

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA	:	Hon.
	:	
v.	:	Criminal No. 22-
	:	
ERIK SANTOS	:	18 U.S.C. § 371
	:	18 U.S.C. § 1349

I N F O R M A T I O N

The defendant having waived in open court prosecution by Indictment, the Attorney for the United States, acting under authority conferred by 28 U.S.C. § 515, for the District of New Jersey charges:

COUNT ONE
(Conspiracy to Violate the Anti-Kickback Statute)

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

The Defendant and Other Individuals and Entities

a. Defendant ERIK SANTOS (“defendant SANTOS”) was a resident of Georgia. Defendant SANTOS owned and operated a holding company (“Santos Company-1”) that conducted business with medical testing companies controlled by Cooperating Witness-1 (“CW-1”) and others.

b. CW-1 was an owner of a clinical laboratory located in the United States (“Laboratory-1”) and companies that conducted or arranged for a variety of medical tests (the “Testing Companies”).

Background on the Medicare Program

c. The Department of Health and Human Services, Office of the Inspector General (“HHS”) and the Federal Bureau of Investigation (“FBI”) investigated a large-scale scheme to defraud the Medicare Program (“Medicare”) and other federal payors through the paying and receiving of kickbacks in return for referrals of patients interested in certain medical services and products.

d. Medicare was a federally-funded program established by the Social Security Act of 1965 (codified as amended in various sections of Title 42 of the United States Code) to provide medical insurance benefits for individuals age 65 and older and certain disabled individuals who qualified under the Social Security Act. Individuals who received benefits under Medicare were referred to as “Medicare beneficiaries.” Medicare was administered by the Center for Medicare and Medicaid Services (“CMS”), a federal agency under the United States Department of Health and Human Services.

e. Medicare was a “health care benefit program,” as defined by 18 U.S.C. § 24(b), and a “Federal health care program,” as defined by 42 U.S.C. § 1320a-7b(f), that affected commerce.

f. Medicare was divided into four parts, which helped cover specific services: Part A (hospital insurance), Part B (medical insurance), Part C (Medicare Advantage), and Part D (prescription drug coverage).

g. Medicare Part B covered non-institutional care that included, among other things, medical testing by clinical laboratories, where those services were reasonable and necessary to diagnose or treat medical conditions and that

met accepted standards of medical practice. Some examples of medical tests that fell within the purview of Medicare Part B include:

i. *Genetic Cancer Screenings.* A genetic cancer screening (a “CGx Test”) was a diagnostic tool that tested for a genetic predisposition to cancer. Medicare reimbursed health care providers approximately \$7,700 for each qualifying CGx Test.

ii. *COVID-19 Testing.* Several different laboratory tests assessed whether an individual had the novel coronavirus disease 2019, commonly referred to as “COVID-19” (collectively referred to herein as a “Coronavirus Test”). Medicare reimbursed health care providers approximately \$51 for each qualifying Coronavirus Test.

iii. *Respiratory Pathogen Panel Testing.* A Respiratory Pathogen Panel test (“RPP Test”) was used to detect certain respiratory viruses and bacterial pathogens. The RPP Test did not and could not test for COVID-19. The RPP Test could include a bacterial panel (which tested only for bacteria, referred to herein as a “Partial RPP Test”), a viral panel (which tested only for viruses), or both (referred to as a “Complete RPP Test”). Medicare offered reimbursement of approximately \$675 for each qualifying Partial RPP Test, and approximately \$1,350 for each qualifying Complete RPP Test.

h. In order to have one of the tests described above conducted, an individual would complete a buccal or nasopharyngeal swab or a respiratory sample to collect a specimen, which would then be transmitted to a laboratory for testing.

i. Under Medicare regulations, any diagnostic laboratory test had to be ordered by the physician treating the Medicare beneficiary; that is, the physician who furnished a consultation or treated a beneficiary for a specific medical problem and who used the results in the management of the beneficiary’s specific medical problem. For example, Medicare did not cover preventative CGx Tests for beneficiaries who did not exhibit symptoms of cancer or were not being treated for cancer. Moreover, any tests not ordered by the

treating physician were not considered reasonable and necessary and were thus not covered by Medicare.

j. In order for a health care provider to bill Medicare for services rendered, it had to enroll with Medicare as a Medicare provider or “supplier.” For example, in order to bill Medicare for a CGx Test, Coronavirus Test, or RPP Test, a clinical laboratory was first required to complete and submit a Form CMS-855B, the Medicare Enrollment Application for “Clinics/Group Practices and Certain Other Suppliers.”

k. As provided in the Form CMS-855B, in order to enroll with Medicare, a supplier of health care services such as a clinical laboratory had to, among other things, certify the following: (1) the supplier understood that any deliberate omission, misrepresentation, or falsification of any information on the Form CMS-855B could be punished by criminal, civil, or administrative penalties; (2) the supplier agreed to abide by applicable Medicare laws, regulations and program instructions, such as, but not limited to, the federal anti-kickback statute (42 U.S.C. § 1320a-1b(b)) (“AKS”); (3) the supplier understood that payment of a claim by Medicare was conditioned upon the claim and the underlying transaction complying with such laws, regulations and program instructions; and (4) the supplier had to refrain from knowingly presenting or causing to present a false or fraudulent claim for payment by

Medicare and submitting claims with deliberate ignorance or reckless disregard of their truth or falsity.

1. Medicare-authorized suppliers of health care services, such as clinical laboratories, could only submit claims to Medicare for reasonable and medically necessary services. Medicare would not reimburse claims for services that it knew were procured through kickbacks or bribes. Such claims were deemed false and fraudulent because they violated Medicare laws, regulations, and program instructions, and violated federal criminal law. For example, where a CGx Test, a Coronavirus Test, or an RPP Test was procured through the payment of a kickback in violation of the AKS, a claim to Medicare for reimbursement for that test was fraudulent. By implementing these restrictions, Medicare aimed to preserve its resources, which were largely funded by United States taxpayers, for those elderly and other qualifying beneficiaries who had a genuine need for medical services.

m. Laboratory-1 was enrolled as a Medicare supplier and authorized to bill Medicare for the medical tests described below. Laboratory-1 was also responsible for acknowledging that any claims made to Medicare complied with the relevant laws, regulations, and program instructions.

The Conspiracy

2. From in or around September 2019 through in or around March 2020, in the District of New Jersey, and elsewhere, defendant

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did knowingly and intentionally conspire and agree with others to commit an offense against the United States, that is, to knowingly and willfully solicit and receive remuneration, directly and indirectly, overtly and covertly, in cash and in kind, that is, kickbacks and bribes, from any person in return for purchasing, ordering, and arranging for, and recommending purchasing and ordering, any good, item, and service, namely, COVID-19 testing, respiratory pathogen panel tests, and genetic cancer screening tests, for which payment may be made in whole or in part under a Federal health care program, as defined in Title 18, United States Code, Section 24(b), namely, Medicare, contrary to Title 42, United States Code, Section 1320a-7b(b)(1)(B).

Goal of the Conspiracy

3. The goal of the conspiracy was for defendant SANTOS and his co-conspirators to unlawfully enrich themselves by soliciting and receiving kickbacks and bribes.

Manner and Means of the Conspiracy

4. It was part of the conspiracy that:

The CGx Test Scheme

a. In or around September 2019, defendant SANTOS, CW-1 and others agreed to engage in a scheme to bill Medicare for CGx Tests obtained through the payment of kickbacks and bribes.

b. Defendant SANTOS, CW-1 and others agreed that defendant SANTOS and others would provide CW-1's Testing Companies with qualified patient leads, which identified individuals whose CGx Tests were eligible for Medicare reimbursement. In exchange, defendant SANTOS agreed to accept kickbacks from the Testing Company of approximately \$1,750 for each test that resulted in a Medicare reimbursement. Defendant SANTOS would, in turn, pay a kickback of approximately \$1,000 to \$1,500 to other individuals under his management (collectively, the "Suppliers") for every processed CGx Test for which CW-1 paid a kickback to defendant SANTOS.

c. In order to generate qualified patient leads, defendant SANTOS and the Suppliers under his management used a variety of methods, including making cold calls, using targeted Internet advertisements, and making in-person solicitations for various medical services to elderly Medicare beneficiaries across the United States. Once an eligible beneficiary was identified, the Suppliers provided that individual's information to the Testing Companies and others as part of a qualified patient lead. The Testing Companies

operated an online portal (the "Portal") through which Suppliers uploaded qualified patient leads directly to the Testing Companies.

d. After receiving qualified patient leads for likely candidates for Medicare reimbursement, the Testing Companies had telemedicine health care providers contact the Medicare beneficiaries identified in the qualified patient leads. Those health care providers were not treating the beneficiaries for any symptoms or conditions, but were instead operating with the objective of providing those pre-screened beneficiaries with prescriptions for the relevant tests, regardless of medical necessity. In other circumstances, defendant SANTOS and his Suppliers had their own independent relationships or arrangements with health care providers who followed up on qualified patient leads to generate prescriptions that were then provided to the Testing Companies.

e. Once the Testing Companies obtained prescriptions generated through the qualified patient lead process, testing kits were sent to the beneficiaries. Beneficiaries then completed the buccal swab or other testing mechanism contained in the kits and returned them to Laboratory-1. Ultimately, Laboratory-1 electronically submitted or caused the electronic submission of claims to Medicare for payment for each of the tests. Laboratory-1 paid kickbacks to defendant SANTOS and his co-conspirators for each test kit that was returned to the lab and processed, and subsequently billed to Medicare.

f. Defendant SANTOS entered into a sham contract with Laboratory-1 in order to make it appear that defendant SANTOS was engaged in,

and being paid for, legitimate marketing and referral services for Laboratory-1 (the "CGx Agreement"). The CGx Agreement made it appear that Santos Company-1 was engaged in referral services for Laboratory-1 and provided, among other things, that Laboratory-1 would pay defendant SANTOS based on the hours and expenses he incurred, rather than on a per-test basis.

g. In order to conceal the kickback arrangement, defendant SANTOS generated false invoices for hourly referral services and sent them to the Testing Companies, even though defendant SANTOS knew that the invoiced payments were, in fact, pre-arranged kickbacks for each qualified patient lead that had been processed by Laboratory-1.

h. From in or around November 2019 through in or around March 2020, Laboratory-1 paid defendant SANTOS kickbacks of approximately \$33,250 in exchange for CGx Tests and qualified patient leads for CGx Tests. The intended loss to Medicare associated with the leads and tests submitted by SANTOS to the Testing Companies was approximately \$1,193,709.00 in reimbursements.

The COVID-19 Test Scheme

i. In or around March 2020, during the early phase of the COVID-19 pandemic, and at a time when many individuals reported difficulty obtaining Coronavirus Tests to determine whether they were infected, defendant SANTOS and CW-1 agreed that defendant SANTOS would be paid kickbacks on a per-test basis for Coronavirus Tests submitted to Laboratory-1, provided that those tests were bundled with a significantly more expensive RPP Test, which

did not identify or treat COVID-19. Specifically, defendant SANTOS and CW-1 agreed that Laboratory-1 would pay defendant SANTOS a kickback of \$100 per bundled Coronavirus Test and Partial RPP Test kit processed by Laboratory-1, and \$225 per bundled Coronavirus Test and Complete RPP Test processed by Laboratory-1.

j. Defendant SANTOS again entered into a sham contract with Laboratory-1 in order to make it appear that defendant SANTOS was engaged in, and being paid for, legitimate marketing and referral services for Laboratory-1 (the "COVID-19 Agreement"). The COVID-19 Agreement made it appear that Santos Company-1 was engaged in referral services for Laboratory-1 and provided, among other things, that Laboratory-1 would pay defendant SANTOS based on the hours and expenses he incurred, rather than on a per-test basis.

k. Defendant SANTOS also agreed with CW-1 that defendant SANTOS would generate false invoices for hourly referral services and send them to the Testing Companies, even though defendant SANTOS knew that the invoiced payments were, in fact, pre-arranged kickbacks for each bundled Coronavirus Test and RPP Test that had been processed by Laboratory-1.

Overt Acts

5. In furtherance of the conspiracy, and in order to effect the goal thereof, defendant SANTOS and others committed or caused the commission of the following overt acts in the District of New Jersey and elsewhere:

a. On or about December 18, 2019, defendant SANTOS caused Santos Company-1 to submit to the Portal information identifying approximately

4 Medicare beneficiaries located in New Jersey for whom defendant SANTOS possessed CGx Tests that he sought to have processed by Laboratory-1 in exchange for kickbacks.

b. On or about March 24, 2020, SANTOS emailed CW-1 an executed version of the COVID-19 Agreement, which SANTOS signed on behalf of Santos Company-1.

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

COUNT TWO
(Conspiracy to Commit Health Care Fraud)

1. The allegations in Paragraphs 1 and 3 through 5 of Count One of this Information are realleged here.

2. From in or around September 2019 through in or around March 2020, in the District of New Jersey, and elsewhere, defendant

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did knowingly and intentionally conspire and agree with others to knowingly and willfully execute and attempt to execute a scheme and artifice to defraud a health care benefit program and to obtain, by means of 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 by 18 U.S.C. § 24(b), in connection with the delivery of or payment for health care benefits, items and services, contrary to Title 18, United States Code, Section 1347.

Goal of the Conspiracy

3. The goal of the conspiracy was for defendant SANTOS and others to unlawfully enrich themselves by submitting or causing the submission of false and fraudulent claims to Medicare.

Manner and Means

4. It was part of the conspiracy that:

a. As described in paragraphs 1 and 3 through 5 of Count One of this Information, in exchange for kickbacks, defendant SANTOS and others knowingly provided the Testing Companies with medically unnecessary CGx Tests and qualified patient leads for CGx Tests, and agreed to provide the Testing

Companies with medically unnecessary RPP Tests.

b. As a result, Laboratory-1 submitted and caused the submission of false and fraudulent claims to Medicare for CGx Tests that were procured through the payment of kickbacks and were not medically necessary.

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

FORFEITURE ALLEGATIONS


1. Upon conviction of the offenses alleged in Counts One and Two of this Information, defendant SANTOS shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(7), all property, real or personal, that constitutes or is derived, directly and indirectly, from gross proceeds traceable to the commission of the offense (as defined in 18 U.S.C. § 24) alleged in this Information, including, but not limited to, a sum of money equal to \$33,250.

SUBSTITUTE ASSETS PROVISION **(Applicable to All Forfeiture Allegations)**

2. 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;

the United States shall be entitled to forfeiture of substitute property, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b).


VIKAS KHANNA
Attorney for the United States,
Acting Under Authority Conferred
By 28 U.S.C. § 515