IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

v. CRIMINAL NO. 3:25-cr-81-DPJ-LGI

AUZIE PHILLIP SMITH, JR. 18 U.S.C. § 371

The United States Attorney Charges:

At all times relevant to this Information:

GENERAL ALLEGATIONS

The Medicare Program

1. Medicare was a federally funded health insurance program that provided health benefits to individuals who were 65 years of age or older or disabled. Medicare was administered by the United States Department of Health and Human Services ("HHS"), through its agency, the Centers for Medicare and Medicaid Services ("CMS").

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

3. Individuals who qualified for Medicare benefits were commonly referred to as "beneficiaries." Each beneficiary was given a unique Medicare identification number.

4. Medicare covered different types of benefits, which were separated into different program "parts." Medicare Part A covered hospital inpatient care; Medicare Part B covered physicians' services and outpatient care; Medicare Part C covered Medicare Advantage Plans; and Medicare Part D covered prescription drugs.

5. Physicians, clinics, and other health care providers, including laboratories (collectively, "providers"), that provided services to beneficiaries, could enroll with Medicare and provide medical services to beneficiaries. Medicare providers 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 benefits, items, or services provided to beneficiaries.

6. When seeking reimbursement from Medicare for provided benefits, services, or items, providers submitted the cost of the benefit, item, or service provided together with a description and the appropriate "procedure code," as set forth in the Current Procedural Terminology ("CPT") Manual. Additionally, claims submitted to Medicare seeking reimbursement were required to include: (a) the beneficiary's name and Health Insurance Claim Number; (b) the date upon which the benefit, item, or service was provided or supplied to the beneficiary; and (c) 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. Claims seeking reimbursement from Medicare could be submitted in hard copy or electronically.

Medicare Part B

7. 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 benefits, items, or services rendered to beneficiaries.

8. Novitas Solutions Inc. ("Novitas") was the MAC for consolidated Medicare jurisdictions JH and JL, which included Louisiana, Mississippi, Oklahoma, Texas, and Pennsylvania.

9. To receive Medicare reimbursement, providers needed to have applied to the MAC and executed a written provider agreement. The Medicare provider enrollment application, CMS Form 855B, was required to be signed by an authorized representative of the provider. CMS Form 855B contained a certification that stated:

> I agree to abide by the Medicare laws, regulations, and program instructions that apply to this supplier. The Medicare laws, regulations, and program instructions are available through the Medicare 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 and the Stark law), and on the supplier's compliance with all applicable conditions of participation in Medicare.

10. In executing CMS Form 855B, 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."

11. Payments under Medicare Part B were often made directly to the providers rather than to the patients or beneficiaries. For this to occur, beneficiaries would assign the right of payment to providers. Once such an assignment took place, providers would assume the responsibility for submitting claims to, and receiving payments from, Medicare.

Molecular Diagnostic Testing

12. Molecular diagnostic tests were laboratory tests that used polymerase chain reaction testing and metagenomics to extract DNA from fungi to determine whether different types of bacteria were present in the specimen provided.

13. Medicare did not cover diagnostic 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. § 13957(a)(1)(A). Except for certain statutory exceptions, Medicare did not cover "examinations 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).

14. To conduct molecular diagnostic testing, a laboratory had to obtain a biological specimen from the patient. One way to obtain a biological specimen was to obtain nail clippings from a patient. The biological specimen was then submitted to the diagnostic laboratory to conduct testing.

15. Biological specimens were submitted along with requisitions, or doctors' orders, that identified the patient, the patient's insurance, and indicated the specific tests to be performed. In order for laboratories to submit claims to Medicare for molecular diagnostic tests, the requisitions had to be signed by a physician or other authorized medical professional, who attested to the medical necessity of the test.

Relevant Individuals and Entities

16. **AUZIE PHILLIP SMITH, JR.** ("**SMITH**"), of Madison County, Mississippi, solicited and recruited providers to refer doctors' orders and/or biological specimens to various diagnostic laboratories, including Laboratory 1 and Laboratory 2, sometimes through his company, Ryda, LLC ("Ryda").

17. Laboratory 1, formed in 2011 and located in Tift County, Georgia, was an independent diagnostic laboratory.

18. Laboratory 2, formed in 2017 and located in Durham County, North Carolina, was an independent diagnostic laboratory.

19. Laboratory 3, formed in 2022, and located in Oakland County, Michigan, was an independent diagnostic laboratory owned by the same individuals as Laboratory 2.

20. Provider 1, of Jackson County, Mississippi, was a doctor of podiatric medicine licensed in the State of Mississippi who had the ability to order molecular diagnostic testing.

21. Sales Representative 1, of Hinds County, Mississippi, solicited and recruited providers to refer doctors' orders and biological specimens to various diagnostic laboratories, including Laboratory 1.

22. Company 1, formed in 2019 and located in Rankin County, Mississippi, was owned by Sales Representative 1's spouse.

23. Sales Representative 2, of Dallas County, Texas, solicited and recruited providers to refer doctors' orders and biological specimens to various diagnostic laboratories, including Laboratory 1.

COUNT 1

The Conspiracy and Its Object

24. Paragraphs 1 through 23 of this Information are re-alleged and incorporated by reference as though fully set forth herein.

25. Beginning in or around November 2019, and continuing through in or around May 2024, in Madison County, in the Southern District of Mississippi, and elsewhere, the defendant,

AUZIE PHILLIP SMITH, JR.,

did knowingly and willfully, that is with the intent to further the objects of the conspiracy, combine, conspire, confederate, and agree with Provider 1, Sales Representative 1, Sales Representative 2, and others known and unknown to the United States Attorney, to:

a. defraud the United States by cheating the United States government or any of its agencies out of money and property, and by impairing, impeding, obstructing, and defeating

through deceitful and dishonest means, the lawful government functions of HHS in its administration and oversight of Medicare, and to commit certain offenses against the United States, that is, to:

b. violate Title 42, United States Code, Section 1320a-7b(b)(1)(A)-(B) by soliciting and receiving any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for referring an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part by a Federal health care program, that is, Medicare, and 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, that is, Medicare; and

c. violate Title 42, United States Code, Section 1320a-7b(b)(2)(A)-(B) by offering and paying any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to any person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole or in part by a Federal health care program, that is, Medicare, and 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, that is, Medicare.

Purpose of the Conspiracy

26. It was a purpose of the conspiracy for **SMITH** and his co-conspirators to unlawfully enrich themselves and others known and unknown to the United States Attorney by, among other things: (a) offering, paying, soliciting, and receiving kickbacks and bribes in exchange for ordering

and arranging for the ordering of molecular diagnostic testing to be completed by Laboratory 1, Laboratory 2, and other laboratories; (b) ordering and causing the ordering of medically unnecessary molecular diagnostic testing to be performed on biological specimens of beneficiaries and others; (c) submitting and causing the submission of false and fraudulent claims to Medicare for the conducting of diagnostic molecular testing that was (i) medically unnecessary and (ii) obtained through the payment of kickbacks and bribes and therefore not eligible for Medicare reimbursement; (d) concealing and causing the concealment of false and fraudulent claims to Medicare and the receipt and transfer of the proceeds of the scheme; and (e) diverting fraud proceeds for their personal use and benefit, the use and benefit of others, and to further the fraud.

Manner and Means

27. The manner and means by which **SMITH** and his co-conspirators sought to accomplish the objects and purpose of the scheme and artifice included, among other things:

a. Along with Sales Representative 2, **SMITH** sought out and formed relationships with diagnostic laboratories, including Laboratory 1, whereby Laboratory 1 would pay Sales Representative 2 a share of the reimbursements received for testing biological specimens that Sales Representative 2 referred, as an illegal kickback/bribe, a portion of which, Sales Representative 2 would pay to **SMITH**.

b. **SMITH** and/or Sales Representative 1 offered to pay, and paid, kickbacks to Provider 1 and others. These payments were made in exchange for orders for diagnostic molecular testing referred to Laboratory 1. **SMITH** knew that Laboratory 1 would bill Medicare for the medically unnecessary diagnostic molecular testing.

c. **SMITH** also sought out and formed a relationship with Laboratory 2, whereby Laboratory 2 would pay **SMITH** a share of the reimbursements received for testing

biological specimens that **SMITH** referred, as an illegal kickback/bribe.

d. Provider 1 and others agreed to send doctors' orders and biological specimens to Laboratory 1 and Laboratory 2 in exchange for illegal kickbacks and bribes in the form of a share of the reimbursements received by Laboratory 1 and Laboratory 2 for molecular diagnostic testing performed on the biological specimens, to be paid from the illegal kickbacks and bribes ultimately paid by Laboratory 1 and Laboratory 2 to **SMITH**.

e. Provider 1 took toenail clippings from beneficiaries and others and sent the toenail clippings primarily to Laboratory 1, and later to Laboratory 2, regardless of whether the molecular diagnostic testing of toenail clippings was medically reasonable or necessary for the treatment of the individual patients.

f. Specifically, Provider 1 contracted with various nursing homes and assisted living facilities, where Provider 1 provided toenail care, including clipping and filing of toenails, for beneficiaries, but did not provide any other podiatric or other care for these beneficiaries, such as evaluating their feet for the presence of bacteria or fungi.

g. In exchange for referrals from **SMITH**, Provider 1, and others, Laboratory 1 and Laboratory 2 paid a percentage of reimbursements received from Medicare for the conducting of diagnostic molecular testing as a kickback to **SMITH**, with Laboratory 1 making payments initially to Sales Representative 2, who then paid **SMITH**.

h. **SMITH**, in turn, made payments by check to Sales Representative 1 that represented a portion of the kickbacks received from Laboratory 1.

i. Sales Representative 1 thereafter paid Provider 1 a portion of the funds that Sales Representative 1 received from **SMITH** as a kickback for referring samples to Laboratory 1.

j. **SMITH** personally made a kickback and/or bribe payment to Provider 1 for referring samples to Laboratory 2, although the samples were ultimately billed by Laboratory 3.

k. Despite knowing that remuneration could not be paid or received for referring biological specimens to Laboratory 1, Laboratory 2, or Laboratory 3 for beneficiaries, nevertheless, **SMITH** solicited, received, offered, and paid illegal remuneration, namely kickbacks and bribes, from Laboratory 1, 2, 3, and Sales Representative 2, and to Sales Representative 1 and Provider 1, in exchange for the referral of biological specimens of beneficiaries to Laboratory 1, Laboratory 2, and/or Laboratory 3.

l. From in or around November 2019 through in or around October 2021, Provider 1 caused Laboratory 1 to submit approximately $1,430,721.26 in false and fraudulent claims to Medicare that were procured by the payment of illegal kickbacks and bribes, medically unnecessary, and ineligible for reimbursement. Laboratory 1 was reimbursed approximately $544,822.68 for molecular diagnostic testing of biological specimens submitted by or on behalf of Provider 1.

m. From in or around November 2019 through in or around November 2021, Laboratory 1 paid Sales Representative 2 approximately $366,483.54 in kickbacks for the referral of orders for diagnostic molecular testing to Laboratory 1 by Provider 1 and others.

n. In turn, Sales Representative 2 paid **SMITH**, through Ryda, approximately $168,372.44 in kickbacks for the referral of orders for diagnostic molecular testing to Laboratory 1 by Provider 1.

o. From in or around November 2019 through in or around October 2021, **SMITH**, through Ryda, paid Sales Representative 1, through Company 1, approximately

$58,937.00 in illegal kickbacks, for the referral of orders for diagnostic molecular testing to Laboratory 1 by Provider 1.

p. From in or around February 2020 through in or around January 2021, Sales Representative 1, through Company 1, paid approximately $20,150.00 in illegal kickbacks to Provider 1, consisting of checks made out to a limited liability company owned and controlled by Provider 1, for the referral of orders and biological specimens for molecular diagnostic testing.

q. From in or around March 2024 through in or around May 2024, Provider 1 caused Laboratory 3 to submit approximately $8,841.84 in false and fraudulent claims to Medicare that were procured by the payment of illegal kickbacks and bribes, medically unnecessary, and ineligible for reimbursement. Laboratory 3 was reimbursed approximately $5,502.16 for molecular diagnostic testing of biological specimens submitted by or on behalf of Provider 1.

r. In turn, on or about May 10, 2024, **SMITH** paid approximately $425.00 in illegal kickbacks and/or bribes to Provider 1 in exchange for the referral of orders and biological specimens for molecular diagnostic testing.

Overt Acts

28. In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one co-conspirator committed and caused to be committed, in the Southern District of Mississippi and elsewhere, at least one of the following overt acts, among others:

a. On October 23, 2023, **SMITH** attempted to restart the relationship with Provider 1, stating, "Still would like to get a few toe nails sometimes….," and advised that he had an arrangement with a new laboratory, Laboratory 2.

b. On October 26, 2023, **SMITH** sent a text message to Provider 1 stating, "Would sure love to get a few of your bad toenails. It would be great help to a struggling rep!!"

c. On January 14, 2024, Provider 1 sent a text message to **SMITH**, asking if he was still "working with that new lab." **SMITH** answered affirmatively.

d. On or about February 5, 2024, **SMITH** mailed Provider 1 a box filled with requisition forms, shipping labels with Laboratory 2's address prefilled in, and specimen bags/vials, along with instructions as to completing the requisition forms.

e. In or around May 2024, **SMITH** sent Provider 1 a letter, stating "[Laboratory 2] stopped paying the month you sent those in. We need to change to [a fourth laboratory]. Forms are included. Shipping labels are included. I will honor our agreement. Enclosed is a check for 19. Please if you could send everything to [the fourth laboratory] moving forward." Enclosed was a check from Ryda to Provider 1 in the amount of $425.00.

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

NOTICE OF INTENT TO SEEK CRIMINAL FORFEITURE

29. Upon conviction of the offense set forth above, the defendant, **AUZIE PHILLIP SMITH, JR.**, 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, pursuant to Title 18, United States Code, Section 982(a)(7).

30. If any of the property described above as being subject to forfeiture, 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 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 divided 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), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

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