

FILED by **NF** D.C.  
  
**Jun 28, 2018**  
  
STEVEN M. LARIMORE  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

**18-20564-CR-SCOLA/TORRES**

18 U.S.C. § 1349  
18 U.S.C. § 1347  
18 U.S.C. § 1341  
18 U.S.C. § 2  
18 U.S.C. § 982(a)(7)

UNITED STATES OF AMERICA

vs.

ARMANDO PEREA CRUZ and  
JOSE FIGUEROA,

**Defendants.**

\_\_\_\_\_ /

**INDICTMENT**

The Grand Jury charges that:

**GENERAL ALLEGATIONS**

At all times material to this Indictment:

**The Medicare Program**

1. The Medicare Program (“Medicare”) was a federally funded program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. The benefits available under Medicare were governed by federal statutes and regulations. The United States Department of Health and Human Services, through its agency, the Centers for Medicare and Medicaid Services (“CMS”), oversaw and administered Medicare. Individuals who received benefits under Medicare were commonly referred to as Medicare beneficiaries.

2. Medicare programs covering different types of benefits were separated into different program parts. Part D of Medicare (the “Medicare Part D Program”) subsidized the costs of prescription drugs for Medicare beneficiaries in the United States. The Medicare Part D Program was

enacted as part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and went into effect on January 1, 2006.

3. In order to receive Part D benefits, a beneficiary enrolled in a Medicare drug plan. Medicare drug plans were operated by private companies approved by Medicare. Those companies were often referred to as drug plan sponsors. A beneficiary in a Medicare drug plan could fill a prescription at a pharmacy and use his or her plan to pay for some or all of the prescription.

4. A pharmacy could participate in Part D by entering a retail network agreement directly with a plan or with one or more Pharmacy Benefit Managers (“PBMs”). A PBM acted on behalf of one or more Medicare drug plans. Through a plan’s PBM, a pharmacy could join the plan’s network. When a Part D beneficiary presented a prescription to a pharmacy, the pharmacy submitted a claim either directly to the plan or to a PBM that represented the beneficiary’s Medicare drug plan. The plan or PBM determined whether the pharmacy was entitled to payment for each claim and periodically paid the pharmacy for outstanding claims. The drug plan’s sponsor reimbursed the PBM for its payments to the pharmacy.

5. A pharmacy could also submit claims to a Medicare drug plan to whose network the pharmacy did not belong. Submission of such out-of-network claims was not common and often resulted in smaller payments to the pharmacy by the drug plan sponsor.

6. Medicare, through CMS, compensated the Medicare drug plan sponsors. Medicare paid the sponsors a monthly fee for each Medicare beneficiary of the sponsors’ plans. Such payments were called capitation fees. The capitation fee was adjusted periodically based on various factors, including the beneficiary’s medical conditions. In addition, in some cases where a sponsor’s expenses for a beneficiary’s prescription drugs exceeded that beneficiary’s capitation fee, Medicare reimbursed the sponsor for a portion of those additional expenses.

7. Medicare and Medicare drug plan sponsors were “health care benefit program[s],” as defined by Title 18, United States Code, Section 24(b).

**Medicare Drug Plan Sponsors**

8. Blue Cross and Blue Shield, United Health Group, Inc. (“United”), and Wellcare Health Plan, Inc. (“Wellcare”) were Medicare drug plan sponsors.

**The Defendants and a Related Company**

9. 305 Pharmacy Inc. (“305”) was a Florida corporation, located at 11398 W. Flagler Street, Suite 109, Miami, Florida, that did business in Miami-Dade County, purportedly providing prescription drugs to Medicare beneficiaries.

10. Defendant **ARMANDO PEREA CRUZ**, a resident of Miami-Dade County, owned and operated 305.

11. Defendant **JOSE FIGUEROA**, a resident of Miami-Dade County, owned and operated 305.

**COUNT 1**  
**Conspiracy to Commit Health Care Fraud**  
**(18 U.S.C. § 1349)**

1. The General Allegations section of this Indictment is re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around July 2013, through in or around April 2015, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**ARMANDO PEREA CRUZ**  
and  
**JOSE FIGUEROA,**

did willfully, that is, with the intent to further the object of the conspiracy, and knowingly combine, conspire, confederate, and agree with each other and others, known and unknown to the Grand Jury,

to violate Title 18, United States Code, Section 1347, that is, to knowingly and willfully execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, Blue Cross and Blue Shield, United, and Wellcare, and to obtain by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit programs, in connection with the delivery of and payment for health care benefits, items, and services.

**Purpose of the Conspiracy**

3. It was the purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to health care benefit programs; (b) concealing the submission of false and fraudulent claims to health care benefit programs; (c) concealing the receipt and transfer of fraud proceeds; and (d) diverting the fraud proceeds for the personal use and benefit of themselves and others.

**Manner and Means of the Conspiracy**

The manner and means by which the defendants and their co-conspirators sought to accomplish the object and purpose of the conspiracy included, among other things, the following:

4. **ARMANDO PEREA CRUZ, JOSE FIGUEROA**, and their co-conspirators submitted and caused the submission of claims that falsely and fraudulently represented that prescription drugs were medically necessary, prescribed by a doctor, and had been provided by 305 to Medicare beneficiaries.

5. As a result of such false and fraudulent claims, Medicare and Medicare prescription drug plan sponsors, through their PBMs, made payments funded by Medicare to 305's corporate

bank account which **ARMANDO PEREA CRUZ** and **JOSE FIGUEROA** controlled and profited from.

6. **ARMANDO PEREA CRUZ** and **JOSE FIGUEROA** used the proceeds from the false and fraudulent Medicare claims for their own benefit and use and the benefit and use of others, and to further the fraud.

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

**COUNTS 2-3**  
**Health Care Fraud**  
**(18 U.S.C. § 1347)**

1. The General Allegations section of this Indictment is re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around July 2013, through in or around April 2015, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**ARMANDO PEREA CRUZ**  
and  
**JOSE FIGUEROA,**

in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare, Blue Cross and Blue Shield, United, and Wellcare, and to obtain by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit programs.

**Purpose of the Scheme and Artifice**

3. It was a purpose of the scheme and artifice for the defendants and their accomplices to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of

false and fraudulent claims to health care benefit programs; (b) concealing the submission of false and fraudulent claims to health care benefit programs; (c) concealing the receipt and transfer of fraud proceeds; and (d) diverting the fraud proceeds for the personal use and benefit of themselves and others.

**The Scheme and Artifice**

4. The allegations contained in the Manner and Means of the Conspiracy of Count 1 are re-alleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

**Acts in Execution or Attempted Execution of the Scheme and Artifice**

5. On or about the dates set forth below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants, **ARMANDO PEREA CRUZ** and **JOSE FIGUEROA**, in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, the above-described scheme and artifice to defraud a health care benefit program affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare, Blue Cross and Blue Shield, United, and WellCare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit programs, in that the defendants submitted and caused the submission of false and fraudulent claims seeking the identified dollar amounts, and representing that 305 provided pharmaceutical items and services to Medicare beneficiaries pursuant to a physician's valid orders and prescriptions:

<b>Count</b>	<b>Medicare Beneficiary</b>	<b>Approx. Date of Claim</b>	<b>Claim Number</b>	<b>Item Claimed; Approx. Amount Claimed</b>	<b>Medicare Drug Plan Sponsor</b>
2	J.R.	3/19/14	140783880894029991	Lidocaine; \$197.57	Blue Cross and Blue Shield
3	O.T.	8/12/14	142242874921066999	Lidocaine; \$217.37	United Health Care

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

**COUNTS 4-5**  
**Mail Fraud**  
**(18 U.S.C. § 1341)**

1. The General Allegations section of this Indictment is re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around July 2013, through in or around April 2015, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**ARMANDO PEREA CRUZ**  
 and  
**JOSE FIGUEROA,**

did knowingly, and with the intent to defraud, devise, and intend to devise, a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing the scheme and artifice and attempting to do so, did knowingly cause to be delivered certain mail matter, via United States mail and private and commercial interstate carrier, according to the directions thereon.

**PURPOSE OF THE SCHEME AND ARTIFICE**

3. It was a purpose of the scheme and artifice for **ARMANDO PEREA CRUZ** and **JOSE FIGUEROA** and their accomplices to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to health care benefit programs; (b) concealing the submission of false and fraudulent claims to health care benefit programs; (c) concealing the receipt and transfer of fraud proceeds; and (d) diverting the fraud proceeds for the personal use and benefit of themselves and others.

**SCHEME AND ARTIFICE**

4. The allegations contained in the Manner and Means of the Conspiracy of Count 1 are re-alleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

**USE OF THE MAILS**

5. On or about the dates specified below, the defendants, **ARMANDO PEREA CRUZ** and **JOSE FIGUEROA**, for the purpose of executing and in furtherance of the aforesaid scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, did knowingly cause to be delivered certain mail matter via United States mail and private and commercial interstate carrier, according to the directions thereon:

<b>Count</b>	<b>Approx. Date</b>	<b>Description of Mailing</b>
4	October 21, 2014	Express Scripts check number 1096723, issued in the name of 305, sent via United States Mail to an address in Miami, Florida 33174, in the amount of \$29,093.90
5	March 10, 2015	Express Scripts check number 1203636, issued in the name of 305, sent via United States Mail to an address in Miami, Florida 33174, in the amount of \$100,268.13

In violation of Title 18, United States Code, Sections 1341 and 2.



**FORFEITURE**  
**(18 U.S.C. § 982(a)(7))**

1. The allegations contained in this Indictment are re-alleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of certain property in which the defendants, **ARMANDO PEREA CRUZ** and **JOSE FIGUEROA**, have an interest.

2. Upon conviction of a violation of Title 18, United States Code, Section 1341 and/or 1347, and/or 1349, as alleged in this Indictment, the defendant so convicted shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(7), any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violations.


3. The property subject to forfeiture includes, but is not limited to, a sum of money equal in value to the gross proceeds traceable to the commission of the violations alleged in this Indictment, which the United States will seek as a forfeiture money judgment against the convicted defendant, as part of his sentence.

All pursuant to Title 18, United States Code, Section 982(a)(7), and the procedures set forth at Title 21, United States Code, Section 853, as made applicable through Title 18, United States Code, Section 982(b)(1).

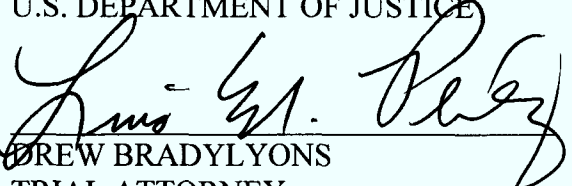
A TRUE BILL

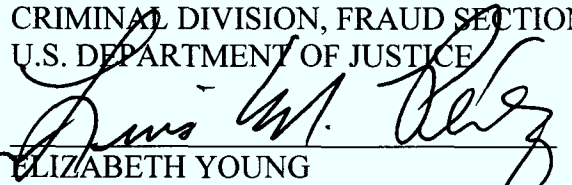
FOREPERSON



*for*   
BENJAMIN G. GREENBERG  
UNITED STATES ATTORNEY  
SOUTHERN DISTRICT OF FLORIDA

JOSEPH BEEMSTERBOER  
DEPUTY CHIEF  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE

*for*   
DREW BRADY LYONS  
TRIAL ATTORNEY  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE

*for*   
ELIZABETH YOUNG  
TRIAL ATTORNEY  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE