14

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case:3:18-cr-20440
Judge: Cleland, Robert H.
MJ: Stafford, Elizabeth A.
Filed: 06-21-2018 At 04:31 PM
SEALED MATTER (dat)

UNITED STATES OF AMERICA,

v.

AUGUSTO DAYCO aka JIM DAYCO aka GENE DAYCO

Defendants.

_____/

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

INDICTMENT

THE GRAND JURY CHARGES:

General Allegations

At all times relevant to this Indictment:

The Medicare Program

1. The Medicare program was a federal health care program providing benefits to persons who were 65 years of age or older, or disabled. Medicare was administered by the Centers for Medicare and Medicaid Services ("CMS"), a federal agency under the United States Department of Health and Human Services.

Individuals who received benefits under Medicare were referred to as Medicare "beneficiaries."

2. Medicare was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b). Medicare was also a "Federal health care program" as defined by Title 42, United States Code, Section 1320a-7b(f).

3. The Medicare Program included coverage under four parts: hospital insurance ("Part A"), medical insurance ("Part B"), Medicare Advantage ("Part C"), and prescription drug benefits ("Part D"). Part A covered certain eligible home health care costs for medical services provided by a home health agency to beneficiaries who required home health treatment because of an illness, injury, or medical condition that caused them to be homebound. Part B covered certain physician services, outpatient services, and other services that were medically necessary and not covered by Part A.

4. Payments for home health services under Part A or physician services under Part B were typically made directly to the provider based on claims submitted to Medicare, rather than directly to the beneficiaries.

5. National Government Services ("NGS") was the CMS contractor for Part A in the state of Michigan. Wisconsin Physicians Service ("WPS") was the CMS contracted carrier for Part B in the state of Michigan. CMS contracted with NGS and WPS to receive, adjudicate, process, and pay claims.

6. Trust Solutions, LLC was the program safeguard contractor for Medicare Part A and Part B in the state of Michigan until approximately April 2012. In or around April 2012, Cahaba Safeguard Administrators LLC ("Cahaba") became the Zone Program Integrity Contractor ("ZPIC") for Medicare Part A in the State of Michigan. AdvanceMed replaced Cahaba as the ZPIC in May 2015.

7. Medical providers, whether a home health agency, physician, or other health care provider, were able to apply for and obtain a Medicare Provider Identification Number ("PIN") for billing purposes. Upon certification, the medical provider was assigned a PIN. A health care provider who was assigned a Medicare PIN and provided services to beneficiaries was able to submit claims for reimbursement to Medicare. When the medical provider rendered a service, the provider submitted a claim for reimbursement to the Medicare contractor that included the PIN assigned to the medical provider.

8. By becoming a participating provider in Medicare, enrolled providers agreed to abide by the policies and procedures, rules, and regulations governing reimbursement. 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.

9. As a requirement to enroll as a Medicare provider, Medicare required providers to agree to abide by Medicare laws, regulations, and program instructions. Medicare further required providers to certify that they understood that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with these laws, regulations, and program instructions, including the federal Anti-Kickback Statute. Accordingly, Medicare would not pay claims procured through kickbacks and bribes.

10. Medicare providers were given and provided with online access to Medicare manuals and services bulletins describing proper billing procedures and billing rules and regulations. Pursuant to these Medicare manuals, services bulletins, and other materials containing Medicare's rules and regulations, providers were supposed to submit claims to Medicare only for services they rendered, and providers were required to maintain patient records to verify that the services were provided as described on the claim form.

11. A Medicare claim was required to set forth, among other things, the beneficiary's name and Medicare number, the services performed, the date and charge for the services, and the name and provider number of the physician or other health care provider who ordered the services.

12. Part A, through a Medicare contractor, reimbursed participating home health agencies for home health services provided to a Medicare beneficiary only if

the beneficiary qualified for home health benefits. A beneficiary qualified for home health benefits only if the following requirements were met, among others:

a. the Medicare beneficiary was under the care of a physician who specifically determined a need for home health services and established a plan of care;

b. the Medicare beneficiary was confined to the home, also referred to as "homebound," and a physician certified that the Medicare beneficiary was homebound; and

c. the Medicare beneficiary needed, and a physician certified that the beneficiary needed, skilled nursing services, physical therapy, speech therapy, or occupational therapy.

13. Pursuant to Medicare rules and regulations, a beneficiary was homebound if (1) the individual was confined to the home because of a condition, or due to illness or injury, that restricted the ability of the individual to leave his or her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual had a condition such that leaving his or her home was medically contraindicated and (2) there existed a normal inability to leave home and leaving home required a considerable and taxing effort.

14. Health care providers could only submit claims to Medicare for reasonable and medically necessary services that they rendered. Medicare regulations required home health care providers and physicians to maintain complete and accurate patient medical records reflecting the medical assessment and diagnoses of their patients, as well as records documenting actual treatment of the patients to whom services were provided and for whom claims for payment were submitted. Medicare required complete and accurate patient medical records so that Medicare could verify that the services were provided as described on the claim form. These records were required to be sufficient to permit Medicare, through its contractors, to review the appropriateness of Medicare payments made to the health care provider.

15. To receive reimbursement for a covered service from Medicare, a provider had to submit a claim, either electronically or using a form (*e.g.*, a CMS-1500 form or UB-92), containing the required information appropriately identifying the provider, patient, and services rendered, among other things.

Relevant Entities

16. Home Health Agency 1 was a Michigan company doing business in Bingham Farms, Michigan. Home Health Agency 1 was enrolled as a participating provider with Medicare and submitted claims to Medicare.

The Defendant and Relevant Individuals

17. Defendant AUGUSTO DAYCO, a resident of Oakland County, was a patient recruiter for Home Health Agency 1.

18. Home Health Agency Owner 1, a resident of Oakland County, controlled, owned, and operated Home Health Agency 1.

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

19. Paragraphs 1 through 18 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

20. From in or around February 2013, and continuing through in or around the present, the exact dates being unknown to the Grand Jury, in Oakland County, in the Eastern District of Michigan, and elsewhere, AUGUSTO DAYCO did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with Home Health Agency Owner 1 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)(2)(A)-(B), 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; and

c. 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, in return for referring an individual to a person for the furnishing and arranging for the furnishing of an 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

21. It was a purpose of the conspiracy for AUGUSTO DAYCO and his co-conspirators, to unlawfully enrich themselves by: (1) offering, paying, soliciting, and receiving kickbacks and bribes in exchange for referring Medicare beneficiaries to serve as patients at Home Health Agency 1; and (2) submitting and causing the

submission of claims to Medicare for medical services purportedly provided to those recruited beneficiaries.

Manner and Means

The manner and means by which the defendant and his co-conspirators sought to accomplish the purpose of the conspiracy included, among others, the following:

22. Home Health Agency Owner 1 and others would own and control Home Health Agency 1 and would submit or cause the submission of claims to Medicare for purportedly providing home health services, including physical therapy, occupational therapy, speech pathology, and/or skilled nursing services.

23. AUGUSTO DAYCO would solicit and receive kickbacks and bribes in the form of cash or checks from Home Health Agency Owner 1 and others in exchange for referring Medicare beneficiaries and providing Medicare beneficiary information to Home Health Agency 1.

24. AUGUSTO DAYCO and others would pay or cause the payment of kickbacks and bribes to Medicare beneficiaries in exchange for signatures by those beneficiaries on documents, enabling Home Health Agency 1 to submit or cause the submission of claims to Medicare.

25. AUGUSTO DAYCO, Home Health Agency Owner 1, and others submitted and caused the submission of approximately $575,000 in claims to

Medicare through Home Health Agency 1 for home health services that were obtained through illegal kickbacks and bribes.

Overt Acts

In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one of the co-conspirators committed and caused to be committed in Oakland County, in the Eastern District of Michigan, and elsewhere, at least one of the following overt acts, among others:

26. On or about December 16, 2017, DAYCO received a check drawn on Chase Bank account x2847, held in the name of Home Health Agency 1, made payable to "Augusto Dayco," in the amount of $1,795.

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

COUNT 2
(42 U.S.C. § 1320a-7b(b)(1)(A)—Receipt of Kickbacks and Bribes in Connection with a Federal Health Care Program)
AUGUSTO DAYCO

27. Paragraphs 1 through 18 and 22 through 25 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

28. On or about the date set forth below, in Oakland County, in the Eastern District of Michigan and elsewhere, AUGUSTO DAYCO, did knowingly and willfully solicit and receive remuneration, that is, 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 under a federal health care program, that is, Medicare, as set forth below:

Count Defendant	Approximate Date of Payment	Description	Approximate Amount
2 DAYCO	December 14, 2017	Check No. 21938 from Home Health Agency 1	$1,795.00

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

FORFEITURE ALLEGATIONS
(18 U.S.C. § 982(a)(7)—Criminal Forfeiture)

29. The allegations contained in Counts 1 and 2 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture against defendant AUGUSTO DAYCO pursuant to Title 18, United States Code, Sections 981 and 982, and Title 28, United States Code, Section 2461.

30. Pursuant to Title 18, United States Code, Section 982(a)(7), upon being convicted of the crimes charged in Counts 1 and 2 of this Indictment, the convicted defendant(s) shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

31. Money Judgment: Property subject to forfeiture includes, but is not limited to a forfeiture money judgment, in an amount to be proved in this matter, representing the total amount proceeds and/or gross proceeds obtained as a result of defendants' violations as set forth in Counts 1 and 2 of this Indictment.

32. Substitute Assets: If the property described above as being subject to forfeiture, as a result of any act or omission of the defendants:

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 that cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) as incorporated by Title 18, United States Code, Section 982(b) and/or Title 28, United States Code, Section 2461, to seek to forfeit any other property of AUGUSTO DAYCO up to the value of such property.

THIS IS A TRUE BILL.

Grand Jury Foreperson

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