

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA
2018 JUN 20 PM 12:48
OFFICE OF THE CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RANDY J. KIRBY,

Defendant.

4:18CR3061

INDICTMENT
18 U.S.C. § 1347

The Grand Jury charges that

INTRODUCTION

At all times material to this indictment:

1. Section 24(b) of Title 18, United States Code, defines a “health care benefit program” as “any public or private plan or contract, affecting commerce, under which any medical benefit, item or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item or service for which payment may be made under the plan or contract.” Health Care Benefit Programs (hereinafter “Programs”) include Medicare, Medicaid, and private insurers.

2. The Medicaid program is a health care benefit program designed primarily for the indigent. In Nebraska, the Nebraska Medical Assistance Program (Nebraska Medicaid or the Medicaid Program) is funded with a combination of federal and state funds, with approximately 60% of the total financial burden of the program paid through the United States Department of Health & Human Services, and the remaining 40% by the State of Nebraska.

3. Nebraska Medicaid contracted with managed care organizations, including Magellan Health Services (hereinafter “Magellan”). Under these contracts, managed care organizations received funding from Nebraska Medicaid to administer the Medicaid program to

Medicaid recipients. Providers could then submit claims directly to the managed care organization for review and reimbursement.

4. RANDY J. KIRBY (KIRBY) was a counselor at his private practice called Transitions Counseling providing mental health and substance abuse counseling from 2007 through September 2016. KIRBY executed Medical Assistance Provider Agreements with Nebraska Medicaid and Magellan, certifying himself as providing mental health and substance abuse services.

HEALTH CARE FRAUD

5. Paragraphs 1 through 4 of this Indictment are realleged and incorporated as if set forth fully herein.

6. From on or about September 2, 2013, and continuing until on or about September 22, 2016, in the District of Nebraska, defendant RANDY J. KIRBY, did knowingly and willfully devise and intend to devise, execute and attempt to execute, a scheme and artifice to defraud a health care benefit program, and to obtain, by means of materially false and fraudulent pretenses, representations, and omissions of material fact, money and property owned by, or under the control of a health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services.

7. The purpose of the scheme and artifice was for KIRBY to unlawfully enrich himself by submitting or causing to be submitted, fraudulent claims to Magellan seeking reimbursement for mental health and substance abuse services that KIRBY did not perform.

8. In furtherance of the scheme and artifice, KIRBY submitted or caused to be submitted to Magellan claims which he knew contained materially false and fraudulent pretenses and representations, and omissions of material fact, in that the claims sought payment for providing mental health and substance abuse services when KIRBY then well knew those

services had not been provided. During the course of the scheme and artifice, claims were submitted for services not provided resulting in reimbursement to KIRBY of approximately \$133,639.57.

9. On or about the dates set forth below in the "Date of Claim" column, in the District of Nebraska, KIRBY knowingly executed and attempted to execute the scheme and artifice to defraud a health care benefit program in connection with the delivery of and payment for health care benefits, items and services, as set forth above, by submitting or causing to be submitted to the authorized agents and intermediaries for the Nebraska Medicaid program, claims for payment in amounts set forth below which the defendant knew made materially false and fraudulent representations in that the claims represented mental health and substance abuse services had been provided to the specified clients when the Defendant then well knew those services had not been provided to those clients.

Count:	Client Initials	Service Date	Claim Receipt Date	Claim Received By	Amount Claimed	Amount Paid
1	J.B.	6/6/16	6/6/16	Magellan	\$125.00	\$74.25
2	Y.B.	6/6/16	6/6/16	Magellan	\$125.00	\$74.25
3	Y.B.	6/9/16	6/20/16	Magellan	\$125.00	\$74.25
4	T.S.	6/7/16	6/20/16	Magellan	\$125.00	\$72.25
5	T.S.	6/9/16	6/20/16	Magellan	\$125.00	\$72.25
6	I.M.	6/9/16	6/20/16	Magellan	\$125.00	\$74.25
7	A.R.	6/6/16	6/6/16	Magellan	\$125.00	\$74.25
8	J.B. & K.M.	3/3/16	3/3/16	Magellan	\$250.00	\$148.50
9	A.R. & K.M.	3/11/16	3/15/16	Magellan	\$250.00	\$148.50

