

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. **18-20539 CR-MOORE**

18 U.S.C. § 371  
42 U.S.C. § 1320a-7b(b)(1)(A)  
18 U.S.C. § 2  
18 U.S.C. § 982(a)(7)

MAGISTRATE JUDGE  
SIMONTON

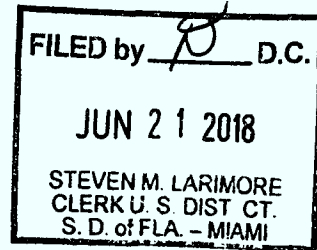
UNITED STATES OF AMERICA

vs.

NIURKA HERRERA,

Defendant.

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

3. Medicare programs covering different types of benefits were separated into different program “parts.” “Part A” of the Medicare program covered certain eligible home health care costs for medical services provided by a home health agency (“HHA”), also referred to as a “provider,” to persons who already qualified for Medicare and who additionally required home health services because of an illness or disability that caused them to be homebound. Payments for home health care medical services were typically made directly to a Medicare-certified HHA or provider based on claims submitted to the Medicare program for qualifying services that had been provided to eligible beneficiaries.

4. CMS did not directly pay Medicare Part A claims submitted by Medicare-certified HHAs. CMS contracted with different private companies to administer the Medicare Part A program throughout different parts of the United States. In the State of Florida, CMS contracted with Palmetto Government Benefits Administrators (“Palmetto”). As administrator, Palmetto was to receive, adjudicate and pay claims submitted by HHA providers under the Part A program for home health claims. Additionally, CMS separately contracted with companies in order to review HHA providers’ claims data. CMS first contracted with TriCenturion, a Program Safeguard Contractor. Subsequently, on December 15, 2008, CMS contracted with SafeGuard Services, a Zone Program Integrity Contractor. Both TriCenturion and SafeGuard Services safeguarded the Medicare Trust Fund by reviewing HHA providers’ claims for potential fraud, waste, and/or abuse.

5. Physicians, clinics and other health care providers, including HHAs that provided services to Medicare beneficiaries were able to apply for and obtain a “provider number.” In its enrollment application, a provider was required to disclose to Medicare any person or company who held an ownership interest of 5% or more or who had managing control of the provider. A health care provider that received a Medicare provider number was able to file claims with Medicare to obtain reimbursement for services provided to beneficiaries. A Medicare claim was required to set

forth, among other things, the beneficiary's name and Medicare information number, the services that were performed for the beneficiary, the date that the services were provided, the cost of the services, and the name and provider number of the physician or other health care provider who ordered the services.

6. By becoming a participating provider in Medicare, enrolled providers agreed to abide by the policies and procedures, rules, and regulations governing reimbursement, including the Federal Anti-Kickback Statute. To receive Medicare funds, enrolled providers, together with their authorized agents, employees, and contractors, were required to abide by all provisions of the Social Security Act, the regulations promulgated under the Act, and applicable policies, procedures, rules, and regulations issued by CMS and its authorized agents and contractors. Health care providers were given and provided with online access to Medicare manuals and services bulletins describing proper billing procedures and billing rules and regulations.

### **Part A Coverage and Regulations**

#### **Reimbursements**

7. The Medicare Part A program reimbursed 100% of the allowable charges for participating HHAs providing home health care services only if the patient qualified for home health benefits. A patient qualified for home health benefits only if the patient:

- a. was confined to the home, also referred to as homebound;
- b. was under the care of a physician who specifically determined there was a need for home health care and established the Plan of Care ("POC"); and
- c. the determining physician signed a certification statement specifying that the beneficiary needed intermittent skilled nursing, physical therapy, speech therapy, or a continued need for occupational therapy; the beneficiary was confined to the home; that a POC for furnishing services was established and periodically reviewed; and that the services were

furnished while the beneficiary was under the care of the physician who established the POC.

**The Defendant, Relevant Entities, and Individuals**

8. City Center Rehab Corp. (“City Center”), located at 7821 Coral Way, Suite 100, Miami, Florida, and previously at 7821 Coral Way, Suite 132, Miami, Florida, was a Florida corporation, incorporated on or about November 16, 2009, with its principal place of business in Miami-Dade County, in the Southern District of Florida. City Center was an outpatient clinic and approved Medicare provider.

9. Star Light Health Care Agency, Inc. (“Star Light”), located at 10620 NW 27th Street, Unit D-101, Miami, Florida, was a Florida corporation, incorporated on or about March 7, 2007, with its principal place of business in Miami-Dade County, in the Southern District of Florida. It purportedly provided home health care services to eligible Medicare beneficiaries.

10. D&V Home Health Care, Inc. (“D&V”), located at 8280 NW 27th Street, Suite 516, Doral, Florida, was a Florida corporation, incorporated on or about August 28, 2007, with its principal place of business in Miami-Dade County, in the Southern District of Florida. It purportedly provided home health care services to eligible Medicare beneficiaries.

11. City of Angels Home Health Care, LLC (“City of Angels”), located at 13170 SW 128th Street, Suite 200, Miami, Florida, was a Florida corporation, incorporated on or about May 26, 2006, with its principal place of business in Miami-Dade County, in the Southern District of Florida. It purportedly provided home health care services to eligible Medicare beneficiaries.

12. Company 1 is a Florida corporation with its principal place of business in Miami-Dade County, in the Southern District of Florida. It purportedly provides home health care services to eligible Medicare beneficiaries.

13. Company 2 is a Florida corporation with its principal place of business in Miami-

Dade County, in the Southern District of Florida. It purportedly provides home health care services to eligible Medicare beneficiaries.

14. Company 3 is a Florida corporation with its principal place of business in Broward County, in the Southern District of Florida. It purportedly provides home health care services to eligible Medicare beneficiaries.

15. Tri-County Rehabilitation, Inc., (“Tri-County”), located at 225 NE 34th Street, Suite 211, Miami, Florida, and 14141 NW 107 Avenue, Suite 301, Miami, Florida, was a Florida corporation, incorporated on or about July 23, 2004, with its principal place of business in Miami-Dade County, in the Southern District of Florida.

16. Caridad Suarez was a resident of Miami-Dade County and co-owned Tri-County.

17. Barbara Francisca Suarez Febles was a resident of Miami-Dade County and co-owned Tri-County.

18. Ana Gabriela Mursuli Caballero was a resident of Miami-Dade County and the owner and operator of City of Angels.

19. Joanna Carpio was a resident of Miami-Dade County and an employee and office manager at City Center.

20. Marlys Tabares was a resident of Miami-Dade County and a co-owner at City Center.

21. Elizabeth De Mena was a resident of Miami-Dade County and a licensed physical therapist assistant who purportedly provided home health care physical therapy services to Medicare beneficiaries.

22. Defendant **NIURKA HERRERA** was the owner and operator of NH Services-Plus Corp., a Florida corporation, and she was paid kickbacks and bribes to refer Medicare beneficiaries to Star Light, D&V, City of Angels, Company 1, Company 2, and Company 3.

**COUNT 1**  
**Conspiracy to Defraud the United States and Pay and  
Receive Health Care Kickbacks**  
**(18 U.S.C. § 371)**

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

2. From in or around May 2014, through in or around December of 2016, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

**NIURKA HERRERA,**

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly, combine, conspire, confederate, and agree with Caridad Suarez, Barbara Francisca Suarez Febles, Ana Gabriela Mursuli Caballero, Joanna Carpio, Marlys Tabares, Elizabeth De Mena, and others, known and unknown to the Grand Jury:

a. to defraud the United States by impairing, impeding, obstructing, and defeating through deceitful and dishonest means, the lawful government functions of the United States Department of Health and Human Services in its administration and oversight of the Medicare program; in violation of Title 18, United States Code, Section 371; and to commit certain offenses against the United States, that is:

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

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

**Purpose of the Conspiracy**

3. It was a purpose of the conspiracy for **NIURKA HERRERA** and her co-conspirators to unlawfully enrich themselves by, among other things: (a) offering, paying, soliciting, and receiving kickbacks and bribes in return for referring Medicare beneficiaries to City Center, Star Light, D&V, City of Angels, Company 1, Company 2, and Company 3 to serve as patients; and (b) submitting and causing the submission of claims to Medicare for home health services that Star Light, D&V, City of Angels, Company 1, Company 2, and Company 3 purportedly provided to those beneficiaries.

**Manner and Means of the Conspiracy**

The manner and means by which the defendant and her co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among other things, the following:

4. **NIURKA HERRERA** solicited and received kickbacks and bribes, in cash and checks, from co-conspirators, including Caridad Suarez, Barbara Francisca Suarez Febles, Ana Gabriela Mursuli Caballero, Elizabeth De Mena, and others, in return for referring Medicare beneficiaries to serve as patients at Star Light, D&V, City of Angels, Company 1, Company 2, and Company 3.

5. **NIURKA HERRERA** paid and caused to be paid kickbacks and bribes to Joanna Carpio, Marlys Tabares, and other co-conspirators in return for prescriptions for home health services.

6. **NIURKA HERRERA**, Caridad Suarez, Barbara Francisca Suarez Febles, Ana Gabriela Mursuli Caballero, Joanna Carpio, Marlys Tabares, Elizabeth De Mena, and other co-conspirators caused Star Light, D&V, City of Angels, Company 1, Company 2, and Company 3 to submit claims to Medicare for home health services purportedly provided to the recruited Medicare beneficiaries.

7. As a result of the submission of these claims, **NIURKA HERRERA** and her co-conspirators caused Medicare to make payments in the approximate amount of \$153,772 to Star Light, D&V, City of Angels, Company 1, Company 2, and Company 3 for home health care services purportedly provided to Medicare beneficiaries.

#### Overt Acts

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

1. On or about December 23, 2014, Ana Gabriela Mursuli Caballero paid **NIURKA HERRERA** approximately \$7,900. **NIURKA HERRERA** used this money to pay herself and the Medicare beneficiaries who she recruited.

2. On or about December 26, 2014, Ana Gabriela Mursuli Caballero paid **NIURKA HERRERA** approximately \$8,100. **NIURKA HERRERA** used this money to pay herself and the Medicare beneficiaries who she recruited.



3. On or about January 7, 2015, Barbara Francisca Suarez Febles and Caridad Suarez paid **NIURKA HERRERA** approximately \$1,240 by means of a check numbered 7003. **NIURKA HERRERA** used this money to pay herself and the Medicare beneficiaries who she recruited.

4. On or about January 19, 2015, Barbara Francisca Suarez Febles and Caridad Suarez paid **NIURKA HERRERA** approximately \$2,340 by means of a check numbered 7017. **NIURKA HERRERA** used this money to pay herself and the Medicare beneficiaries who she recruited.

5. On or about February 17, 2015, Barbara Francisca Suarez Febles and Caridad Suarez paid **NIURKA HERRERA** approximately \$480 by means of a check numbered 7034. **NIURKA HERRERA** used this money to pay herself and the Medicare beneficiaries who she recruited.

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

**COUNTS 2-4**

**Receipt of Kickbacks and Bribes in Connection with a Federal Health Care Program  
(42 U.S.C. § 1320a-7b(b)(1)(A))**

1. Paragraphs 1 through 7, 15 through 17, and 22 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about the dates set forth below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

**NIURKA HERRERA,**

did knowingly and willfully solicit and receive remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by check, as set forth below, in return for referring an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part by a federal health care program, that is, Medicare:

<b>Count</b>	<b>Approximate Date of Kickback</b>	<b>Check Number</b>	<b>Approximate Amount</b>
<b>2</b>	January 7, 2015	7003	\$1,240
<b>3</b>	January 19, 2015	7017	\$2,340
<b>4</b>	February 17, 2015	7034	\$480

In violation of Title 42, United States Code, Section 1320a-7b(b)(1)(A), and Title 18, United States Code, Section 2.

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

1. The allegations of this Indictment are re-alleged and incorporated by reference as though fully set forth herein for purposes of alleging forfeiture to the United States of certain property in which the defendant has an interest.

2. Upon conviction of a violation alleged in Counts 1 through 4 of this Indictment, the defendant shall forfeit to the United States any property, real or personal, which constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense, pursuant to Title 18, United States Code, Section 982(a)(7).

3. The property subject to forfeiture includes, but it is not limited to, a sum of money equal in value to the gross proceeds of the offense alleged in the Indictment.

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

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or

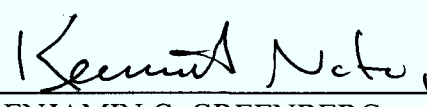
e. has been commingled with other property which cannot be divided without difficulty,

the United States shall be entitled to forfeiture of substitute property, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1), including the real property located at 3620 SW 114th Avenue, Unite 2-110, Miami, Florida.

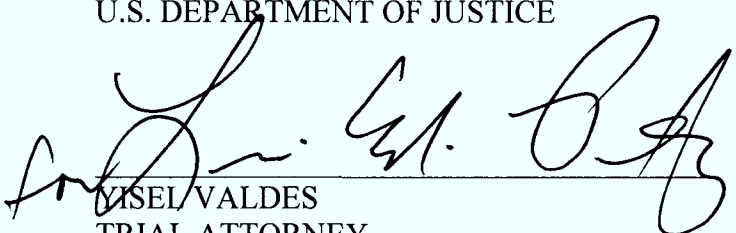
All pursuant to Title 18, United States Code, Section 982(a)(7) and the procedures set forth in Title 21, United States Code, Section 853, made applicable by Title 18, United States Code, Section 982(b)(1).

A TRUE BILL

  
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FOREPERSON

  
\_\_\_\_\_  
BENJAMIN G. GREENBERG  
UNITED STATES ATTORNEY  
SOUTHERN DISTRICT OF FLORIDA

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

  
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MYSEL VALDES  
TRIAL ATTORNEY  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE