2022R00545/KL/PQ

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon. Peter G. Sheridan
	:	
	:	Crim. No. 22-477
v.	:	
	:	18 U.S.C. § 1349
	:	18 U.S.C. § 1347
HENRY ROJAS	:	18 U.S.C. § 371
	:	18 U.S.C. § 2

INDICTMENT

The Grand Jury in and for the District of New Jersey, sitting at Newark, charges:

COUNT 1
(Conspiracy to Commit Health Care Fraud)

1. Unless otherwise indicated, at all times relevant to this Indictment:

The Defendant

a. Defendant HENRY ROJAS was a resident of New York. ROJAS was a licensed physician and an enrolled Medicare provider who practiced internal medicine in Carmel, New York.

Relevant Entities and Individuals

b. Individual 1, a co-conspirator not charged in this Indictment, was a resident of Florida and the owner and operator of Company 1, a purported marketing company that generated referrals for diagnostic testing, including genetic testing.

c. Individual 2, a co-conspirator not charged in this Indictment, was a resident of New Jersey and the owner and operator of Company 2, a

purported marketing company that generated referrals for diagnostic testing, including genetic testing.

d. Laboratory 1 was a New Jersey limited liability company, located in Elmwood Park, New Jersey, that purported to serve as a diagnostic testing laboratory. Laboratory 1 was enrolled as a Medicare provider and submitted claims to Medicare for diagnostic testing, including genetic testing.

e. Individual 3, a co-conspirator not charged in this Indictment, was a resident of New Jersey and the co-owner of Laboratory 1. Individual 3 maintained signatory authority on a bank account held in the name of Laboratory 1 (the "Laboratory 1 Bank Account").

The Medicare Program

f. The Medicare Program ("Medicare") was a federally funded health care program that provided free or below-cost benefits to certain individuals, primarily the elderly, blind, or disabled. The benefits available under Medicare were governed by federal statutes and regulations. Medicare was administered by the Centers for Medicare and Medicaid Services ("CMS"), a federal agency within the U.S. Department of Health and Human Services ("HHS"). Individuals who received Medicare benefits were referred to as "beneficiaries."

g. Medicare was divided into four parts: hospital insurance (Part A), medical insurance (Part B), Medicare Advantage (Part C), and prescription drug benefits (Part D). Medicare Part B covered medically necessary physician office services and outpatient care, including laboratory tests.

h. Medicare was a "Federal health care program" as defined in Title 42, United States Code, Section 1320a-7b(f), and a "health care benefit program" as defined in Title 18, United States Code, Section 24(b).

i. Physicians, clinics, laboratories, and other health care providers (collectively, "providers") that provided items and services to Medicare beneficiaries were able to apply for and obtain a "provider number." Providers that received a Medicare provider number were able to file claims with Medicare to obtain reimbursement for services provided to beneficiaries.

j. When seeking reimbursement from Medicare for provided benefits, services, or items, providers submitted the cost of the benefit, service, or item provided together with a description and the appropriate "procedure code." Additionally, claims submitted to Medicare seeking reimbursement were required to include: (i) the beneficiary's name and Health Insurance Claim Number; (ii) the date upon which the benefit, item, or service was provided or supplied to the beneficiary; and (iii) the name of the provider, as well as the provider's unique identifying number, known either as the Unique Physician Identification Number or National Provider Identifier.

k. Medicare, in receiving and adjudicating claims, acted through fiscal intermediaries called Medicare administrative contractors ("MACs"), which were statutory agents of CMS for Medicare Part B. The MACs were private entities that reviewed claims and made payments to providers for services rendered to beneficiaries. The MACs were responsible for processing Medicare claims arising within their assigned geographical area.

l. To receive Medicare reimbursement, providers needed to have applied to the MAC and executed a written provider agreement. The Medicare provider enrollment application for physicians and non-physician practitioners, CMS Form 855I, was required to be signed by the provider. CMS Form 855I contained a certification that stated:

> I agree to abide by the Medicare laws, regulations, and program instructions that apply to me or to the organization listed in section 4A of this application. The Medicare laws, regulations, and program instructions are available through the Medicare Administrative Contractor. I understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations, and program instructions (including, but not limited to, the Federal Anti-Kickback Statute . . .) . . . .

m. In executing CMS Form 855I, providers further certified that they "w[ould] not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare and w[ould] not submit claims with deliberate ignorance or reckless disregard of their truth or falsity."

n. Medicare paid for claims only if the items and services were medically reasonable, medically necessary for the treatment or diagnosis of the patient's illness or injury, documented, and actually provided as represented to Medicare. Medicare would not pay for items and services that were procured through kickbacks and bribes.

Genetic Tests

o. Cancer genetic tests ("CGx" tests) were laboratory tests that used DNA sequencing to detect mutations in genes that could lead to a higher risk of developing cancer in the future. Pharmacogenetic tests ("PGx" tests) were laboratory tests that used DNA sequencing to assess how the body's genetic makeup would affect the response to certain medications. Genetic tests that could predict future risks of cardiac conditions and diseases such as Parkinson's and Alzheimer's were also available. All such tests were generally referred to as "genetic testing." Genetic testing was not a method of diagnosing whether an individual had a disease, such as cancer, at the time of the test.

p. To conduct genetic testing, a laboratory needed to obtain a DNA sample ("specimen") from the patient. Specimens were typically obtained from the patient's saliva by using a cheek swab to collect sufficient cells to provide a genetic profile. The specimen was then submitted to the laboratory to conduct a genetic test.

q. DNA specimens were submitted along with laboratory requisition forms that identified the patient, the patient's insurance, and the specific test to be performed. In order for laboratories to submit claims to Medicare for genetic tests, the tests had to be approved by a physician or other authorized medical professional who attested to the medical necessity of the test.

r. Medicare did not cover diagnostic testing, including genetic testing, that was "not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member."

42 U.S.C. § 1395y(a)(1)(A). Except for certain statutory exceptions, Medicare did not cover "[e]xaminations performed for a purpose other than treatment or diagnosis of a specific illness, symptoms, complaint, or injury." 42 C.F.R. § 411.15(a)(1).

s. If diagnostic testing was necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member, Medicare imposed additional requirements before covering the testing. Title 42, Code of Federal Regulations, Section 410.32(a) provided that "all diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests must be ordered by the physician who is treating the beneficiary, that is, the physician who furnishes a consultation or treats a beneficiary for a specific medical problem and who uses the results in the management of the beneficiary's specific medical problem. Tests not ordered by the physician who is treating the beneficiary are not reasonable and necessary."

The Conspiracy

2. From in or around November 2018 through in or around March 2021, in the District of New Jersey and elsewhere, the defendant,

HENRY ROJAS,

did knowingly and intentionally combine, conspire, confederate, and agree with Individual 1, Individual 2, Individual 3, and others known and unknown to the Grand Jury, to knowingly and willfully execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, and to obtain, by means of false

and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services.

Goal of the Conspiracy

3. It was the goal of the conspiracy for defendant HENRY ROJAS and his co-conspirators to unlawfully enrich themselves and others by, among other things: (a) soliciting, receiving, offering, and paying kickbacks and bribes in return for ordering and arranging for the ordering of genetic tests that were referred to Laboratory 1; (b) submitting and causing the submission of false and fraudulent claims to Medicare through Laboratory 1 for genetic tests that were ordered and procured through kickbacks and bribes, medically unnecessary, ineligible for reimbursement, and not provided as represented; (c) concealing the submission of false and fraudulent claims to Medicare through Laboratory 1, the receipt and transfer of the proceeds of the fraud, and the receipt and payment of kickbacks and bribes; and (d) diverting proceeds of the fraud for their personal use and benefit, for the use and benefit of others, and to further the fraud.

Manner and Means of the Conspiracy

4. The manner and means by which defendant HENRY ROJAS and his co-conspirators sought to accomplish the goal of the conspiracy included, among others, the following:

a. Defendant HENRY ROJAS submitted a Medicare provider enrollment application in which he certified that, as an enrolled Medicare

provider, he would abide by all applicable Medicare laws, regulations, and program instructions, that he would not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare, and that he understood that payment of claims by Medicare was conditioned upon the claim and the underlying transaction complying with the Federal Anti-Kickback Statute.

b. Defendant HENRY ROJAS and his co-conspirators, including Individual 1 and Individual 2, gained access to Medicare beneficiaries' insurance information and genetic samples through various means of solicitation, including organizing and appearing at purported "health fairs" at assisted living facilities and senior centers, among other places.

c. Defendant HENRY ROJAS signed laboratory requisition forms ordering medically unnecessary genetic tests for Medicare beneficiaries even though he was not treating the beneficiaries for cancer, symptoms of cancer, or in many instances, any other medical condition; he did not use the test results in the treatment of the beneficiaries or the management of their care; in many instances, he did not conduct a patient visit or consultation that would justify approval of the orders for genetic tests and often never spoke with the beneficiaries; in many instances, he did not obtain or review the beneficiaries' medical records or otherwise evaluate their purported medical conditions; and he often did not provide the results of the genetic tests to Medicare beneficiaries.

d. Defendant HENRY ROJAS signed laboratory requisition forms falsely certifying and attesting that genetic tests for Medicare beneficiaries were

medically necessary for the diagnosis or detection of a disease or disorder and that the results would be used in the medical management and treatment decisions for the beneficiaries.

e. Individual 1 and Individual 2 transmitted laboratory requisition forms that defendant HENRY ROJAS signed, along with specimens, to Individual 3 and Laboratory 1 for the purpose of submitting and causing the submission of false and fraudulent claims to Medicare for genetic tests.

f. Individual 3 agreed to and did offer, pay, and cause the payment of kickbacks and bribes through Laboratory 1 to Individual 1, Individual 2, and others, in exchange for specimens collected from beneficiaries and fraudulent orders for genetic tests signed by defendant HENRY ROJAS, all of which were used to support false and fraudulent claims to Medicare by Laboratory 1.

g. Defendant HENRY ROJAS agreed to and did solicit and receive illegal kickbacks and bribes, typically in the form of cash payments, from Individual 1 and Individual 2 in exchange for signing laboratory requisition forms ordering diagnostic testing, including genetic testing, for Medicare beneficiaries.

h. Defendant HENRY ROJAS caused Laboratory 1 to submit approximately $7.9 million in false and fraudulent claims to Medicare for genetic tests that were ordered and procured through illegal kickbacks and bribes, medically unnecessary, ineligible for reimbursement, and not provided as represented. Medicare paid Laboratory 1 approximately $4.7 million based on these false and fraudulent claims.

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

COUNTS 2 – 3
(Health Care Fraud)

5. Paragraph 1 of Count 1 of this Indictment is realleged here.

6. From in or around November 2018 through in or around March 2021, in the District of New Jersey and elsewhere, the defendant,

HENRY ROJAS,

did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud Medicare, a health care benefit program as defined in 18 U.S.C. § 24(b), and to obtain by means of false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, Medicare, in connection with the delivery of, and payment for, health care benefits, items, and services.

Goal of the Scheme

7. The Grand Jury realleges Paragraph 3 of this Indictment as a description of the goal of the scheme and artifice.

The Scheme

8. The Grand Jury realleges Paragraph 4 of this Indictment as a description of the scheme and artifice.

Executions of the Scheme

9. On or about the dates specified below, in the District of New Jersey and elsewhere, defendant HENRY ROJAS, aided and abetted by, and aiding and abetting, others known and unknown to the Grand Jury, submitted and caused to be submitted to Medicare through Laboratory 1 the following false and fraudulent claims for genetic testing that were ordered and procured through illegal kickbacks and bribes, medically unnecessary, ineligible for reimbursement, and not provided as represented, in an attempt to execute, and in execution of, the scheme described in Paragraph 4

Count	Medicare Beneficiary	Approx. Claim Date	Approx. Amount Billed to Medicare	Approx. Amount Paid by Medicare
2	G.D.	3/20/2019	$9,579	$7,165
3	R.C.	3/20/2019	$9,579	$7,165

Each in violation of Title 18, United States Code, Sections 1347 and 2.

COUNT 4
(Conspiracy to Defraud the United States and Pay and Receive Health Care Kickbacks)

10. Paragraph 1 of Count 1 of this Indictment is realleged here.

11. From in or around November 2018 through in or around March 2021, in the District of New Jersey and elsewhere, the defendant,

HENRY ROJAS,

did knowingly and intentionally combine, conspire, confederate, and agree with Individual 1, Individual 2, Individual 3, and others, known and unknown to the Grand Jury, to:

a. defraud the United States by cheating the United States government and any of its agencies and departments out of money and property, and by impairing, impeding, obstructing, and defeating through deceitful and dishonest means, the lawful government functions of HHS and CMS in their administration and oversight of Medicare;

b. knowingly and willfully violate Title 42, United States Code, Section 1320a-7b(b)(1)(B), by soliciting and receiving any remuneration, specifically, kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for purchasing, leasing, ordering, and arranging for and recommending purchasing, leasing, and ordering any good, facility, service, and item for which payment may be made in whole and in part by a Federal health care program; and

c. knowingly and willfully violate Title 42, United States Code, Section 1320a-7b(b)(2)(B), by offering and paying any remuneration, specifically,

kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to any person to induce such person to purchase, lease, order, and arrange for and recommend purchasing, leasing, and ordering any good, facility, service, and item for which payment may be made in whole and in part by a Federal health care program.

Goal of the Conspiracy

12. The Grand Jury realleges Paragraph 3 of this Indictment as a description of the goal of the conspiracy.

Manner and Means of the Conspiracy

13. The Grand Jury realleges Paragraph 4 of this Indictment as a description of the manner and means of the conspiracy.

Overt Acts

14. In furtherance of the conspiracy, and to accomplish its goal, at least one of the conspirators committed, and caused to be committed, in the District of New Jersey and elsewhere, at least one of the following overt acts, among others:

a. On or about March 20, 2019, defendant HENRY ROJAS attended a purported "health fair" in Chester, New York, so that he could gain access to Medicare beneficiaries and genetic testing specimens and sign laboratory requisition forms for medically unnecessary genetic testing in exchange for kickbacks and bribes.

b. On or about March 20, 2019, defendant HENRY ROJAS signed a laboratory requisition form for Medicare beneficiary G.D. in which

defendant HENRY ROJAS falsely attested that genetic testing was medically necessary and that the results would be used for Medicare beneficiary G.D.'s medical management and treatment decisions.

c. On or about March 20, 2019, defendant HENRY ROJAS caused Laboratory 1 to submit a false and fraudulent claim to Medicare for genetic tests for Medicare beneficiary G.D.

d. On or about April 5, 2019, Individual 3 wrote a check in the approximate amount of $19,358, payable to Company 1, and drawn on the Laboratory 1 Bank Account, in exchange for specimens and laboratory requisition forms signed by defendant HENRY ROJAS and referred by Individual 1 and Individual 2.

e. On or about August 1, 2019, Individual 3 wrote a check in the approximate amount of $100,000, payable to Company 2, and drawn on the Laboratory 1 Bank Account, in exchange for specimens referred and laboratory requisition forms signed by defendant HENRY ROJAS and referred by Individual 1 and Individual 2.

All in violation of Title 18; United States Code, Section 371.

FORFEITURE ALLEGATIONS

1. The allegations contained in Counts 1 through 4 of this Indictment are realleged here for the purpose of alleging forfeiture against defendant HENRY ROJAS.

2. Pursuant to Title 18, United States Code, Section 982(a)(7), upon being convicted of the offenses charged in Counts 1 through 4 of this Indictment, defendant HENRY ROJAS shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offenses.

Substitute Assets Provision

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

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b) and Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of defendant HENRY ROJAS up to the value of the forfeitable property described above.

A True Bill,

[redacted]

Foreperson

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18 U.S.C. § 371
18 U.S.C. § 2

A true bill,

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Foreperson

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