

**TO: Clerk's Office
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**



**APPLICATION FOR LEAVE
TO FILE DOCUMENT UNDER SEAL**

UNITED STATES v.
XUAN DI HUANG,
also known as Wendy Huang

20 MC 733
Docket Number

SUBMITTED BY: Plaintiff ___ Defendant ___ DOJ
Name: Assistant U.S. Attorney Elizabeth Macchiaverna
Firm Name: U.S. Attorney's Office, Eastern District of New York
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Brooklyn, New York 11201
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INDICATE UPON THE PUBLIC DOCKET SHEET: YES ___ NO
If yes, state description of document to be entered on docket sheet:

MANDATORY CERTIFICATION OF SERVICE:

A.) ___ A copy of this application either has been or will be promptly served upon all parties to this action, B.) ___ Service is excused by 31 U.S.C. 3730(b), or by the following other statute or regulation: _____; or C.) This is a criminal document submitted, and flight public safety, or security are significant concerns. (Check one)

8/26/2020
DATE

SIGNATURE

A) If pursuant to a prior Court Order:
Docket Number of Case in Which Entered: _____
Judge/Magistrate Judge: _____
Date Entered: _____

B) If a new application, the statute, regulation, or other legal basis that authorizes filing under seal

Ongoing criminal investigation

**ORDERED SEALED AND PLACED IN THE CLERK'S OFFICE,
AND MAY NOT BE UNSEALED UNLESS ORDERED BY
THE COURT.**

DATED: Brooklyn, NEW YORK

08-26-2020

Steven M. Gold

U.S. MAGISTRATE JUDGE

RECEIVED IN CLERK'S OFFICE _____
DATE

JN:ELM
F. #2019R01513

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

XUAN DI HUANG,
also known as “Wendy Huang,”

Defendant.

TO BE FILED UNDER SEAL

C O M P L A I N T

20-M-733

(T. 42, U.S.C., § 1320a-7b(b)(2)(B);
T. 18, U.S.C., § 2)

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EASTERN DISTRICT OF NEW YORK, SS:

RYAN HODKINSON, being duly sworn, deposes and states that he is a Special Agent with the United States Department of Health and Human Services, Office of the Inspector General (“HHS-OIG”), duly appointed according to law and acting as such.

In or about and between August 12, 2019 and March 20, 2020, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant XUAN DI HUANG, also known as “Wendy Huang,” did knowingly and willfully offer to pay and did pay remuneration, directly and indirectly, overtly and covertly, in cash and in kind, to Medicaid beneficiaries to induce those beneficiaries to arrange for social adult daycare services through Zhiqing Social Adult Day Care, LLC, for which payment may be made in whole and in part under a federal health care program, namely Medicaid, and aided and abetted such activity.

(Title 42, United States Code, Section 1320a-7b(b)(2)(B) and Title 18, United States Code, Section 2)

The source of your deponent's information and the grounds for his belief are as follows:

1. I have been a Special Agent with HHS-OIG since February 2018. As an HHS-OIG Special Agent, I investigate health care violations, including schemes to defraud the Medicare and Medicaid programs and other health care benefit programs. During my tenure with HHS-OIG, I have participated in a variety of criminal health care fraud investigations, during the course of which I have interviewed witnesses, conducted physical surveillance, arranged consensually monitored telephone calls, executed search warrants and reviewed health care claims data, bank records, telephone records, medical records, invoices and other business records. I am familiar with the records and documents maintained by health care providers and the laws and regulations related to the administration of the Medicare and Medicaid programs and other health care benefit programs.

2. I have personally participated in the investigation of the offense discussed below. I am familiar with the facts and circumstances of this investigation from (a) my personal participation in this investigation, (b) reports made to me by other law enforcement authorities, and (c) information obtained from witnesses.

3. Except as explicitly set forth below, I have not distinguished in this affidavit between facts of which I have personal knowledge and facts of which I have hearsay knowledge. Because this affidavit is being submitted for the limited purpose of establishing probable cause for the issuance of an arrest warrant for the defendant XUAN DI HUANG, I have not set forth each and every fact learned during the course of this investigation. Instead, I have set forth only those facts, in substance and in pertinent part,

which I believe are necessary to establish probable cause for the issuance of an arrest warrant.

I. The New York State Medicaid Program

4. The New York State Medicaid program (“Medicaid”) was a federal and state health care program providing benefits to individuals and families who met specified financial and other eligibility requirements, and certain other individuals who lacked adequate resources to pay for medical care. The Centers for Medicare and Medicaid Services, a federal agency under the United States Department of Health and Human Services, was responsible for overseeing the Medicaid program in participating states, including New York. Individuals who received benefits under Medicaid were referred to as “beneficiaries.”

5. Medicaid was a “health care benefit program” as defined by Title 18, United States Code, Section 24(b) and referenced in Title 18, United States Code, Section 1347.

6. Medicaid was a health and long-term care coverage program jointly financed by states and the federal government pursuant to the Social Security Act of 1965. Each state established and administered its own Medicaid program and determined the type, amount, duration and scope of services covered within broad federal guidelines. New York State Medicaid was administered by the New York State Department of Health (“New York DOH”).

7. New York DOH has approved certain Managed Long Term Care (“MLTC”) plans to provide Medicaid managed long term care. MLTC plans provides services and support to people who have long-lasting health issues or disabilities. Each

MLTC plan has its own network of healthcare providers, including home care agencies, healthcare professionals and other providers. Non-billing managed care Medicaid providers who are within a MLTC network do not bill Medicaid directly, but instead bill the MLTC plan for services provided to its members.

8. New York State Medicaid MLTC services include social adult day care services. The term “social adult day care” describes a structured program that provides older adults with functional impairments with socialization, supervision, personal care and nutrition services in a protective setting. A social adult day care center would, for example, provide a space where its members could congregate and socialize by talking, playing card or board games, listening to music, singing karaoke or participating in other activities under the supervision of social day care center staff who are trained to provide assistance to people with mobility and other health issues. Healthy meals might also be provided.

II. The Defendant and the Relevant Entity

9. The defendant XUAN DI HUANG, also known as “Wendy Huang,” is an owner, Chief Executive Officer and President for Zhiqing Social Adult Day Care, LLC, located at 34-20 Linden Place in Flushing, New York (“Zhiqing”).

10. Zhiqing has been registered as a non-billing managed care Medicaid provider since December 31, 2017. Zhiqing provides social adult day care services as a Medicaid managed care provider and a member of at least seven New York State Medicaid MLTC plans. Zhiqing submits claims and receives payment directly from these MLTC plans.

III. The Kickback Scheme

11. In or about the summer of 2019, HHS-OIG began investigating a complaint alleging that Zhiqing was paying its members – including New York State Medicaid beneficiaries – to attend the facility. As described below, the investigation revealed that, between August 12, 2019 and March 20, 2020, Zhiqing paid its members between \$20 and \$30 per visit to the facility.

A. The Confidential Source

12. Beginning in August 2019, a confidential source (the “CS”) who is a New York State Medicaid beneficiary began receiving adult day care services at Zhiqing.¹ The CS agreed to wear audio and video recording devices when the CS attended Zhiqing programming, and during her/his conversations with the defendant XUAN DI HUANG and other Zhiqing employees.

13. On or about August 9, 2019, the CS went to Zhiqing and attempted to sign up for adult day care service. The CS met with an employee of Zhiqing (“Employee 1”), who told the CS that Zhiqing provided members with three meals – breakfast, lunch and dinner – and that members were paid cash or provided with a nutritional product. The CS asked Employee 1 how much members were paid, but Employee 1 did not provide an answer. Employee 1 indicated that an individual named “Wendy Huang,” who Employee 1 identified as the person responsible for running Zhiqing, would make a decision about how much the CS would be paid.

¹ The CS is working for HHS-OIG in exchange for monetary compensation. The information provided by the CS has proven to be reliable and is corroborated by other evidence.

14. The CS returned to Zhiqing and met with the defendant XUAN DI HUANG on or about August 12, 2019. HUANG asked the CS whether s/he currently attended any other adult daycare, and if s/he received payment for doing so. HUANG asked the CS how much money s/he would want to attend Zhiqing. HUANG told the CS that s/he would be able to attend Zhiqing up to three times per week, depending upon the CS's insurance plan. HUANG then helped the CS begin the enrollment process and advised the CS to call her/his insurance plan to switch from the CS's current daycare program to Zhiqing.

15. The CS attended Zhiqing as a member for the first time on or about August 20, 2019. During that visit, the CS spoke with an unidentified Zhiqing member who told the CS that s/he received \$20 per day to attend Zhiqing, and that the defendant XUAN DI HUANG was the sole decision maker concerning how much an individual member would be paid. The unidentified member also told the CS that the CS could receive up to \$100 for "transportation." When the CS inquired about being paid for transportation, HUANG told the CS that s/he could receive \$50 per month for transportation because the CS only attended Zhiqing two days per week. The CS understood this to mean that s/he would be compensated if s/he traveled to Zhiqing on her/his own, instead of using the transportation services provided by Zhiqing to members.² HUANG informed the CS that payment would be available between the first and tenth days of each month.

² The CS did not use any transportation services provided by Zhiqing. HHS-OIG special agents escorted the CS to and from each of her/his visits to Zhiqing. However, on at least two occasions, the defendant XUAN DI HUANG asked the CS to sign travel vouchers indicating that s/he had used Zhiqing's transportation services. To date, the investigation has not revealed that Zhiqing submitted any claims or received any payment for providing

16. The CS also attended Zhiqing on three additional occasions in August 2019. On or about August 22, 2019 and August 27, 2019, the CS observed the defendant XUAN DI HUANG with “stacks” of cash.

17. The CS attended Zhiqing on eight occasions in September 2019. One of those occasions took place on or about September 5, 2019, during which the CS wore video recording equipment. During that visit, the defendant XUAN DI HUANG paid the CS \$170 in cash, reflecting a rate of \$30 for each of the four August visits and \$50 for not using the transportation services provided by Zhiqing. The CS’s video recording equipment also captured HUANG making cash payments to two unidentified women during that visit.

18. The CS attended Zhiqing on three occasions in October 2019 and on each visit, the CS wore video recording equipment. When the CS attended Zhiqing on or about October 24, 2019, it had been approximately one month since the CS’s last visit to Zhiqing. During that visit, the defendant XUAN DI HUANG paid the CS \$260, reflecting a rate of \$25 per visit for each of the CS’s eight September visits and \$60 for not using the transportation provided by Zhiqing. The CS’s video recording equipment also captured HUANG making cash payments to two unidentified women during that visit. During a visit to Zhiqing on or about October 29, 2019, the CS’s video recording equipment captured HUANG making cash payments to two unidentified men. Similarly, during a visit to Zhiqing on or about October 31, 2019, the CS’s video recording equipment captured HUANG counting a stack of cash and making a payment to an unidentified woman. On that same visit, the video recording equipment also captured an unknown male employee of

transportation services to the CS.

Zhiqing (“Employee 2”) making cash payments to two unidentified men in HUANG’s presence.³

19. The CS also attended Zhiqing on five occasions in November 2019. On or about November 5, 2019, the CS attended Zhiqing and wore video recording equipment. During this visit, the defendant XUAN DI HUANG paid the CS a total of \$130 in cash, reflecting a rate of \$25 per visit for each of the CS’s four visits between October 22 and November 5, 2019, and \$30 for not using the transportation provided by Zhiqing. The video recording equipment also captured HUANG making cash payments to one unidentified man and one unidentified woman, and Employee 2 making payments to two unidentified men.

20. On or about November 7, 2019, the CS attended Zhiqing and wore video recording equipment. During this visit, the CS had a conversation with a female New York State Medicaid beneficiary (“Beneficiary 1”), a male New York State Medicaid beneficiary who was married to Beneficiary 1 (“Beneficiary 2”), and an unidentified woman. I have reviewed the video recordings of this exchange, together with a summary translation of the conversation (which was conducted in Cantonese).

21. After some small talk about their health conditions, Beneficiary 1 told the CS that she comes to Zhiqing four days a week and receives home health services two days a week. The CS asked Beneficiary 1: “[h]ow much do they pay you for each day you come here?” and Beneficiary 1 replied: “[t]hirty.” Beneficiary 1 commented that “old

³ The identities of Employees 2 and 3 and of all beneficiaries who have been anonymized in this Complaint are known to your affiant.

members,” such as herself, receive thirty dollars per day. The CS then calculated that Beneficiary 1 and Beneficiary 2 received a combined \$240 each week for attending Zhiqing. Beneficiary 1 confirmed that calculation was correct and noted that \$10 per day was deducted from that amount for the two meals she and Beneficiary 2 each received at Zhiqing.⁴ The CS asked the unidentified woman about her compensation from Zhiqing, and the unidentified woman confirmed that she received \$20 per day, after a \$10 deduction for two meals. Beneficiary 1 commented that many members get the same “treatment” because the center needs the members to continue to attend.

22. Later during the same visit on November 7, 2019, the CS had a short conversation with the defendant XUAN DI HUANG. Following their conversation, the CS stood near the front counter where HUANG was working and made a call on her/his cell phone. While the CS stood near the counter, the video recording equipment captured an interaction between HUANG and an unidentified man (“Unidentified Man 1”). I have reviewed the recordings of this exchange, together with a summarized translation of the conversation (which was originally conducted in Chinese).

23. The defendant XUAN DI HUANG told Unidentified Man 1 that he had “nine days in October” and handed him a post-it note. Unidentified Man 1 wrote on the post-it and returned it to HUANG, who then wrote in a booklet before tearing out the page and asking Unidentified Man 1 to sign it. Unidentified Man 1 signed the page and HUANG

⁴ Based upon a rate of \$30 a day, less \$10 a day for food for four days each week, Beneficiary 1 and Beneficiary 2 received a combined total of \$160 in cash.

retrieved cash from a purse near her seat at the counter and handed the money to Unidentified Man 1.

24. On or about November 14, 2019, the CS visited Zhiqing and wore video recording equipment, which captured Employee 2 making cash payments to two unidentified women and one unidentified man.

25. The CS attended Zhiqing on six occasions in December 2019, and wore video recording equipment during each visit. On or about December 3, 2019, the recording equipment captured an employee of Zhiqing (“Employee 3”) making cash payments to five unidentified women and one unidentified man in the presence of the defendant XUAN DI HUANG. On or about December 10, 2019, HUANG informed the CS that s/he had arrived too late to be paid because there was no money left; the video recording equipment captured HUANG making cash payments to one unidentified woman and one unidentified man during that visit. Subsequently, on or about December 12, 2019, HUANG paid the CS a total of \$200, reflecting a payment of \$25 per visit for each of the eight visits between November 7, 2019 and December 12, 2019.

26. The CS also attended Zhiqing on three occasions in January 2020, and wore video recording equipment during each visit. On or about January 2, 2020, the video recording equipment captured the defendant XUAN DI HUANG carrying large amounts of cash and making cash payments to one unidentified man and three unidentified women. During that visit, the CS heard HUANG explain that she withdrew money from her bank account to pay Zhiqing members and had to explain to the bank why she needed the cash. On or about January 14, 2020, HUANG paid the CS \$200 in cash. During that visit, the CS

told HUANG that the CS would not return to Zhiqing; the video recording equipment also captured Employee 3 making cash payments to two unidentified men in HUANG's presence.

27. The CS attended Zhiqing a total of 29 times as a member between August 20, 2019 and January 14, 2020. Zhiqing submitted a total of 37 claims for adult daycare per diem services on the CS's behalf during that time. Zhiqing further submitted 17 claims for adult daycare per diem services on the CS's behalf between January 16, 2020 and March 12, 2020, even though the CS did not attend Zhiqing during that time period.⁵ In total, Zhiqing was paid \$5,400 at a rate of \$100 per visit for the CS's claimed visits to the facility, with \$1,700 attributable to claims made on days that the CS did not attend.

B. Beneficiaries 1 and 2

28. On or about August 5, 2020, Beneficiary 1 was interviewed at her home by special agents with HHS-OIG and the Federal Bureau of Investigation (the "FBI"), with the assistance of a translator. Beneficiary 1 and her husband, Beneficiary 2, were both New York State Medicaid beneficiaries. Beneficiary 1 stated, in sum and substance, that she and Beneficiary 2 had been attending Zhiqing for approximately two years. Beneficiary 1 initially denied receiving any payments in connection with her attendance at Zhiqing.⁶ After agents provided Beneficiary 1 with warning pursuant to Title 18, United States Code, Section 1001, and played a clip of her prior conversation with the CS on November 7, 2019

⁵ The CS was not informed by the defendant XUAN DI HUANG or anyone else that Zhiqing submitted 17 claims for services on dates that the CS did not attend the center. The CS was not paid anything by HUANG or Zhiqing in connection with these 17 claims.

⁶ During a prior interview with HHS-OIG and FBI on July 22, 2020, Beneficiary 1 had similarly denied that she or Beneficiary 2 had received any money from Zhiqing for their attendance.

(described above), Beneficiary 1 admitted that she and Beneficiary 2 had each been paid approximately \$30 per day that each had attended Zhiqing during the past two years. Beneficiary 1 explained that if she and Beneficiary 2 each ate two meals at Zhiqing, ten dollars per day would be deducted from each of their payments, leaving them with a total of \$20 each per day. Beneficiary 1 further stated that she and Beneficiary 2 received approximately \$240 to \$260 each per month from Zhiqing.⁷

29. Beneficiary 1 explained that the defendant XUAN DI HUANG had paid both her and Beneficiary 2. Beneficiary 1 also stated that she had seen other members receive cash payments, and said that there was typically a long line to receive such payments.

30. Beneficiary 1 further stated that she attended Zhiqing four times per week, or approximately 128 visits for the approximately 32 weeks between August 12, 2019 and March 20, 2020.⁸ Zhiqing submitted a total of 115 claims to Medicaid for adult daycare per diem services on Beneficiary 1's behalf during that time. Zhiqing was paid a total of \$10,350 at a rate of \$90 per visit for these 115 claimed visits.

31. Beneficiary 1 stated that Beneficiary 2 also attended Zhiqing four times per week, or approximately 128 visits for the approximately 32 weeks between August 12, 2019 and March 20, 2020. Zhiqing submitted a total of 115 claims to Medicaid for adult

⁷ As noted above, on or about November 7, 2019, Beneficiary One told the CS in a recorded conversation that she and Beneficiary Two attended Zhiqing four times each week and were paid a total of \$20 per visit. Based on this information, Beneficiary One and Beneficiary Two each received a total of \$320 per month.

⁸ On or about March 20, 2020, Governor Andrew Cuomo signed an executive order mandating the closure of all non-essential New York State businesses, including social day care centers, due to the COVID-19 pandemic, and Zhiqing stopped operation.

daycare per diem services on Beneficiary 2's behalf during that time. Zhiqing was paid a total of \$10,350 at a rate of \$90 per visit for these 115 claimed visits.

C. Beneficiaries 3 and 4

32. On or about July 20, 2020, a male New York State Medicaid beneficiary ("Beneficiary 3") and a female New York State Medicaid beneficiary, who is also Beneficiary Three's wife ("Beneficiary 4"), were interviewed at their home by special agents with HHS-OIG and the FBI, with the assistance of a translator. Beneficiary 3 explained that both he and Beneficiary 4 have been attending Zhiqing four days per week for approximately one year. Beneficiaries 3 and 4 received approximately \$300 combined each month for attending Zhiqing.

33. Beneficiary 3 stated that he attended Zhiqing four times per week, or approximately 128 visits for the approximately 32 weeks between August 12, 2019 and March 20, 2020. Zhiqing submitted a total of 113 claims to Medicaid for adult daycare per diem services on Beneficiary 3's behalf during that time. Zhiqing was paid a total of \$10,170 at a rate of \$90 per visit for these 113 claimed visits.

34. Beneficiary 3 further stated that Beneficiary 4 attended Zhiqing four times per week, which is approximately 128 visits for the approximately 32 weeks between August 12, 2019 and March 20, 2020. Zhiqing submitted a total of 114 claims to Medicaid for adult daycare per diem services on Beneficiary 4's behalf during that time. Zhiqing was paid a total of \$10,260 at a rate of \$90 per visit for these 114 claimed visits.

35. Zhiqing received approximately \$3,105,865 in payments from New York State Medicaid MLTC plans for adult daycare per diem services purportedly provided

to New York State Medicaid recipients during the period between August 12, 2019 and March 20, 2020.

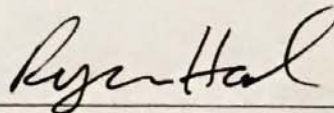
36. Based on the foregoing, there is probable cause to believe that the conduct by the defendant XUAN DI HUANG, as described above, violated the Federal Anti-Kickback Statute, Title 42, United States Code, Section 1320a-7b(b).

IV. Request for Sealing

37. I respectfully request that this Court issue an order sealing, until further order of the Court, all papers submitted in support of this application, including the instant complaint and application and arrest warrant. The defendant XUAN DI HUANG is currently at liberty, and it is respectfully submitted that sealing these documents is necessary to prevent the defendant from learning that a complaint has been filed and an arrest warrant issued, and to thus prevent the defendant from avoiding arrest and prosecution.

* * * * *

WHEREFORE, your deponent respectfully requests that a warrant be issued for the arrest of the defendant XUAN DI HUANG so that she may be dealt with according to law.



RYAN HODKINSON
Special Agent, HHS-OIG

Sworn to before me this
26th day of August, 2020

by telephone

Steven M. Gold

THE HONORABLE STEVEN M. GOLD
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

United States of America

v.

XUAN DI HUANG
also known as "Wendy Huang"

Case No. 20-M-733

Defendant

ARREST WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay
(name of person to be arrested) XUAN DI HUANG also known as "Wendy Huang",
who is accused of an offense or violation based on the following document filed with the court:

- Indictment, Superseding Indictment, Information, Superseding Information, Complaint, Probation Violation Petition, Supervised Release Violation Petition, Violation Notice, Order of the Court

This offense is briefly described as follows:

Violation of the Anti-Kickback Statute in violation of 42 USC 1320a-7b(b)(2)(B) and aiding and abetting violation of the Anti-Kickback Statute in violation of 18 USC 2.

Steven M. Gold

Date: 08/26/2020

Issuing officer's signature

City and state: Brooklyn, New York

Hon. Steven M. Gold, U.S.M.J.

Printed name and title

Return

This warrant was received on (date) , and the person was arrested on (date)
at (city and state) .

Date:

Arresting officer's signature

Printed name and title

This second page contains personal identifiers provided for law-enforcement use only and therefore should not be filed in court with the executed warrant unless under seal.

(Not for Public Disclosure)

Name of defendant/offender: XUAN DI HUANG also known as "Wendy Huang"

Known aliases: _____

Last known residence: _____

Prior addresses to which defendant/offender may still have ties: _____

Last known employment: _____

Last known telephone numbers: _____

Place of birth: _____

Date of birth: _____

Social Security number: _____

Height: _____ Weight: _____

Sex: _____ Race: _____

Hair: _____ Eyes: _____

Scars, tattoos, other distinguishing marks: _____

History of violence, weapons, drug use: _____

Known family, friends, and other associates (*name, relation, address, phone number*): _____

FBI number: _____

Complete description of auto: _____

Investigative agency and address: _____

Name and telephone numbers (office and cell) of pretrial services or probation officer (*if applicable*): _____

Date of last contact with pretrial services or probation officer (*if applicable*): _____