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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

v.

BRIAN COTUGNO

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* **CRIM. NO. 24-cr-00045-CG**
* **USAO NO. 23R00544**
*
* **VIOLATION:**
* **18 U.S.C. § 371**
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* **FORFEITURE NOTICE**
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* **FILED UNDER SEAL**

INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

COUNT ONE

Conspiracy to Violate the Anti-Kickback Statute
Title 18, United States Code, Section 371

1. From in or about January 2023 through in or about July 2023, in the Southern District of Alabama, Middle District of Alabama, Northern District of Alabama, Northern District of Georgia, Northern District of Florida, Eastern District of Texas, Southern District of Texas, Central District of California, Southern District of Indiana, District of New Jersey, and elsewhere, the defendant,

BRIAN COTUGNO,

knowingly and willfully combined, conspired, confederated, and agreed with others to purchase, sell, and distribute, and to arrange for the purchase, sale, and distribution of Medicare beneficiary identification numbers, in violation of 42 U.S.C. §1320a-7b(b)(4).

OBJECTIVE OF THE CONSPIRACY

2. The objective of this conspiracy was to obtain money from Medicare through the purchase and sale of beneficiary identification numbers that were then used to falsely bill Medicare for COVID-19 test kits.

BACKGROUND

The Medicare Program

3. Medicare is a federal program administered by the Centers for Medicare and Medicaid Services (“CMS”), an agency of the U.S. Department of Health and Human Services and is a “health care benefit program” as defined in 18 U.S.C. § 24(b).

4. Medicare is funded through individual payroll taxes, other taxes, and user fees. Medicare helps pay for certain medical services for people aged 65 and over and some other individuals with specific illnesses and/or disabilities. Individuals who receive benefits under Medicare are referred to as Medicare “beneficiaries.”

5. Each Medicare beneficiary is identified with a unique beneficiary identifier number known as a “BIN.” These BINs are used, among other ways, to submit claims to Medicare seeking reimbursement for covered benefits, items, and services. BINs are considered means of identification pursuant to 18 U.S.C. § 1028(d)(7).

6. Medical providers and suppliers must obtain a National Provider Identifier (“NPI”) number before enrolling in Medicare. Healthcare providers seeking to become Medicare providers must submit enrollment documentation to Medicare.

7. Every enrollment application submitted by, or on behalf of, a healthcare provider, includes an agreement by the healthcare provider to abide by Medicare’s rules and regulations. As a condition of payment, Medicare requires providers to certify all information on the claim to be true, correct, and complete.

8. Medicare does not reimburse providers for claims for testing, items, or services procured in violation of the Federal Anti-Kickback statute, including the provision set out in 42 U.S.C. §1320a-7b(b)(4), prohibiting the purchase, sale, and distribution of Medicare BINs.

Over the Counter (“OTC”) COVID-19 Test Kits

9. In April 2022, the United States federal government announced that Medicare beneficiaries could receive up to eight OTC COVID-19 test kits per calendar month, at no cost to the beneficiary, from participating Medicare providers during the duration of the COVID-19 public health emergency (“PHE”).

10. While these tests were available at no cost to the beneficiaries, they were not “free.” Rather, Medicare used federal tax dollars to reimburse enrolled healthcare providers for these tests at a rate of approximately \$94.00 per test.

11. During the period when these COVID-19 test kits were authorized for distribution, participating healthcare providers were encouraged by Medicare to use online ordering mechanisms, including direct-to-consumer shipping programs, to furnish these tests to requesting beneficiaries. Direct-to-consumer shipping programs included online and telephone ordering. To comply with the federal authorization for these tests, these direct-to-consumer shipping programs could only be operated by an eligible pharmacy or healthcare provider enrolled in the Medicare program.

12. The federal government ended the PHE on May 11, 2023. However, Medicare announced a one-year grace period for healthcare providers to bill for COVID-19 test kits shipped to requesting beneficiaries prior to May 11, 2023, but which had not been billed to Medicare before the end of the PHE.

13. To receive reimbursement from Medicare for these COVID-19 test kits, healthcare providers were directed to bill Medicare using Healthcare Common Procedure Coding System code K1034 (“code K1034”). CMS guidance to providers regarding billing code K1034 was to “only give patients the tests when they request them.” Thus, a provider could not send unrequested tests to beneficiaries and then bill Medicare for these tests.

Brian Cotugno and TeleMD, LLC

14. **BRIAN COTUGNO** (“**COTUGNO**”) is a federal felon who owns TeleMD, LLC (“TeleMD”), which is located in the Northern District of Georgia.

15. Neither **COTUGNO** nor TeleMD has ever been enrolled as a Medicare provider. Thus, neither could bill Medicare for tests, items, or services, such as COVID-19 test kits.

16. During the period relevant to this Information, TeleMD had a bank account with Renasant Bank (hereinafter “the TeleMD bank account”). **COTUGNO** was the only signatory on this account.

Individuals 1 & 2 and Lab-1

17. Persons identified herein as “Individual–1” and “Individual–2” co-own a business identified herein as “Lab–1”, which is located in the Southern District of Alabama.

18. Lab–1 has been a registered Medicare provider since December 2018. Thus, Lab–1 had the ability to bill Medicare for COVID-19 test kits provided to requesting beneficiaries during the PHE.

19. Reimbursement monies for claims submitted by Lab–1 to Medicare were electronically deposited into a Community Bank account held in Lab–1’s name (hereinafter “Lab–1 bank account”). Individual–1 and Individual–2 were signatories on the Lab–1 bank account.

MANNER AND MEANS OF THE CONSPIRACY

20. Prior to forming this hub and spoke conspiracy, **COTUGNO** knew that Medicare reimbursed over \$90.00 per COVID-19 test kit furnished to requesting beneficiaries. However, since neither **COTUGNO** nor TeleMD was an enrolled provider, he could not bill for COVID-19 test kits. Thus, **COTUGNO** devised a plan where he would sell “lead packages” to enrolled providers able to bill Medicare in exchange for kickback payments from those enrolled providers.

21. **COTUGNO**'s "lead packages" consisted of a beneficiary's personal information, his or her BIN, and an audio recording that purported to be the voice of the beneficiary requesting a COVID-19 test kit.

22. **COTUGNO** and those working for him solicited enrolled providers throughout the United States willing to pay **COTUGNO** kickbacks in exchange for these "lead packages." Ultimately, enrolled Medicare providers whose businesses were located in the Southern District of Alabama, Northern District of Alabama, Eastern District of Texas, Southern District of Texas, Central District of California, Southern District of Indiana, and District of New Jersey all agreed to pay kickbacks to **COTUGNO** in exchange for these "lead packages."

23. After an enrolled provider agreed to this kickback scheme, **COTUGNO** asked how many "lead packages" the provider wanted. Once that number was determined, **COTUGNO** gave a time estimate on how long it would take to come up with that number of "lead packages" and then used call centers located outside the United States to generate that these "lead packages." The provider paid **COTUGNO** per "lead package." Thereafter, the provider billed Medicare for COVID-19 test kits for the beneficiaries whose information was contained in the "lead packages."

24. Many, if not most, of the "lead packages" sold by **COTUGNO** to the providers contained fraudulently generated audio recordings. These beneficiaries had not requested that COVID-19 test kits be sent to them.

25. Through **COTUGNO**'s scheme, the enrolled providers were able to obtain money from Medicare by billing for millions of dollars worth of COVID-19 test kits supposedly ordered by beneficiaries. By receiving kickback payments for these "lead packages," **COTUGNO** was able to obtain a portion of the money reimbursed by Medicare to the enrolled providers.

26. As it pertains to the spoke of this conspiracy that occurred in the Southern District of Alabama, **COTUGNO** agreed with Individual-1 and Individual-2 to provide Lab-1 with "lead packages" in exchange for kickback payments. Once this agreement was made and **COTUGNO**

began providing the “lead packages,” Lab-1 billed Medicare for over 170,000 COVID-19 test kits supposedly requested by over 111,000 different Medicare beneficiaries. Medicare reimbursed Lab-1 approximately \$14,000,000.00 for these claims between February and May 2023. This money was all electronically deposited into the Lab-1 bank account controlled by Individual-1 and Individual-2.

27. After Medicare reimbursement money was deposited into the Lab-1 bank account, Individual-1 and Individual-2 wired approximately \$7,000,000.00 in kickback payments to the TeleMD bank account controlled by **COTUGNO**.

28. Lab-1 did not provide COVID-19 test kits to any of the beneficiaries for whom they billed. Rather, Individual-1 and Individual-2 paid extra money to **COTUGNO** in exchange for him to use a separate distributor. Thus, Individual-1 and Individual-2 obtained approximately \$14,000,000.00 in Medicare reimbursements simply by billing Medicare using the BINs they purchased from **COTUGNO** as part of this kickback scheme.

OVERT ACTS

29. Numerous overt acts were committed as part of this conspiracy. These overt acts include, but are not limited to the following kickback payments wired from the Lab-1 bank account to the TeleMD bank account as payment for “lead packages” provided by **COTUGNO**:

Date	Amount	Wired From	Wired To
02/02/23	\$120,000.00	Lab-1 account	TeleMD account
02/17/23	\$120,000.00	Lab-1 account	TeleMD account
02/28/23	\$120,000.00	Lab-1 account	TeleMD account
03/10/23	\$240,000.00	Lab-1 account	TeleMD account
03/17/23	\$170,000.00	Lab-1 account	TeleMD account
03/24/23	\$60,000.00	Lab-1 account	TeleMD account
03/27/23	\$70,000.00	Lab-1 account	TeleMD account
03/31/23	\$35,000.00	Lab-1 account	TeleMD account
04/06/23	\$500,000.00	Lab-1 account	TeleMD account
04/07/23	\$300,000.00	Lab-1 account	TeleMD account
04/11/23	\$300,000.00	Lab-1 account	TeleMD account
04/14/23	\$400,000.00	Lab-1 account	TeleMD account
04/20/23	\$500,000.00	Lab-1 account	TeleMD account

04/24/23	\$300,000.00	Lab-1 account	TeleMD account
04/27/23	\$300,000.00	Lab-1 account	TeleMD account
05/02/23	\$300,000.00	Lab-1 account	TeleMD account
05/04/23	\$275,000.00	Lab-1 account	TeleMD account
05/08/23	\$400,000.00	Lab-1 account	TeleMD account
05/12/23	\$500,000.00	Lab-1 account	TeleMD account
05/15/23	\$400,000.00	Lab-1 account	TeleMD account
05/18/23	\$500,000.00	Lab-1 account	TeleMD account
05/22/23	\$500,000.00	Lab-1 account	TeleMD account

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

FORFEITURE NOTICE

31. The allegations contained in Count One of this Information are hereby realleged and incorporated by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Sections 981(a)(1)(C), 982(a)(2)(7) and 982(a)(7) and Title 28, United States Code, Section 2461(c).

32. Upon conviction of the offense in violation of Title 18, United States Code, Section 371 as set out in Count One of this Information, the defendant,

BRIAN COTUGNO,

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 offense or any proceeds obtained directly or indirectly as the result of such offense and any property used or intended to be used in any manner or part to commit or to facilitate the commission of the offense. The property to be forfeited includes, but is not limited to the following:

- a. \$2,965,970.85 seized from a Renasant Bank account ending in x2094 held in the name of TeleMD, LLC with authorized signer, **BRIAN COTUGNO**.

33. If any of the property described above, as a result of any action or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or disposed of with, a third party;
- 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,

the United States shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p).

34. All pursuant to Title 21, United States Code, Section 853 and Title 28, United States Code, Section 2461(c).

SEAN P. COSTELLO
UNITED STATES ATTORNEY



MARCH 2024

PENALTY PAGE

CASE STYLE: UNITED STATES v. COTUGNO

DEFENDANT: BRIAN COTUGNO (COUNT ONE)

USAO NUMBER: 23R00197

AUSA: Christopher J. Bodnar

CODE VIOLATION:

COUNT ONE: 18 U.S.C. § 371 (Conspiracy to Violate the Anti-Kickback Statute)

PENALTY:

COUNT ONE: 5 yrs/\$250,000/3 yrs SRT/\$100 SA

AO 455 (Rev. 01/09) Waiver of an Indictment

UNITED STATES DISTRICT COURT
for the
Southern District of Alabama

United States of America

v.

BRIAN COTUGNO

Defendant

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Case No. 24-cr-00045-CG

WAIVER OF AN INDICTMENT

I understand that I have been accused of one or more offenses punishable by imprisonment for more than one year. I was advised in open court of my rights and the nature of the proposed charges against me.

After receiving this advice, I waive my right to prosecution by indictment and consent to prosecution by information.

Date: _____

Defendant's signature

Signature of defendant's attorney

Printed name of defendant's attorney

Judge's signature

Judge's printed name and title