVID-19 quarantine orders had an immediate impact on Harmony’s ability to bill and generate revenue. In addition, the order effectively ended Harmony’s ability to operate the mobile clinics and solicit participants for CWAs through community events. On or about March 24, 2020,

FABER submitted a letter on Harmony Medical Care letterhead and documentation in support of a "\$2,300,000 or more" loan application pursuant to the U.S. Small Business Administration Disaster Business Loan Application program. In the application, FABER asserts that Harmony has seen a "nearly 90% decrease in our short-term projected revenue." FABER further asserts that "[a]s with most medical practices we are not an extremely high-margin business and therefore we find ourselves unable to endure this time without some help." An analysis of Harmony's billing records between February and March 2020 showed a percentage decrease in the number of allergy claims submitted and a slight increase in the number of CCM follow up services. From my training and experience, I know that the decrease in allergy claims is a result of Harmony's inability to administer testing during the quarantine period. In addition, because CCM services do not require in person interaction, the expectant increase in unauthorized billing for such services is consistent with Harmony's unauthorized billing practice.

19. In order to continue its fraudulent billing practice, Harmony began offering COVID-19 testing in order to induce beneficiaries to complete CWA testing. Around March 2020, Harmony posted on their Facebook page www.facebook.com/HarmonyMedicalCareGilbert) the following public advertisement: (<https://www.facebook.com/HarmonyMedicalCareGilbert/posts/1174265719632290>):

Receive a Covid-19 test now!

We are now offering Covid-19 antibody and follow-up virus testing to patients as part of a comprehensive health assessment. This test will be provided at zero out-of-pocket for all patients with Medicare, many types of Medicaid and most commercial Health Insurance.

Even without symptoms, getting tested for the Coronavirus is crucial to staying healthy and stopping the spread of the virus to others, including family and friends.

Research has shown that 50% (or more) of people who test positive to Covid-19 do not have any symptoms, or only have mild symptoms. People who test positive and have no symptoms are still able to transmit the virus to others.

What to expect:

As part of a comprehensive health assessment we will provide patients with a blood Covid-19 antibody test. We are one of the first providers in Arizona with access to this capability. This simple test can be part of a diagnostic strategy and help provide better certainty if someone has or has not been exposed to the virus.

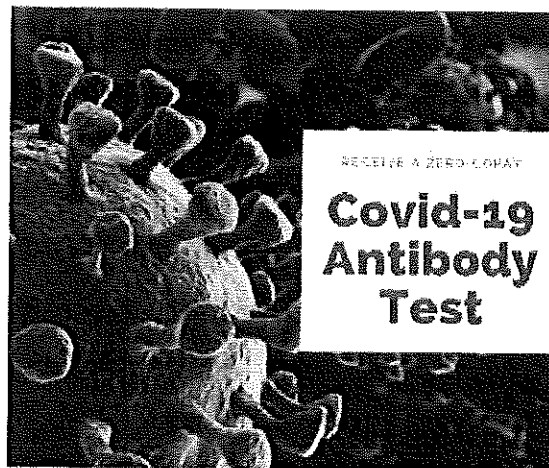
If a patient shows appropriate signs/symptoms, has recently been exposed or tests positive to Covid-19 antibodies we will also provide a Covid-19 nasal swab virus confirmation test.

The combination of these tests along with clinical history and other available data will help give a more accurate answer to whether a patient is immune, currently infected or has ever been exposed allowing the patient and their provider to decide on the most effective treatment plan possible.

Harmony Medical Care has multiple clinical office locations around Arizona (Mesa, Gilbert, Peoria, Tucson and Others) and our fleet of mobile clinics travel around the state and hold events at churches, businesses and communities.

**Results from antibody testing provides an initial screening test result and will not be used*

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as the sole basis to diagnose or exclude SARS-CoV-2 infection or to inform infection status. Positive results will be considered in conjunction with the clinical history, RT-PCR results and other data available. This test has not been reviewed by the FDA and will be provided under FDA Enforcement Discretion Guidance.

20. Facebook member responded in the comment section of the posting and inquired if they could receive the COVID-19 antibody test without going through the full CWA. In response, Harmony stated that the individual must have the CWA to receive the COVID-19 antibody testing. Multiple individuals in both March and April 2020, reached out to Harmony to inquire whether they could receive only the COVID-19 test. On all occasions, Harmony responded that Harmony does not offer the test alone without completing the CWA. In addition, individuals were told that if Harmony did not take their insurance, the total cost of the CWA and COVID-19 testing would be \$1,500.00

21. On or about April 21, 2020, P.L., Harmony's Medical Director, and FABER (who was introduced as the Chief Operating Officer) appeared on Arizona's Channel 3 Good Morning Arizona News Program (https://www.youtube.com/watch?v=d7cwhrGKxTA&feature=youtu.be&fbclid=IwAR0g_LP0OUxjTWLE8fAzsWlrPv2H7BYH4b9bEtG4SzNpmpEepbzk8Ufbwg). P.L. and FABER promoted the COVID-19 antibody test offered to patients as a way to know if they have had the virus. FABER stated that "these tests aren't readily available to most practices" and "we were able to get our hands on some early." The reporter further added "first responders, here's who, that's who they want to get it out to, they want you to go to their website, put your name on the list. They want to get this out to you for free." On or about May 5, 2020, New Life Screening's Facebook account posted a link to this news program.

22. D.L. encountered Harmony's posting on either Instagram or Facebook and contacted them in order to get a COVID-19 test and COVID-19 antibody test. On or about April 21, 2020, D.L. went to a Harmony clinic and had several tests routinely administered as part of the

CWA including, among others, bloodwork, allergy scratch test, bone density, and EKG. D.L. stated that a technician did all the testing and D.L. did not meet with any other providers or physicians during the visit. D.L. was not required to make a co-pay and was told that Harmony would bill insurance carrier AHCCCS (Mercy Care) for the entire visit. On or about April 25, 2020, D.L. shared Harmony's Facebook advertisement on Facebook and commented, "I gotta mine and results are negative!" [sic].

23. Harmony submitted claims for reimbursement to Mercy Care for D.L.'s CWA testing that were falsely billed for services provided by a physician who had no involvement in D.L.'s CWA testing. Based on D.L.'s medical history almost all the services billed were medically unnecessary. No codes were submitted for the COVID-19 testing, however, the services that were billed were consistent with Harmony's initial billing practices for other beneficiaries who were subsequently billed for allergy and CCM services that they did not receive. The following claims were received by Mercy Care:

Date Claim Received	Code	Code Description	Amount Billed
4/24/2020	99204	Level IV Office Visit	\$248.00
4/24/2020	96132	Neuropsych Testing	\$190.00
4/24/2020	96138	Neuropsych Testing	\$95.00
4/24/2020	36415	Venipuncture	\$15.00
4/24/2020	99174	Ocular Screening	\$15.00
4/24/2020	77081	DXA Bone Density	\$70.00
4/24/2020	92548	Posturography sensory organization test	\$156.00
4/24/2020	93880	Extracranial study	\$309.00
4/24/2020	93978	Vascular study	\$293.00

4/24/2020	93926	Lower extremity study	\$234.00
4/24/2020	93922	Upper extremity study	\$136.00
4/24/2020	93000	EKG	\$26.00
4/24/2020	95943	Heart rate testing	\$200.00
4/24/2020	G0444	Annual depression screening	\$28.00
4/24/2020	95004	Percutaneous allergy testing	\$858.00

The claims submitted for D.L.'s CWA testing were paid by AHCCS to Gateway bank account ending X8008 in the name of Harmony Healthcare PLLC.

FABER'S ROLE WITH HARMONY'S FINANCIAL ACCOUNTS

24. Harmony and its related entities have had business bank accounts at Gateway Bank since approximately 2014. FABER regularly communicate with Gateway Bank by email. On March 19, 2020, FABER responded to an inquiry regarding a refinance and building acquisition loan. Between October 8, 2019 and October 10, 2019, FABER corresponded with the bank requesting a line of credit increase for one of the accounts he maintained signatory authority over.


25. Gateway Bank business checking account ending X8008 in the name of Harmony Healthcare PLLC, routinely received deposits from health care insurance entities including Medicare and Medicaid. On May 12, 2020, claims submitted by Harmony for D.L. were processed and deposited into this account. From March 1 through 31, 2020, bank account ending X8008 received 846 deposits/credits totaling \$1,458,608.

26. Medicare generates around 30-40% of the deposits into Harmony's Gateway Bank account ending X8008. The remaining portion of the deposits come from other insurance companies including Blue Cross Blue Shield, Aetna, United and Cigna. The private insurance carriers confirmed a similar pattern of claims submitted for non-covered services. Allergy services and CCM claims make up approximately 42% of deposits from Medicare and 17% of deposits overall during the period January 1 through March 31, 2020. A comparison of the estimated deposits from Medicare and private insurance companies into this account are as follows:

CONCLUSION

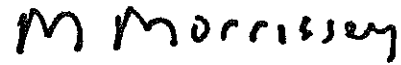
28. Based on the evidence in this affidavit, there is probable cause to believe that FABER has engaged in conduct resulting in a violation of 18 U.S.C. § 1347, Health Care Fraud and 18 U.S.C. § 1957, Transactional Money Laundering.

29. The FBI seeks a summons for JEREMIAH FABER. The FBI plans to promptly serve the summons on this individual once the complaint is signed.



Heather Rivera, Special Agent
Federal Bureau of Investigation

Sworn to and subscribed telephonically this 25 day of May, 2020.



HONORABLE MICHAEL T. MORRISSEY
United States Magistrate Judge