

FILED

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PETER A. MOORE, JR., CLERK
US DISTRICT COURT, EDNC
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:20-CR-306

UNITED STATES OF AMERICA)
)
 v.)
)
HUMBERTO MERCADO)

)

CRIMINAL INFORMATION

The United States Attorney charges that:

Introduction

1. From a date unknown, but beginning no later than in or about January 2012, and continuing until at least in or about January 2017, both dates being approximate, in the Eastern District of North Carolina and elsewhere, the defendant, HUMBERTO MERCADO, conspired with others, known and unknown to the United States Attorney, in a scheme to defraud the North Carolina Medicaid Program by submitting false and fraudulent reimbursement claims for non-existent services and submitting claims that misrepresented the services actually provided, if any, in order to earn greater reimbursement than was owed.

The North Carolina Medicaid Program

2. The North Carolina Medicaid Program is a state-administered program aided by federal funds.

3. Medicaid helps pay for reasonable and medically necessary services for qualifying, enrolled individuals and their families, referred to herein as

“beneficiaries.” Covered services include mental and behavioral health services provided on an outpatient basis.

4. The North Carolina Medicaid Program is administered by the North Carolina Department of Health and Human Services, Division of Health Benefits (formerly known as the Division of Medical Assistance), which oversees mental health providers throughout the state who receive payments from Medicaid. The North Carolina Medicaid Program includes both traditional Medicaid and the North Carolina Health Choice for Children insurance program (“NCHC”) (the North Carolina Medicaid Program, the Division of Health Benefits, and NCHC are collectively referred to herein as “Medicaid”).¹

5. If qualified, an individual can enroll as a Medicaid beneficiary. At the time of enrollment, a beneficiary receives a unique alphanumeric code issued by the program, known as a Medicaid Identification Number. Each beneficiary can be identified by reference to their Medicaid Identification Number and may use the number to receive covered services.

6. Medicaid beneficiaries receive services from practitioners (“rendering providers”) and companies (“billing providers”). Once a rendering provider or billing provider enrolls with Medicaid, the program issues a unique number to the provider, known as a “provider number.” Rendering and billing providers must also obtain a federal identification number, known as a National Provider Identifier or “NPI”

¹ NCHC supports families whose household income is too high to qualify for traditional Medicaid benefits and too low to afford private or employer-sponsored health insurance.

number. All Medicaid providers must certify that they will only bill the government for services that they actually render.

Claims Processing

7. After a rendering provider renders a covered medical service to a Medicaid beneficiary, the billing provider may bill Medicaid for the reasonable and necessary costs of the service. To bill Medicaid, providers generally send an electronic claim to the program. In North Carolina, electronic claims are typically submitted through Medicaid's online provider portal, referred to as "NCTracks." Providers may also hire third-party billing companies or contractors to perform the task of submitting claims to Medicaid for payment.

8. The claim generally includes, but is not limited to, the date of the alleged service, the Medicaid Identification Number of the beneficiary, the nature of the service rendered, and the provider number or federally-issued NPI number. The electronic claim is generally all that is required to receive payment from Medicaid.

9. While Medicaid may reject a claim if, for example, the provider or beneficiary is not enrolled, Medicaid typically presumes the truth of each claim and generally pays providers for the services that they bill. In other words, Medicaid entrusts its providers to submit claims only for services that they actually perform.

Recordkeeping Requirements

10. Medicaid providers sign participation agreements which state, in relevant part, that they will maintain and make available "complete and accurate

medical records” in accordance with Medicaid regulations, which they must furnish to Medicaid authorities upon request.

11. Medicaid regulations and policies specify what constitutes “complete and accurate medical records” according to the services provided. Outpatient behavioral health providers are required to maintain written clinical assessments, treatment plans, and progress notes for each treatment encounter with a beneficiary. The records must be kept and maintained for a minimum of five years in order to document and substantiate any claims for reimbursement.

12. Medicaid is a “health care benefit program,” as defined in Title 18, United States Code, Section 24(b).

The Health Care Fraud Conspiracy

13. From a date unknown, but beginning no later than in or about January 2012, HUMBERTO MERCADO conspired with other persons, known and unknown to the United States Attorney, in a scheme to defraud Medicaid by seeking and obtaining payment from Medicaid for claims for outpatient behavioral health services purportedly provided to beneficiaries that were false and fraudulent in one or more material respect. The offending claims were submitted by one or more North Carolina billing providers owned, operated, or administered by HUMBERTO MERCADO’s co-conspirators.

14. Among other things, the billing providers filed claims with Medicaid seeking reimbursement for fictitious services that were never provided to the listed beneficiaries. The services were often backdated to appear as if they had occurred

prior to the date the claims were submitted to Medicaid, a practice known as “back-billing”. In truth, as HUMBERTO MERCADO and his conspirators well knew and believed, the beneficiaries never received any services at all.

15. It was a part of the conspiracy that, in an effort to obstruct Medicaid-related inquiries, audits, and investigations, HUMBERTO MERCADO was paid on an ongoing basis to create false and fraudulent medical records on behalf of conspiring billing providers and their representatives, including clinical assessments, treatment plans, and progress notes. The billing providers used the bogus medical records generated by HUMBERTO MERCADO to backstop thousands of false and fraudulent claims for services that were never rendered and, in some instances, turned the records over to Medicaid authorities to conceal their criminal activity.

COUNT ONE

16. The United States Attorney realleges and incorporates by reference herein all of the foregoing allegations of this Criminal Information and further alleges that beginning no later than in or about January 2012, and continuing until at least in or about January 2017, in the Eastern District of North Carolina and elsewhere, the defendant, HUMBERTO MERCADO, did knowingly combine, conspire, confederate, and agree with other persons, known and unknown to the United States Attorney, to commit an offense against the United States, that is, health care fraud, in violation of Title 18, United States Code, Section 1347.

Object of the Conspiracy

17. It was a part and object of the conspiracy that HUMBERTO MERCADO and others, known and unknown to the United States Attorney, having devised the above-described scheme and artifice, to defraud and to obtain by means of materially false and fraudulent pretenses, representations, and promises, any of the money owned by and under the custody and control of a health care benefit program, as defined in Title 18, United States Code, Section 24, in connection with the delivery of, and payment for, health care benefits, items, and services, by submitting and causing to be submitted false and fraudulent claims to the North Carolina Medicaid Program, a violation of Title 18, United States Code, Section 1347.

Manner and Means

Among the manner and means used to effect and accomplish the purpose of the conspiracy included, but were not limited to, the following:

18. The conspirators, including HUMBERTO MERCADO, carried out the conspiracy through the manner and means described in the foregoing paragraphs of this Criminal Information, among others.

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

FORFEITURE NOTICE

The defendant, HUMBERTO MERCADO, is hereby given notice that all of the defendant's interest in all property specified herein is subject to forfeiture.

Upon conviction of the offense alleged in this Criminal Information, the defendant, HUMBERTO MERCADO, shall forfeit to the United States, pursuant to

18 U.S.C. § 982(a)(7), any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

If any of the property described above, as a result of any act or omission of the defendant:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third party;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

ROBERT J. HIGDON, JR.
United States Attorney



ADAM F. HULBIG
Assistant United States Attorney
Criminal Division

Date: 6/25/20