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AO 91 (Rev. 11/11) Criminal Complaint

AUSAs Stephen Chahn Lee & Kartik K. Raman (312) 353-5327

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

MARIA ALFEREZ;
JOSETTE LUGTU; and
ANGELA ORDONEZ

CASE NUMBER: 18CR 405

MAGISTRATE JUDGE SCHENKIER

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

COUNT ONE

On or about August 14, 2014, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant MARIA ALFEREZ violated:

Code Section	*Offense Description*
Title 18, United States Code, Section 1347	did knowingly and willfully execute a scheme to defraud a health care benefit program by causing to be submitted to Medicare a claim seeking payment for services rendered by Lincoln Park Home Health regarding Beneficiary AB from on or about April 22, 2014 through on or about June 20, 2014, knowing that payment on this claim was not warranted because the claim was based in part on false statements about Beneficiary AB, in violation of Title 18, United States Code, Section 1347

COUNT TWO

On or about May 14, 2014, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere, defendants JOSETTE LUGTU and ANGELA ORDONEZ violated:

Code Section	*Offense Description*
Title 18, United States Code, Section 1347	did knowingly and willfully execute the scheme to defraud a health care benefit program by causing to be submitted to Medicare a claim seeking payment for services rendered by Lincoln Park Home Health regarding CHS from on or about March 14, 2014 through on or about May 12, 2014, knowing that payment on this claim was not warranted because CHS was not confined to the home, because the claim was based in part on false statements about CHS, and because the billed services were not actually rendered; in violation of Title 18, United States Code, Section 1347

This criminal complaint is based upon these facts:

_X_ Continued on the attached sheet.

SUZANNE BECKERMAN
Special Agent, Federal Bureau of Investigation

Sworn to before me and signed in my presence.

Date: June 27, 2018

Judge's signature

City and state: Chicago, Illinois

SIDNEY I. SCHENKIER, U.S. Magistrate Judge
Printed name and Title

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS | ss

AFFIDAVIT

I, SUZANNE BECKERMAN, being duly sworn, state as follows:

1. I am a Special Agent with the Federal Bureau of Investigation. I have been so employed for approximately 15 years and am currently assigned to a health care squad.

2. This affidavit is submitted in support of a criminal complaint alleging that MARIA ALFEREZ, JOSETTE LUGTU, and ANGELA ORDONEZ have violated Title 18, United States Code, Section 1347. Specifically, the complaint alleges that:

a. on or about August 14, 2014, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant MARIA ALFEREZ did knowingly and willfully execute a scheme to defraud a health care benefit program by causing to be submitted to Medicare a claim seeking payment for services rendered by Lincoln Park Home Health regarding Patient AB from on or about April 22, 2014 through on or about June 20, 2014, knowing that payment on this claim was not warranted because the claim was based in part on false statements about Patient AB, in violation of Title 18, United States Code, Section 1347; and

b. on or about May 14, 2014, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere, defendants JOSETTE LUGTU and ANGELA ORDONEZ did knowingly and willfully execute the scheme to defraud a health care benefit program by causing to be submitted to Medicare a claim seeking payment for services rendered by Lincoln Park Home Health regarding CHS from on or about March 14, 2014 through on or about May 12, 2014, knowing that payment on this claim was not warranted because CHS was not confined to the home,

because the claim was based in part on false statements about CHS, and because the billed services were not actually rendered; in violation of Title 18, United States Code, Section 1347.

3. Because this affidavit is being submitted for the limited purpose of establishing probable cause in support of a criminal complaint charging ALFEREZ, LUGTU and ORDONEZ with health care fraud, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that the defendants committed the offense alleged in the complaint.

4. The statements in this affidavit are based on my personal knowledge, and on information that I have received from other law enforcement personnel and from persons with knowledge regarding relevant facts. Because this affidavit is being submitted for the limited purposes set forth above, I have not included each and every fact known to me concerning this investigation.

SUMMARY OF PROBABLE CAUSE

5. As discussed more below, MARIA ALFEREZ was an owner of one home health agency (PRO VITA HOME CARE, LLC) and then of another (LINCOLN PARK HOME HEALTH CARE, INC.), and was also a registered nurse. The investigation has shown that, among other things: ALFEREZ, transferred patients and employees from PRO VITA to a second company LINCOLN PARK HOME HEALTH when Medicare requested a large overpayment from PRO VITA, to evade making the repayment to Medicare. In addition, ALFEREZ put false information about patients in nursing assessments in order to make the patients appear to qualify for home health services that were billed to Medicare. JOSETTE LUGTU, the director of nursing, also signed false documents that made it appear that she had conducted nursing assessments and provided nursing services to patients when LUGTU had not provided those services. ALFEREZ

also paid ANGELA ORDONEZ, a marketer, approximately $300 for each patient that ORDONEZ recruited, in violation of the Anti-Kickback Statute. Finally, unbeknownst to ORDONEZ and LUGTU, a confidential human source working at the direction of law enforcement consensually recorded meetings with ORDONEZ and LUGTU which revealed them seeking to have the source get or continue getting home health services when the source did not qualify (for example, the source discussed driving and caring for family members) and LUGTU producing false notes of visits and services never provided to the source.

I. Medicare Background Information

6. Medicare is a health care benefit program within the meaning of 18 U.S.C. § 24(b). Medicare provides free or below-cost healthcare benefits to certain eligible beneficiaries, primarily persons sixty-five years of age or older. Individuals who receive Medicare benefits are often referred to as Medicare beneficiaries.

7. Medicare consists of four distinct parts, two of which are relevant here. Part A provides for home health care, and Part B provides supplementary medical insurance for physician services, outpatient services, and certain home health and preventive services.

8. Centers for Medicare and Medicaid Services (CMS), a federal agency within the United States Department of Health and Human Services, administers the Medicare program. CMS contracts with public and private organizations, usually health insurance carriers, to process Medicare claims and perform administrative functions. CMS currently contracts with National Government Services, Inc. to administer and pay Part B claims from the Medicare Trust Fund. The Medicare Trust Fund is a reserve of monies provided by the federal government. NGS processes Medicare Part B claims submitted for physicians' services for beneficiaries in multiple states including Illinois.

9. Enrolled providers of medical services to Medicare recipients are eligible for reimbursement for covered medical services. By becoming a participating provider in Medicare, enrolled providers agree to abide by the rules, regulations, policies, and procedures governing reimbursement, and to keep and allow access to records and information as required by Medicare.

10. Providers of health care services to Medicare beneficiaries seeking reimbursement under the program must submit a claim form, which is referred to a CMS 1500, with certain information regarding the Medicare beneficiary, including the beneficiary's name, health insurance claim number, date the service was rendered, location where the service was rendered, type of services provided, number of services rendered, the procedure code (described further below), a diagnosis code, charges for each service provided, and a certification that such services were personally rendered by that provider.

11. Medicare pays for home health services only if a Medicare patient qualifies for coverage of home health services and if the services are "reasonable and necessary," according to the Medicare Benefit Policy Manual (Chapter 7, Section 20).

12. Home health services are billed to Medicare in 60-day increments known as "episodes." Each episode requires its own certification by the physician who has ordered skilled nursing services. To certify a patient, a physician must sign a form entitled, "Home Health Certification and Plan of Care," which is sometimes referred to as a "Form 485." In signing a Form 485, a physician certifies or recertifies the following

> I certify/recertify that this patient is confined to his/her home and needs intermittent skilled nursing care, physical therapy and/or speech therapy or continues to need occupational therapy. The patient is under my care, and I have authorized the services on this plan of care and will periodically review the plan.

13. Nurses from home-health agencies also sign the Form 485s. The Form 485 includes the following language at the bottom of the first page:

> Anyone who misrepresents, falsifies or conceals essential information required for payment of Federal funds may be subject to fine, imprisonment, or civil penalty under applicable Federal laws.

14. Form 485s are created based in part on nursing assessments, which are sometimes called OASIS (Outcome and Assessment Information Set) forms. Nursing assessments include information about patients' conditions, such as their pain level, specific reasons as to why they are confined to the home, and whether they are incontinent. The information contained in the assessments is used to create Form 485s, as well as to determine the amount of the payment by Medicare to a home-health agency, with payments increasing for patients who are sicker and who need more assistance.

15. Information from the OASIS forms is input into the Home Health Prospective Payment System (HHPPS) to make an initial determination as to the patient's condition, which is expressed as a five-digit alphanumeric code. This code is called a HHPPS code and is used to determine how much the home health agency should be paid. In general, if a patient is sicker (has a higher clinical severity) and is more dependent on other people (has a higher functional severity), then the home health agency is expected to do more and will be paid more. The home health agency is paid an initial amount based on the HHPPS score while providing care. After the period of care is over, the home health agency submits a final claim, and is paid the remainder based on the final claim.

16. From 2008 onwards, the five-digit HHPPS code is broken down as follows:

1. Grouping = 1 to 5, depending on number of visits and whether episode is "early" (1st or 2nd) or late (3rd and up)
2. Clinical severity = A (least severe) to C (most severe)
3. Functional severity = F (not dependent) to H (most dependent)

4. Service domain = K to P
5. Supplies = S to X if supplies provided, 1 to 6 if supplies not provided

17. Accordingly, a patient who is classified as "1CHPX" generally is a patient who is just beginning to receive home health services, is very sick, is very dependent on others for help with daily activities of living, and needs supplies. By contrast, a patient who is classified as "1AFK1" generally is a patient who is just beginning to receive home health services, is sick to a lesser degree, and is mostly independent for daily activities.

18. Nursing assessments contain information about patients' ability to perform basic activities of daily living on their own, such as dressing, bathing, and using the toilet, with the number "0" representing patients who do not need assistance with such activities, and higher numbers representing greater dependence on others, as shown below:

Level	Dressing	Bathing	Toileting Hygiene	Ambulation	Feeding
0	Able to obtain, put on and remove clothing without assistance	Able to bathe self in shower or tub independently, including getting in and out of tub / shower	Able to manage toileting hygiene and clothing management without assistance	Able to independently walk on even and uneven surfaces and negotiate stairs with or without railings	Able to independently feed self
1	able to dress upper/lower body if clothing is laid out or handed to patient	with the use of devices, is able to bathe self in shower or tub independently	able to manage toileting hygiene and clothing management without assistance if supplies / implements are laid out for patient	with the use of one-handed device, able to independently walk on even and uneven surfaces	able to feed self but requires meal set-up or intermittent assistance / supervision, or a liquid / pureed / ground meat diet

Level	Dressing	Bathing	Toileting Hygiene	Ambulation	Feeding
2	Someone must help patient put on [clothing]	able to bathe with intermittent assistance for supervision / reminders, to get in/out of shower / tub, or washing difficult to reach areas	someone must help patient to maintain toileting hygiene and/or adjust clothing	requires use of a two-handed device to walk alone on a level surface and/or requires assistance to negotiate uneven surfaces	unable to feed self and must be assisted or supervised throughout meal/snack

19. Under federal regulations (42 CFR 484.55), a nursing assessment regarding home health services is required to be performed by a registered nurse, A registered nurse "must complete the comprehensive assessment and for Medicare patients, determine eligibility for the Medicare home health benefit, including homebound status."

Confined to the Home

20. To qualify for Medicare coverage of home health services, a patient must be, among other things, "confined to the home." That term is defined in the Medicare Benefit Policy Manual (Chapter 7, Section 30) and is often used interchangeably with the term "homebound."[1]

21. Prior to November 19, 2013, the Medicare Benefit Policy Manual defined a patient as being "confined to the home" if the patient had a "normal inability to leave home and, consequently, leaving home would require a considerable and taxing effort."

22. As of November 19, 2013, the Medicare Benefit Policy Manual was revised so that a person is not to be considered confined to the home unless both of the following two criteria are met:

- First, the patient must either (a) because of illness or injury, need the aid of supportive devices such as crutches, canes, wheelchairs, and walkers; the use

[1] The definition is available online at http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c07.pdf

of special transportation; or the assistance of another person in order to leave their place of residence, OR (b) have a condition such that leaving his or her home is medically contraindicated.

- Second, there must exist a normal inability to leave the home, AND leaving home must require a considerable and taxing effort.

23. To "illustrate the factors used to determine whether a homebound condition exists," the Medicare Benefit Policy Manual both before and after November 19, 2013 gave the following examples of patients who would be considered confined to the home:

- "A patient paralyzed from a stroke who is confined to a wheelchair or requires the aid of crutches in order to walk"
- "A patient who is blind or senile and requires the assistance of another person in leaving their place of residence"
- "A patient who has lost the use of their upper extremities and, therefore, is unable to open doors, use handrails on stairways, etc., and requires the assistance of another individual to leave their place of residence"
- "A patient who has just returned from a hospital stay involving surgery who may be suffering from resultant weakness and pain and, therefore, their actions may be restricted by their physician to certain specified and limited activities such as getting out of bed only for a specified period of time, walking stairs only once a day, etc."

24. According to the Medicare Benefit Policy Manual, "[t]he aged person who does not often travel from home because of feebleness and insecurity brought on by advanced age would not be considered confined to the home for purposes of receiving home health services" unless that person had a condition like one of those quoted in the paragraph above.

25. The Medicare Benefit Policy Manual recognizes that patients can leave their home and still be considered confined to the home, but only if the absences are "infrequent or for periods of relatively short duration," or are "attributable to the need to receive health care treatment." According to the Medicare Benefit Policy Manual, "[i]t is expected that in most instances, absences from the home that occur will be for the purpose of receiving health care treatment,"

though "occasional absences from the home for nonmedical purposes … would not necessitate a finding that the patient is not homebound if the absences are undertaken on an infrequent basis or are of relatively short duration and do not indicate that the patient has the capacity to obtain the health care provided outside rather than in the home."

Skilled Nursing Services That Are Reasonable and Necessary

26. Under the Medicare Benefit Policy Manual (Chapter 7, Section 20), if a Medicare patient is confined to the home and meets the other criteria for home health services, such a patient is "entitled by law to coverage of "reasonable and necessary home health services." Medicare reimbursement for home health services is not authorized for services and treatment that were not "reasonable and necessary" or for which a patient did not meet the criteria necessary to justify the claimed service or treatment.

27. Under the Medicare Benefit Policy Manual (Chapter 7, Section 40.1.1), skilled nursing services are necessary "only when (a) the particular patient's special medical complications require the skills of a registered nurse or, when provided by regulation, a licensed practical nurse to perform a type of service that would otherwise be considered non-skilled; or (b) the needed services are of such complexity that the skills of a registered nurse or, when provided by regulation, a licensed practical nurse are required to furnish the services." Such a service "must be so inherently complex that it can be safely and effectively performed only by, or under the supervision of, professional or technical personnel as provided by regulation."

28. If the nursing services are not necessary, or if the nursing services could "safely and effectively be performed by the patient or unskilled caregivers," then such services should not be paid for by Medicare and should not be billed to Medicare, according to the Medicare Benefit Policy Manual (Chapter 7, Section 40.1.1). "If a service can be safely and effectively performed

(or self-administered) by an unskilled person, without the direct supervision of a nurse, the service cannot be regarded as a skilled nursing service although a nurse actually provides the service … A service is not considered a skilled nursing service merely because it is performed by or under the supervision of a nurse."

29. The Medicare Benefit Policy Manual gives some examples of situations where skilled nursing services may or may not be appropriate. According to the Medical Benefit Policy Manual, "giving a bath does not ordinarily require the skills of a nurse and, therefore, would not be covered as a skilled nursing service." The Medicare Benefit Policy Manual also states that skilled nursing visits may be appropriate to help educate a patient who has been "newly diagnosed" with diabetes mellitus.

30. In addition, the Medicare Benefit Policy Manual (Chapter 7, Section 40) explains when skilled nursing services would be appropriate in the following conditions:

- Observation and assessment of a patient by a nurse is reasonable and necessary only "where there is a reasonable potential for change in a patient's condition that requires skilled nursing personnel to identify and evaluate the patient's need for possible modification of treatment or initiation of additional medical procedures." Such observation and assessment can continue "until the patient's clinical condition and/or treatment regimen has stabilized."

- Management and evaluation of a patient's care plan is reasonable and necessary only "where underlying conditions or complications require that only a registered nurse can ensure that essential unskilled care is achieving its purpose." The complexity of the unskilled services that are "a necessary part of the medical treatment" must require skilled nurses "to promote the patient's recovery and medical safety in view of the patient's overall condition."

- Teaching and training activities can be reasonable and necessary "where the teaching or training is appropriate to the patient's functional loss, illness, or injury." At the same time, teaching and training should not go on indefinitely, and would "cease to be reasonable and necessary" if it "becomes apparent after a reasonable period of time that the patient, family, or caregiver will not or is not able to be trained."

Anti-Kickback Statute

31. Based on my training and experience, I know that the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(1)(A), prohibits the solicitation or receipt of kickbacks in exchange for the referral of Medicare patients:

> "[W]hoever knowingly and willfully solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to induce such person –
>
> "in return for referring an individual to a person for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program . . .
>
> "shall be guilty of a felony. . . ."

32. Section (b)(2)(A) of the Anti-Kickback Statute also prohibits the offering or payment of kickbacks in exchange for the referral of Medicare patients:

> "[W]hoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to induce such person –
>
> "to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program . . .
>
> "shall be guilty of a felony. . . ."

33. Under the plain language of the Anti-Kickback Statute, therefore, it is illegal to knowingly and willfully offer to pay anyone money or remuneration of any sort in exchange for the referral of a patient for home healthcare services for which payment may be made under Medicare or Medicaid. As the legislative history of the statute and decisions interpreting have explained, the purpose of this statute is to ensure that medical decisions are not influenced by financial rewards and to protect against increased costs to federal health care programs. *See, e.g.,*

H.R. Rep. 95-393(II) (relating to 1977 amendments broadening the AKS to include "any remuneration").

II. Background on PRO VITA HOME CARE and LINCOLN PARK HOME HEALTH CARE, and CMS' issuance of overpayment letter to PRO VITA.

34. The companies at issue in this affidavit are LINCOLN PARK HOME HEALTH CARE, INC. and PRO VITA HOME CARE, LLC.

35. According to Medicare records, PRO VITA was a home health agency that was located in Lincolnwood, Illinois. According to Medicare records, MARIA ALFEREZ was a part owner of PRO VITA beginning in 2006, and reported to Medicare at that time that she was the director of nursing, a board member, and a 22.5 percent owner. In 2012, she signed a certification statement with Medicare stating that she was an authorized official, that she had read the application, and agreed to bind PRO VITA to the laws and regulations regarding Medicare.

36. According to representatives of TrustSolutions, LLC, an entity that contracted with Medicare to help ensure the integrity of Medicare claims in part by identifying fraud and abuse, it received information that some Medicare beneficiaries had been solicited by PRO VITA for the purpose of providing them with medically unnecessary services. TrustSolutions representatives also indicated that in 2010, it sent physician questionnaires to 45 physicians who referred patients to PRO VITA within a data set generated from a statistically valid random sample. According to TrustSolutions records, 23 physicians responded, and seven of the physicians replied either the noted beneficiary was not their patient or that they had not ordered home health services for the noted beneficiary.

37. Records maintained by TrustSolutions state that it reviewed a sample of Medicare claims submitted by PRO VITA for purportedly provided home health services paid between January 1, 2010 and March 4, 2011. According to a summary prepared by TrustSolutions,

TrustSolutions employees reviewed the medical records corresponding to 153 separate claims submitted by PRO VITA. Based on that review, TrustSolutions calculated a 95.8 percent denial rate (i.e., that those claims should have been denied my Medicare due to deficiencies in the claims), yielding an actual overpayment of $464,086.62. TrustSolutions then extrapolated that denial rate to all of the claims submitted by PRO VITA to Medicare, indicating a potential overpayment in the amount of $3,900,254.

38. On May 31, 2013, CMS sent an overpayment letter to PRO VITA, notifying PRO VITA that the company had received a Medicare payment in error for the amount of approximately $3,900,254 and was required to return the overpaid amount. The practical impact of this letter to PRO VITA would be that for any future claims submitted by PRO VITA to Medicare, if approved, would go toward the overpayment amount and not be paid to PRO VITA. Stated another way, Medicare would not pay any claims submitted by PRO VITA until satisfaction of the overpayment amount.

39. According to records provided by a Medicare contractor, as of early October 2013, PRO VITA owed Medicare approximately $3,622,631. According to records provided by a Medicare contractor, PRO VITA currently owes approximately $5.376 million, including interest.

40. According to a review of claims data, PRO VITA has not submitted claims to Medicare for any services past August 2013. The last claims submitted on behalf of PRO VITA were received by a Medicare contractor in or around May 2014.

41. According to a Medicare form submitted by Lincoln Park, ALFEREZ became president of Lincoln Park Home Health as of August 15, 2013. According to a Medicare database, ALFEREZ was an owner of Lincoln Park as of August 1, 2013.

42. According to a review of claims data for PRO VITA and for LINCOLN PARK, as well as based on interviews of patients who were seen by PRO VITA prior to CMS sending the overpayment letter, multiple patients were later seen by LINCOLN PARK. In addition, interviews of employees of PRO VITA confirmed that they became employees of LINCOLN PARK in 2013. The transfer of both patients and employees from PRO VITA to LINCOLN PARK indicates that ALFEREZ created LINCOLN PARK in order to evade the overpayment letter issued by CMS to PRO VITA.

43. When ALFEREZ was interviewed by law enforcement on August 6, 2015, she was also asked about PRO VITA discharging patients and LINCOLN PARK re-admitting those patients, and whether this was an attempt to get around Medicare's request for repayment. ALFEREZ said that patients who were discharged by PRO VITA and then admitted at LINCOLN PARK were those who had gone to the hospital.

44. By contrast, a review of claims data associated with the approximately 47 patients who were discharged by PRO VITA in July or August 2013 for what were said to be routine discharges and then admitted by LINCOLN PARK in July or August 2013 for home-health services shows that most patients did not have a hospitalization between the discharge and the admission. Of these patients, about 80 percent (37 patients) had no hospitalizations according to claims data (approximately 10 patients had one or more days of hospital services that were billed to Medicare and that occurred between the discharge from PRO VITA and admission at LINCOLN PARK).

45. For example, as discussed further below, Beneficiary LB was one of the Medicare beneficiaries who was discharged from PRO VITA in July 2013 and then admitted at LINCOLN PARK soon afterwards. According to a review of claims data, PRO VITA ended services with

Beneficiary LB on or about July 23, 2013 with a routine discharge, and LINCOLN PARK admitted Beneficiary LB on or about August 13, 2013. A nursing assessment signed by ALFEREZ and dated August 13, 2013 regarding Beneficiary LB is marked to state that Beneficiary LB had not been discharged from any inpatient facility in the 14 days prior to admission, and a review of claims data showed no hospitalizations between the PRO VITA discharge and the LINCOLN PARK admission.

46. According to claims data, Medicare paid LINCOLN PARK approximately $1.7 million for home-health services in 2013, approximately $3.0 million for home-health services in 2014, and approximately $1.5 million for home-health services in 2015, including services for four beneficiaries specifically discussed in this affidavit – Beneficiary HG (discussed above in paragraphs 53 and 54), Beneficiary AB, Beneficiary LB, and the confidential source.

47. In June 2018, Individual SJ and Individual LM were interviewed by law enforcement. They said that their company served as the outside biller for PRO VITA and LINCOLN PARK, and that their primary point of contact was ALFEREZ. They also said that they are not clinicians and did not decide billing codes, and simply submitted to Medicare bills based on the information that PRO VITA and LINCOLN PARK provided to them.

III. Patient Interviews

48. Over the course of the investigation, law enforcement agents have interviewed Medicare beneficiaries who received services from PRO VITA and LINCOLN PARK. Multiple beneficiaries described their ability to leave the home (which is inconsistent with their being confined to the home, as required in order to qualify for the services for which PRO VITA and LINCOLN PARK billed Medicare), and the patients' descriptions of the services that they received

reveal those services to have been medically unnecessary, not consistent with Medicare regulations, and not consistent with how the services were billed to Medicare.

49. One such beneficiary was Beneficiary RK, who was identified by Medicare records as a former patient of PRO VITA. Beneficiary RK told agents that s/he received home health services from PRO VITA beginning in October 2010 and ending in April 2011. A review of Medicare claims records indicates that PRO VITA submitted claims to Medicare for home health services purportedly provided to Beneficiary RK from October 13, 2010 to April 6, 2011, and PRO VITA was paid approximately $11,174.84 for these claims.

50. Beneficiary RK said that during the entire time s/he received services from PRO VITA, s/he felt guilty because s/he was able to get up and get around. Beneficiary RK told agents that s/he was capable of leaving her/his residence when s/he wants and uses public transportation to get around by her/his self. Beneficiary RK explained to agents that when the PRO VITA nurse visited Beneficiary RK's home, the nurse sat on her/his couch and talked to Beneficiary RK for about an hour; took her/his blood pressure; listened to her/his chest, and then left.

51. Beneficiary RK explained to agents that s/he agreed to receive home health services after being approached at her/his church club by an employee who described herself as working for PRO VITA, whom Beneficiary RK identified as ANGELA ORDONEZ. According to Beneficiary RK, ORDONEZ signed her/him up with PRO VITA.

52. Beneficiary RK advised agents that s/he frequently saw ORDONEZ at church functions and social gatherings. Beneficiary RK told agents that in the fall of 2013, at a church function, ORDONEZ informed her/him that PRO VITA changed its name to LINCOLN PARK. According to Beneficiary RK, during this same function, ORDONEZ asked her/him to sign up for home health services, but s/he declined. Beneficiary RK told agents that ORDONEZ provides

small gifts through a raffle or provides food to attendees at the social gatherings that s/he has attended.

53. Beneficiary HG was another person who received home health services billed to Medicare by PRO VITA and then, later, by LINCOLN PARK. Law enforcement agents interviewed Beneficiary HG in person at a Burger King restaurant on December 17, 2013, who told agents that s/he had just bought a new car but had taken the bus to meet with them. Beneficiary HG said that s/he got home health from PRO VITA and then LINCOLN PARK, though s/he quit services for a few months because s/he did not like having to wait around for a doctor to come visit him/her because s/he wanted to be able to leave his/her home because s/he had things to do. Beneficiary HG confirmed at the time of the interview that s/he drives, prepares her/his own food, and takes her/his roommate to the doctor and to go shopping. Beneficiary HG described the services s/he received to include that nurses came once a week, took her/his blood pressure, weighed her/him, checked her/him, and left.

54. According to a review of claims data, PRO VITA submitted claims to Medicare for home health services purportedly provided to Beneficiary HG from August 5, 2010 to August 1, 2013, and Medicare paid PRO VITA approximately $23,678.06 for these claims. According to a review of claims data, LINCOLN PARK submitted claims to Medicare for home health services purportedly provided to Beneficiary HG from August 13, 2013 through February 4, 2014, and then from June 8, 2014 through September 29, 2014, and then from December 11, 2014 through April 2, 2015. According to claims data, Medicare paid LINCOLN PARK approximately $17,241.64 on those claims, including approximately $1,975.09 for the episode from December 11, 2013

through February 4, 2014, which included the date on which agents met Beneficiary HG at the Burger King restaurant.[2]

IV. Patients Allegedly Seen by MARIA ALFEREZ

55. On May 8, 2014, law enforcement agents met with Beneficiary AB in person at his/her residence. According to Medicare claims data, this visit occurred during an episode of home health services that began on April 22, 2014 and went through June 20, 2014. According to claims data, a Medicare contractor received a claim for this episode on or about August 7, 2014, and Medicare paid LINCOLN PARK approximately $2,462.43 for the episode.

56. Beneficiary AB told agents on May 8, 2014 that s/he was in and out a lot going "back and forth" in large part because of his/her duties with the church where s/he was very active. Beneficiary AB said that s/he has to leave home to do these duties, and that s/he sometimes drives himself/herself. When s/he met with agents, s/he answered the door afoot and did not use any walking assistance.

57. By contrast, the LINCOLN PARK patient file for Beneficiary AB, which law enforcement seized from LINCOLN PARK's offices pursuant to a search warrant, contains multiple statements that Beneficiary AB was confined to the home. For example, the file contained a nursing assessment that was dated April 22, 2014 (about two weeks before the agents' interview) and signed by MARIA ALFEREZ.[3] That assessment stated that Beneficiary AB was homebound because of the following reasons: needs assistance for all activities, requires assistance to ambulate, dependent upon adaptive devices, severe SOB [shortness of breath] / SOB upon

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[2] According to Medicare records, Beneficiary HG passed away in early 2018.

[3] I have compared the signature on this assessment to signatures on checks signed by MARIA ALFEREZ and to MARIA ALFEREZ's driver's license, and they appear similar.

exertion, medical restrictions. The file also contained a May 20, 2014 note signed by ALFEREZ stating that Beneficiary AB was homebound because of poor endurance, unable to safely leave home unassisted, and impaired vision.

58. Beneficiary AB was also asked about his/her activities of daily living, which are part of the nursing assessment and are part of the mix of information used to determine the amount of payment for an episode of care. The table below contrasts what s/he told agents with what was claimed in the April 22, 2014 statement signed by ALFEREZ.

	Statement signed by ALFEREZ	Beneficiary AB statements to law enforcement
Grooming	Someone must assist patient to groom self	Has no problems shaving
Dressing	Someone must help patient put on upper body clothing, undergarments, slacks, socks or nylons, and shoes	Dresses himself/herself
Bathing	Requires presence of another person throughout bath for assistance or supervision	Has no problems showering
Meals	Unable to prepare light meals on a regular basis due to physical, cognitive or mental limitations	Prepares meals for himself/herself
Ambulation	Requires use of a two-handed device to walk alone on a level surface and/or requires human supervision or assistance to negotiate stairs or steps or uneven surfaces	S/he has a bad knee and so uses a cane when s/he goes outside

59. When asked about the visits, Beneficiary AB said that the nurse came about once a week, checked his/her blood pressure, weighed him/her, and listened to his/her heart and breathing. By contrast, LINCOLN PARK billed Medicare as if nurses had performed services as follows:

# separate dates	Type of skilled nursing
7	Management and evaluation, at least 45 minutes (G0162, 3+ units)
17	Observation and assessment of the patient's condition, at least 45 minutes (G0163, 3+ units)
22	Training and/or education of the patient, at least 45 minutes (G0164, 3+ units)

60. Specifically regarding education, Beneficiary AB said that the nurse did not do any education during visits. However, the May 20, 2014 note signed by ALFEREZ states that the

nurse "instructed patient" regarding the use of ambulatory devices, the application of heat to relieve pain, and the importance of monitoring pain medication.

61. On September 3, 2014, an agent spoke by telephone with Beneficiary LB, who is the spouse of Beneficiary AB. According to Medicare claims data, this call occurred during an episode of home health services that began on August 7, 2014 and went through September 30, 2014. According to claims data, Medicare paid LINCOLN PARK approximately $1,975.09 for this episode.

62. During the September 2014 call, Beneficiary LB told agents that s/he drove to visit friends or go grocery shopping and that s/he had been running errands when agents had visited his/her spouse for a second time a few days earlier.

63. By contrast, the LINCOLN PARK patient file for Beneficiary LB, which was seized by law enforcement pursuant to a search warrant, contains multiple statements that Beneficiary LB was confined to the home. For example, the file contains a nursing assessment dated August 13, 2013 and signed by ALFEREZ stating that Beneficiary LB was homebound because of "severe SOB, SOB upon exertion."

64. Beneficiary LB was also asked about his/her activities of daily living when s/he was first seen by LINCON PARK. The table below contrasts what Beneficiary LB told agents in June 2018 with what was claimed in the August 13, 2013 statement signed by ALFEREZ in connection with Beneficiary LB's first episode of home health by LINCOLN PARK.

	ALFEREZ's assessment	Beneficiary LB's statement to agents
Grooming	Someone must assist patient to groom self	Needed no assistance
Dressing	Someone must help patient put on upper body clothing, undergarments, slacks, socks or nylons, and shoes	Able to dress himself/herself
Bathing	Requires presence of another person throughout bath for assistance or supervision	Needed no assistance

	ALFEREZ's assessment	Beneficiary LB's statement to agents
Meals	Unable to prepare light meals on a regular basis due to physical, cognitive or mental limitations	Able to prepare meals for himself/herself
Ambulation	With the use of a one-handed device able to independently walk on even and uneven surfaces and negotiate stairs with or without railings	Able to walk without any assistive device

65. When asked about visits, Beneficiary LB said in the September 2014 interview that a nurse visited once a week to check vitals, make note of medications in a folder, and check on upcoming doctor appointments. Beneficiary LB said that s/he did not receive any training or education from the nurse. By contrast, LINCOLN PARK billed as if nurses had performed services as below:

# separate dates	Type of skilled nursing
7	Management and evaluation, at least 45 minutes (G0162, 3+ units)
22	Observation and assessment of the patient's condition, at least 45 minutes (G0163, 3+ units)
24	Training and/or education of the patient, at least 45 minutes (G0164, 3+ units)

66. In total, Medicare paid LINCOLN PARK approximately $13,954.71 for the services billed in the name of Patient AB, and approximately $11,770.49 for the services billed in the name of Beneficiary LB.

67. When asked by law enforcement about the nurse who came to see him/her from LINCOLN PARK, Beneficiary AB and Beneficiary LB did not mention ALFEREZ, and instead mentioned Individual VP, who is referenced multiple times in the patient file seized from LINCOLN PARK's offices. Individual VP was interviewed by telephone in June 2018. Individual VP is a licensed practical nurse, and not a registered nurse. Individual VP said that s/he would have known if ALFEREZ had visited her/his patients, such as Beneficiary AB, and that Individual VP had no knowledge that ALFEREZ ever visited Individual VP's patients.

68. Based on my training and experience, information provided by Medicare, and my knowledge of the investigation, Medicare would not have paid the claims submitted by LINCOLN PARK regarding Beneficiary AB and Beneficiary LB if Medicare had known that the beneficiaries were not confined to the home or that the nursing assessments contained false information about the beneficiaries' conditions and about the assessment itself.

69. Beneficiary RR was another patient who allegedly was seen by ALFEREZ. According to a patient file seized from Lincoln Park's offices, ALFEREZ did assessments of Beneficiary RR on June 15, 2014, August 6, 2014, and October 9, 2014, as well as a skilled nursing note dated September 10, 2014, in which ALFEREZ claimed to have "educated patient." In June 2018, agents attempted to contact Beneficiary RR by telephone. In a call, Beneficiary RR said that he was not available because he was out of the area. Shortly afterwards, a person who identified her/his self as a close relative of Beneficiary RR called law enforcement. The relative explained that Beneficiary RR did not want to talk to people s/he did not know.

70. According to the assessments signed by ALFEREZ and dated June 15 and August 6 and October 9, Beneficiary RR was homebound for multiple reasons, including needing assistance for all activities (June 15 and August 6), requiring assistance to ambulate (June 15 and August 6), dependence upon adaptive devices (all three), and confusion / unable to go out of home alone (August 6). When read these reasons, Beneficiary RR's relative said that none of these were accurate, especially the claim that Beneficiary RR was confused.

71. According to the assessments signed by ALFEREZ and dated June 15 and August 6 and October 9, Beneficiary RR needed assistance for various activities, such as dressing, bathing, and toileting hygiene. When asked about this, Beneficiary RR's relative said that Beneficiary RR did not need assistance for any of these activities around the time of the assessments.

72. Beneficiary RR's relative said that a Filipino nurse did visit Beneficiary RR for the initial visit, but that another person, whom the relative identified as Individual VP, came for the other visits.

73. According to Medicare data, LINCOLN PARK submitted claims to Medicare for services for Beneficiary RR from June 15, 2014 through December 8, 2014 and from March 3, 2015 through June 29, 2015, and was paid a total of approximately $10,863.31 on those claims.

74. Based on my training and experience, information provided by Medicare, and my knowledge of the investigation, Medicare would not have paid the claims submitted by LINCOLN PARK regarding Beneficiary RR if Medicare had known that the beneficiaries were not confined to the home or that the nursing assessments contained false information about the beneficiaries' conditions and about the assessment itself.

V. ORDONEZ and LUGTU Interactions with Confidential Human Source

75. As described below, the investigation involved a healthy non-home bound individual purportedly covered by Medicare seeking home health and physician services who acted in an undercover capacity as a confidential human source (CHS).[4] During the course of the investigation and as detailed below, the recordings reveal that CHS, both through his/her mobility and statements, did not qualify for home health services. The recordings reveal ORDONEZ coaching CHS in order to appear to qualify for home health services. Further, LINCOLN PARK submitted claims for services which CHS did not receive, including nursing services for dates on which no one visited CHS, including three dates for which LUGTU signed false visit notes.

[4] The CHS was paid a total of $660 by law enforcement for his/her work on this case, and has been paid a total of approximately $4,685 for his/her work on this and other investigations in total. The CHS used to work in law enforcement before retiring and has no criminal history.

76. As background, at the time of the recordings CHS was an able-bodied 71-year-old adult who moved and walked without difficulty and who was not confined to his/her home. Agents instructed CHS to answer any questions posed to him/her by health care providers honestly, and to refrain from altering his/her appearance, behavior, or mannerisms during visits with health care providers. Based upon a review of the video recordings described below, as well as conversations with CHS, during CHS's interactions with others, as described below in this affidavit, s/he did not use a wheelchair, walker, or other movement aid, nor did CHS use any other medical device that would indicate to medical personnel discussed below that s/he was ill or confined to the home. Despite that, LINCOLN PARK HOME HEALTH fraudulently billed Medicare for services for which CHS did not qualify and did not receive.[5]

CHS's Interactions with ORDONEZ

77. On or about November 18, 2013, at approximately 3:10 p.m., under the direction of agents, the CHS placed a consensually recorded call to LINCOLN PARK and requested to speak with ORDONEZ, whom a PRO VITA patient had previously identified to agents as the person who had signed him/her up for home health services.[6]

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[5] As a part of the undercover investigation, law enforcement obtained a unique undercover Medicare number for the CHS. Through the use of these unique Medicare numbers, law enforcement had the ability to track Part A and B claims submitted by LINCOLN PARK to Medicare for care purportedly provided to the CHS.

[6] Patient PK told agents in November 2013 that s/he had agreed to receive home health services after being approached at a church club by ANGELA ORDONEZ. Medicare paid PRO VITA approximately $11,174.84 for services billed in the name of Patient PK from 2010 through 2011. Patient PL told agents that s/he felt guilty while receiving such services because s/he was able to get up and get around. Patient PK said that ORDONEZ approached him/her again in the fall of 2013, told Patient PK that PRO VITA had changed its name to LINCOLN PARK, and asked Patient PK to sign up for home health services. Patient PK said that s/he declined.

78. During the November 18, 2013 call, an unidentified woman answered the phone and identified herself as "LINCOLN PARK."[7] CHS said that s/he had been to brunch with friends and that they told CHS about LINCOLN PARK, PRO VITA, and "a woman named [ORDONEZ] who does presentations." The unidentified female stated, "[ORDONEZ] is one of our marketers." CHS then asked when one of ORDONEZ's next presentations will be, so that CHS might be able to attend because CHS is "kind of interested." The woman asked CHS what building s/he lives in. CHS advised that s/he was in the northern suburbs. The unidentified woman said that, "She [ORDONEZ] does, uhm, you know, regular marketing at, uhm, certain buildings. That's wha-, that's how they know her." CHS again advised that s/he wanted to attend one of ORDONEZ's presentations, and the woman said that she would call ORDONEZ and find out from ORDONEZ when ORDONEZ's next presentation would be. CHS provided his/her phone number and name. The woman said that she would call ORDONEZ, and ORDONEZ would give CHS a call back.

79. CHS advised agents on or about November 18, 2013 that s/he received a call from ORDONEZ earlier that day. According to CHS, s/he did not cause this call to be recorded because s/he did not recognize the phone number of the incoming caller. CHS told agents that ORDONEZ identified herself during the call. CHS also told agents that ORDONEZ told CHS that in order to sign CHS up for home health services, ORDONEZ needed to ask CHS five questions and get CHS's Medicare number. According to CHS, s/he did not provide a Medicare number to ORDONEZ.

80. On or about November 22, 2013, at approximately 3:13 p.m., under the direction of agents, the CHS placed a consensually recorded call to ORDONEZ. ORDONEZ identified

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[7] All quotations contained in this affidavit were taken from a review of the audio recordings made by the CHS, and are not intended to be a verbatim transcript.

herself and said that she had "called to see if you were still interested in home health care." CHS replied, "Yeah, I was wondering whether you could e-mail when I can come to one of your presentations after Thanksgiving." ORDONEZ asked CHS where s/he lives, so that ORDONEZ could invite CHS to a presentation that is close to CHS's home. CHS said that is what s/he would like to do. CHS said that s/he lived near a particular Chicago suburb and ORDONEZ said that she would be in that area that week. CHS said that s/he needed to get his/her house in order for Thanksgiving. CHS also advised that s/he does not give out information over the phone. ORDONEZ advised that s/he would call after Thanksgiving to set up an appointment at CHS's home.

81. On or about December 10, 2013, at approximately 4:18 p.m., under the direction of agents, the CHS placed a consensually recorded call to LINCOLN PARK and requested to speak with ORDONEZ. CHS left a voicemail for ORDONEZ to call CHS.

82. On or about December 10, 2013, CHS advised agents that s/he received a call from ORDONEZ but did not pick up the phone or speak to ORDONEZ. Later that day, on or about December 10, 2013, at approximately 5:01 p.m., under the direction of agents, the CHS placed a consensually recorded call to ORDONEZ. CHS inquired when ORDONEZ's next presentations would take place. ORDONEZ advised CHS she could meet anywhere by CHS's residence on Thursday the 19th because she would be seeing a patient nearby. ORDONEZ suggested, "On Friday the 20th, I could stop by and see you." CHS responded, "Okay, I will be out and about that day, but I could meet you at [a particular restaurant]." CHS and ORDONEZ agreed to meet at noon on December 20, 2013 at a restaurant in Skokie, Illinois. In addition, CHS told ORDONEZ what CHS would be wearing and said that s/he would be in the waiting area of the restaurant.

83. On or about December 20, 2013, for approximately 30 minutes, CHS had a consensually audio and video recorded meeting with ORDONEZ at a restaurant in Skokie, Illinois. Based upon a review of the video recording, during the meeting, ORDONEZ was able to observe CHS walk unassisted from the waiting area of the restaurant to a table in the dining area.

84. The recording indicates that ORDONEZ discussed the services LINCOLN PARK could provide to CHS. When explaining the services provided by LINCOLN PARK, ORDONEZ told CHS, "Everything is paid for through Medicare." The recording indicates that ORDONEZ explained that a nurse visits once a week and the nurse visit is scheduled at the patient's convenience. CHS responded, "Oh good, because I'm very, very active in Basenji Rescue, which is a dog rescue thing. And from time to time, I've gotta go out on transports or, you know, bring dogs to other places and stuff like that. And uh, then sometimes I've gotta go out, if my daughter-in-law's got a Doctor's appointment I have to go, one lives in Zion, one lives in Streamwood, so I gotta go watch the grandkids."

85. The recording indicates that ORDONEZ described benefits that CHS, as a senior citizen, was eligible to receive. In the recording, ORDONEZ acknowledged that CHS still drives, however ORDONEZ also warned CHS "okay, cuz, Medicare will not cover anybody at home if they're driving." The recording indicates that ORDONEZ talked about getting CHS set up with public transportation. ORDONEZ said, "Now, the day that you don't want to drive no more, we would give you the PACE application anyway, and then you keep it for whenever you decide you don't wanna drive no more, then you could apply for it."

86. On or about March 7, 2014, at approximately 4:17 p.m., CHS made a consensually recorded telephone call to ORDONEZ at the direction of agents. The recording indicates that CHS told ORDONEZ that s/he wanted to sign up for home health services at LINCOLN PARK. In the

recording, ORDONEZ coached CHS to say/not say certain things in order to qualify for home health care services. For example, ORDONEZ stated, "When the Doctor and the nurse come and put you in the program, [CHS], between me and you, do not say that you occasionally drive. All right? 'Cuz if not, they will not approve you. All right?" CHS responded, "Okay. Do not say what?" ORDONEZ said, "Do not say that you occasionally drive." CHS responded, "Okay." ORDONEZ then said, "Okay. Because if not, Medicare laws – They will not approve you. All right?" CHS responded, "Okay."

87. Later in the same recording, ORDONEZ further coached CHS regarding how to act when the nurse and physician visit. ORDONEZ said, "I'm gonna give you a tip. Okay? When the social worker from the Department of Aging calls you to come and interview you at the house . . ." CHS responded, "Okay." ORDONEZ continued, "They will give you a date and a time. Please stay in your pajamas. Also, when the doctor and the nurse come and see you. Okay?" ORDONEZ also asked CHS, "Do you use a cane of any sort? Or a walker for now?" CHS responded, "Every once and in a while I'll use my cane." ORDONEZ responded, "Ok let me put that down, uses a cane once in a while. All right. When they come to see you, the doctor and the nurse, make sure you use it, okay, in front of them. All right?" CHS responded, "Okay."

88. On or about March 7, 2014, at approximately 5:13 p.m., CHS made a consensually recorded telephone call to ORDONEZ at the direction of agents. According to the recording, CHS asked ORDONEZ, "Did you call me?" ORDONEZ responded, "Yes, I did, hon." CHS responded, "Oh cuz my…" ORDONEZ said, "I called you to tell you that everything came out approved." At the end of the call, ORDONEZ told CHS, "Okay my dear, so they should be calling you to do uh, appointments."

Nurse A's Visit

89. On or about March 14, 2014, at approximately 11:43 a.m., CHS had a consensually audio and video recorded meeting with Nurse A.[8] Based upon a review of the video recordings, at the beginning of the meeting, CHS answered the door by walking to the door without assistance and let Nurse A into his/her residence.

90. Nurse A asked, "Have any episodes of shortness of breath?" CHS answered, "Uh, yeah, if I come up the basement stairs pretty quick, I'll—you know, get winded and stuff like that." Nurse A asked, "How about the uh, with uh, walking. Any problems with walking?" CHS responded, "Uh, well, I have spinal stenosis. So if I stand too long, my legs start to go numb. But you know, as far as going grocery shopping, (UI) that's no problem." By contrast, according to the assessment found in the patient file later seized by law enforcement, Nurse A's assessment is marked to indicate that the CHS was homebound because he required assistance to ambulate, was unable to safely leave home unassisted, was dependent upon an adaptive device, and had severe shortness of breath or shortness of breath on exertion.

91. Nurse A stated, "When was the last time uh, you saw the Doctor?" CHS said, "Uh, probably about eight months ago. Usually I go once a year for a physical."

92. Nurse A asked, "Can you do your showers yourself? CHS responded, "Oh yeah. That's no problem." Nurse A asked, "Able to get out of the tub and the like… CHS responded, "Yeah, no problem doing that." By contrast, according to the assessment found in the patient file

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[8] Records from the Illinois Department of Employment Security (IDES) reflect that Nurse A began working for LINCOLN PARK no later than the first quarter of 2011. According to IDES records for PRO VITA Nurse A was employed there until the second quarter of 2013. A search of the Illinois Department of Financial and Professional Regulation (IDFPR) revealed that Nurse A is a licensed nurse in Illinois.

later seized by law enforcement, Nurse A's assessment is marked to indicate that the CHS was not able to bathe independently and needed the intermittent assistance of another person to bathe.

93. According to the recording, Nurse A asked, "How about for the days of visits? When is the best time I can see you always? It's only a once a week visit." CHS responded, "Yeah once a week. Probably Thursdays, cause there's some Wednesdays I'm busy and then, Fridays sometimes I go visit a friend of mine at a home health care." In addition, CHS told Nurse A, "Just then make sure you give me a call before you come, so in case something comes up and I'm not here."

94. Based upon a review of the video recording, at the end of the meeting, CHS escorted Nurse A to the door, walking without assistance. This meeting lasted approximately 25 minutes.

Statements by Nurse A and ALFEREZ Regarding Charts

95. Subsequent to the recordings and the search of LINCOLN PARK's office, Nurse A has been interviewed by law enforcement. No promises have been made by law enforcement to Nurse A, though s/he has expressed hope of consideration in terms of charging and sentencing decisions. When asked about the false information s/he put in nursing notes, Nurse A said that s/he did not complete the nursing assessment form when s/he did an assessment, but instead recorded her/his notes on separate sheets of paper. Nurse A then submitted her/his notes to staff at LINCONLN PARK. Nurse A said that s/he understood that ALFEREZ had "the last say" on patient charts, and that s/he understood that everyone was required to listen to ALFEREZ's instructions. Nurse A said that s/ramahe was told by LINCOLN PARK staff to return to the office and alter patient charts if ALFEREZ was not happy with what s/he had documented. Nurse A said that her/his notes were based on his observations during patient visits, but that ALFEREZ would want changes made so that patients appeared less able to care for themselves. Nurse A said that

ALFEREZ did not want nurses to list any activities of daily living as zero (meaning that a patient did not need assistance with that activity) and wanted something higher.

96. ALFEREZ was interviewed by law enforcement agents on August 6, 2015. Among other things, she was asked why a LINCOLN PARK nurse would lie about a patient's condition in the patient file, such as falsely saying that a patient was homebound or needed assistance. ALFEREZ said that a nurse would not do that. When asked why a nurse might lie on an assessment, ALFEREZ said that she had no idea. When asked what she would do if she found out that a nurse lied on the assessment, ALFEREZ said that she would write up the nurse.

Claims Submitted by LINCOLN PARK

97. In total, LINCOLN PARK billed for two home health "episodes" or two 60 day periods, for CHS. The initial "episode" billed for CHS occurred between March 14, 2014 to May 12, 2014, and the claim for the episode was received by a Medicare contractor on or about May 14, 2014. Medicare paid approximately $2,263.77 for this episode. The second episode occurred between May 13, 2014 and June 26, 2014, and the claim for this episode was received by a Medicare contractor on or about July 14, 2014. Medicare paid approximately $2,263.77 for this episode.

98. In submitting claims to Medicare, LINCOLN PARK claimed that the CHS received specific nursing services on specific dates. Law enforcement coordinated with CHS to record all of the visits s/he received by LINCOLN PARK personnel, and compared these visits with what LINCOLN PARK claimed to Medicare. While there were dates when a licensed practical nurse did visit the CHS and that were claimed to Medicare, there were multiple dates when no one from LINCOLN PARK visited the CHS and that were claimed to Medicare. There were multiple dates on which a licensed practical nurse working for LINCOLN PARK did visit the CHS and which

were billed to Medicare. For example, the CHS told law enforcement that no visit occurred on April 3. By contrast, LINCOLN PARK claimed to Medicare that a nurse had provided three 15-minute units of observation and assessment of the patient, and the patient file seized from LINCOLN PARK's office contained a note claiming that a nurse had assessed the patient, taken his/her vital signs, and provided instruction about inhalation therapy that day.

99. As discussed in more detail below, the patient file for the CHS also contained visit notes signed by LUGTU falsely claiming that she had done assessments of the CHS on three separate occasions.[9] LINCOLN PARK claimed that a nurse provided nursing services to the CHS on each of those three dates.

Alleged Visit by JOSETTE LUGTU on April 11, 2014

100. According to claims data, LINCOLN PARK billed Medicare for three 15-minute units (45 minutes in total) of a procedure code associated with the observation and assessment by a nurse of the patient's condition on April 11, 2014. The CHS informed law enforcement that no visit occurred on this date.

101. The LINCOLN PARK patient file for the CHS, which was seized by law enforcement during the search of LINCOLN PARK's offices, contained a skilled nursing note that was dated April 11, 2014 and signed by JOSETTE LUGTU.

102. According to the note signed by LUGTU, she claimed to have done a "multi assessment" that day and that the CHS's "vital signs [were] taken and recorded." The note also contains specific readings for the CHS's blood pressure, temperature, and pulse. According to the note, she "instructed" the CHS or his/her family on "how to reduce the risk of accidental falls by

[9] I have compared the signature on these three notes with the signature on documents enclosed in JOSETTE LUGTU's personnel file at Lincoln Park Home Health, and they appear to be similar.

wearing well fitting shoes with non skid soles." According to the note, she explained to the CHS "how to use the prescribed drugs" and told CHS that s/he should keep his/her inhaler "all the time for emergency."

103. According to the note, the CHS was marked to be homebound because of residual weakness, poor endurance, shortness of breath upon exertion, unsteady gait / painful ambulation, and medical restrictions.

Alleged Visit by JOSETTE LUGTU on May 8, 2014

104. According to claims data, LINCOLN PARK billed Medicare for three 15-minute units (45 minutes in total) of a procedure code associated with the management and evaluation of the patient's plan of care on May 8, 2014. The CHS was instructed to inform agents about any visits by Lincoln Park staff, and did not report any visit on May 8, 2014. A licensed practical nurse who worked for LINCOLN PARK did visit the CHS on May 7, 2014, but LUGTU did not visit the CHS at that time.

105. The LINCOLN PARK patient file for the CHS, which was seized by law enforcement during the search of LINCOLN PARK's offices, contained a nursing assessment that is dated May 8, 2014 and that refers to a skilled nursing note. The file also contains a skilled nursing note that appears to be dated May 7, 8 or 9, 2014 and that is signed by JOSETTE LUGTU.

106. According to the note signed by LUGTU, she claimed to have done a "nursing assessment" that day and that the CHS's "vital sign[s] were taken and recorded." The note also contains specific readings for the CHS's blood pressure, temperature, and pulse. According to the note, she "instructed" the CHS about breathing techniques, and the CHS "verbalized understanding."

107. The nursing assessment dated May 8, 2014 includes statements about the CHS's ability to conduct activities of living. Regarding bathing, the assessment claims that the CHS was not able to bathe independently and needed the intermittent assistance of another person to bathe, similar to the assessment done by Nurse A (*see* paragraphs 92, 95 and 96).

Alleged Visit by JOSETTE LUGTU on June 12, 2014

108. According to claims data, LINCOLN PARK billed Medicare for three 15-minute units (45 minutes in total) of a procedure code associated with the observation and assessment by a nurse of the patient's condition on June 12, 2014. The CHS informed law enforcement that no visit occurred on this date.

109. The LINCOLN PARK patient file for the CHS, which was seized by law enforcement during the search of LINCOLN PARK's offices, contained a skilled nursing note that was dated June 12, 2014 and signed by JOSETTE LUGTU.

110. According to the note signed by LUGTU, she claimed to have done a "nursing assessment" that day and that the CHS's "vital sign[s] were taken and recorded." The note also contains specific readings for the CHS's blood pressure, temperature, and pulse. According to the note, she "instructed" the CHS about "energy conservation techniques" and performing various activities. According to the note, the patient "verbalized understanding."

CHS Meeting with LUGTU

111. On June 25, 2014, CHS had a consensually audio and video recorded meeting with employees from LINCOLN PARK, at the direction of agents. Agents conducting surveillance observed CHS walk unassisted into the office of LINCOLN PARK.

112. According to the recording, upon entering the office, CHS was greeted by a man whom the CHS had met on a prior visit to LINCOLN PARK that had occurred on June 3, 2014.

The CHS was then introduced to a woman identified as LINCOLN PARK's office manager (herein referred to as Individual D), and to JOSETTE LUGTU, who was introduced as LINCOLN PARK's director of nursing. Based on my review of the recording, this appears to have been the first meeting between LUGTU and the CHS, even though LUGTU had claimed in nursing notes to have visited and assessed the CHS on three prior occasions, as discussed above.

113. According to the recording, CHS spoke with Individual D as well as LUGTU. CHS told Individual D, "Okay. Uh, I wanna drop out." Individual D responded, "Uh, ok." CHS responded, "Because you know, uh, now that summer's here and my grandkids, I wanna go see them. So I gotta drive 35 miles either northeast, or 35 miles southwest, to go see them." Individual D responded, "Uh-huh." In addition CHS told Individual D and LUGTU, "Okay and anyways, uh, you know I travel a lot and like I say I wanna go see my grandkids…" CHS also said, "My personal physician … a month ago, I went for a physical, he gave me, other than I'm overweight, he gave me a clean bill of health." CHS further indicated, "So, you know, blood test was good, urine test was good, blood pressure was 127 over 70." Individual D and LUGTU both appeared to acknowledge these statements from CHS. Later in the conversation, LUGTU explained, "Don't think that we're gonna tie you down at your home. No."

114. According to the recording, CHS told LUGTU and Individual D, "I got a busy schedule during the summer with the grandkids." LUGTU responded, "Yes, and—and most patients do get a busy schedule because the family is off, you know, goin' on vacation and stuff." CHS responded, "Right, right." Individual D told CHS, "We know that." LUGTU added, "Yeah, that's allowable. That's not you, you know. And that's doable." Individual D explained, "So we work with your schedule. We're—we're never gonna tie you down like that. No, it's not that kind of a program." CHS responded, "All right."

115. Agents observed CHS walk unassisted out of LINCOLN PARK's offices. The meeting lasted approximately eight minutes.

116. The following day, the licensed practical nurse who had visited the CHS on prior occasions visited the CHS again. According to a recording made of the visit, the CHS told the licensed practical nurse that s/he was canceling "everything" "for the summer." The visit lasted a total of approximately 17 minutes. According to claims data, LINCOLN PARK billed Medicare for three 15-minute units (45 minutes in total) of a procedure code associated with the management and evaluation of a patient's plan of care on June 26, 2014. The patient file also contained a discharge assessment that was marked to indicate that a registered nurse had assessed the CHS on June 26, 2014. Like the other assessments, this assessment includes statements about the CHS's ability to conduct activities of living. Regarding bathing, the assessment claims that the CHS was not able to bathe independently and needed the intermittent assistance of another person to bathe, similar to the assessment done by Nurse A (*see* paragraph 92, 95, 96 and 107).

VII. ALFEREZ Payments to ORDONEZ for Patient Referrals

117. ALFERZ was also asked on August 6, 2015 about how Lincoln Park paid ORDONEZ and whether ORDONEZ was paid based on the number of patients she recruited for Lincoln Park (*see* Paragraphs 31-33 above regarding the Anti-Kickback Statute). ALFEREZ denied paying ORDONEZ on a per-patient basis, and said that ORDONEZ was paid by the hours she worked as a certified-nursing assistant (CNA) and was paid $25 per hour.

118. By contrast, when ORDONEZ was interviewed in person on December 15, 2016 and was asked about how she was paid by LINCOLN PARK, ORDONEZ said that ALFEREZ paid her a salary for her work as a CNA and also paid her a commission of approximately $600 per patient referral.

119. Subpoenaed bank records for LINCOLN PARK show that ORDONEZ received regular checks that specifically referred to "payroll" in the memo lines. Bank records also showed that ORDONEZ received approximately 58 checks from January 2014 through February 2015 that had blank memo lines and that were in multiples of $300, approximately 21 checks that were for $300 each and that had a memo line stating "community outreach," and a March 2014 check for $1,800 with a memo line "loan to be paid asap." ORDONEZ received a total of approximately $39,000 based on these checks.

120. In the search of LINCOLN PARK's offices, agents also identified documents specifically referring to payments to ORDONEZ and others regarding patients. For example, a document entitled "petty cash voucher" stated that on or about November 18, 2013, ORDONEZ received a $1,200 loan which was to be "paid by 2 referrals."

121. Bank records also showed that LUGTU also received five checks from February 2014 through January 2015 that were for multiples of $300 and that had blank memo lines, in addition to payroll checks. LUGTU received a total of $3,900 in these checks.

CONCLUSION

122. Based on the above information, I respectfully submit that there is probable cause to believe that:

a. on or about August 14, 2014, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant ALFEREZ did knowingly and willfully execute a scheme to defraud a health care benefit program by causing to be submitted to Medicare a claim seeking payment for services rendered by Lincoln Park Home Health regarding Beneficiary AB from on or about April 22, 2014 through on or about June 20, 2014, knowing that payment on this

claim was not warranted because the claim was based in part on false statements about Beneficiary AB, in violation of Title 18, United States Code, Section 1347; and

b. on or about May 14, 2014, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere, defendants LUGTU and ORDONEZ did knowingly and willfully execute the scheme to defraud a health care benefit program by causing to be submitted to Medicare a claim seeking payment for services rendered by Lincoln Park Home Health regarding CHS from on or about March 14, 2014 through on or about May 12, 2014, knowing that payment on this claim was not warranted because CHS was not confined to the home, because the claim was based in part on false statements about CHS, and because the billed services were not actually rendered; in violation of Title 18, United States Code, Section 1347.

FURTHER AFFIANT SAYETH NOT.

SUZANNE BECKERMAN
Special Agent, Federal Bureau of Investigation

SUBSCRIBED AND SWORN to before me on June 27, 2018.

The Hon. SIDNEY I. SCHENKIER
United States Magistrate Judge