

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **18-20474** CR-ALTONAGA

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

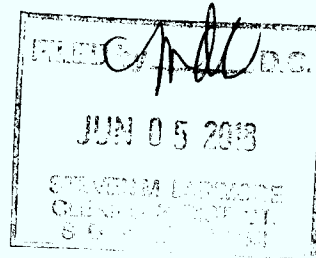
GOODMAN

UNITED STATES OF AMERICA

vs.

DALIA HERNANDEZ,

Defendant.



INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times relevant to this Indictment:

The Medicare Program

1. The Medicare Program ("Medicare") was a federal program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and 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 ("HHS"). Individuals who received benefits under Medicare were commonly referred to as Medicare "beneficiaries."

2. The Medicare program was divided into different "parts." Part D of Medicare subsidized the costs of prescription drugs for Medicare beneficiaries in the United States. It 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 must be 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 with one or more Pharmacy Benefit Managers (“PBMs”). Each 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 to the 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 upon 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 of 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. United Healthcare Insurance Company (“United”), Simply HealthCare Plans, Inc. (“Simply”), and Transamerica Life Insurance Company (“Transamerica”) were, among others, Medicare drug plan sponsors.

The Defendant and Related Entity

9. AAP Pharmacy Inc. (“AAP Pharmacy”) was a Florida corporation, located at 171 Westward Drive, Miami Springs, Florida 33166, incorporated on or about October 23, 2013, that did business in Miami-Dade County purportedly providing prescription drugs to Medicare beneficiaries.

10. **DALIA HERNANDEZ** was a resident of Miami-Dade County and the President and Registered Agent of AAP Pharmacy from on or about April 1, 2014, to on or about September 25, 2015.

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

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

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

DALIA HERNANDEZ,

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

commit offenses against the United States of America, that is:

a. to knowingly and willfully execute and attempt to 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, United, Simply, and Transamerica, among others, 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, in violation of Title 18, United States Code, Section 1347; and

b. to knowingly and with the intent to defraud, devise and intend to devise a scheme and artifice to defraud and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing the scheme and artifice, did knowingly transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, certain writings, signs, signals, pictures and sounds, in violation of Title 18, United States Code, Section 1343.

Purpose of the Conspiracy

3. It was a purpose of the conspiracy for the defendant and her 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 of the fraud proceeds; and (d) diverting the fraud proceeds for their personal use and benefit, and the benefit of others, and to further the fraud.

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 others, the following:

4. **DALIA HERNANDEZ** submitted and caused the submission of claims, via interstate wires, totaling approximately \$1,267,368, which falsely and fraudulently represented that various health care benefits, primarily prescription drugs, were medically necessary, prescribed by a doctor, and had been provided by AAP Pharmacy to Medicare beneficiaries.

5. As a result of such false and fraudulent claims, Medicare prescription drug plan sponsors, through their PBMs, made payments funded by the Medicare Part D Program to AAP Pharmacy in the approximate amount of \$322,331.

6. **DALIA HERNANDEZ** and others used the proceeds of the health care fraud for their personal use and benefit, and to further the fraud.

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

COUNTS 2-5
Health Care Fraud
(18 U.S.C. § 1347)

1. The General Allegations section of this Indictment is realleged and incorporated by reference as if fully set forth herein.

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

DALIA HERNANDEZ,

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 in Title 18, United States Code, Section

24(b), that is, Medicare and Medicare drug plan sponsors, 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 defendant and her 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 of the fraud proceeds; and (d) diverting the fraud proceeds for their personal use and benefit, and the benefit of others, and to further the fraud.

Manner and Means of the Scheme and Artifice

4. The Manner and Means of the Conspiracy section of Count 1 of this Indictment is 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 defendant, 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, that is, Medicare, United, Simply, Transamerica, and others, 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 defendant submitted and caused the submission of false and fraudulent claims seeking the

identified dollar amounts, and representing that AAP Pharmacy provided pharmaceutical items and services to Medicare beneficiaries pursuant to a physician's valid orders and prescriptions:

Count	Medicare Beneficiary	Approx. Date of Claim	Claim Number	Item Claimed; Approx. Amount Claimed
2	T.H.	4/22/2014	38732724587	Invega; \$749
3	A.M.A	5/14/2014	38907878615	Abilify; \$1,126
4	R.B.	6/17/2014	40590891454	Acyclovir; \$673
5	T.S.	7/2/2014	45331443667	Acitretin; \$713

In violation of Title 18, United States Code, Sections 1347 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 defendant, **DALIA HERNANDEZ**, has an interest.

2. Upon conviction of any violation of Title 18, United States Code, Sections 1347 and 1349, as alleged in this Indictment, the defendant 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 such violation, pursuant to Title 18, United States Code, Section 982(a)(7).

3. The property subject to forfeiture includes, but is not limited to, the sum of \$322,331 in United States currency, which sum constitutes the gross proceeds traceable to the commission of the health care fraud offenses alleged in this Indictment, for which the United States will seek a forfeiture money judgment as part of the defendant's sentence.

4. If the property described above as being subject to forfeiture, 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 subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property and, in addition, to seek a court order requiring the defendant to return any such property to the jurisdiction of the court for seizure and forfeiture, including the following:

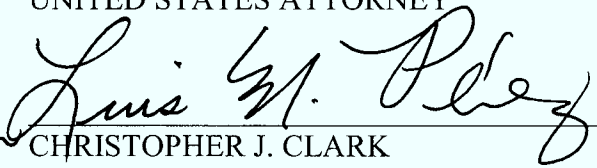
- 1) the contents, including interest, in TD Bank Account Number 4302912674, titled in the name of AAP Pharmacy Inc.; and
- 2) the assets, equity interest in AAP Pharmacy Inc.

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 by Title 18, United States Code, Section 982(b)(1).

A TRUE BILL

~~FOR~~ PERSON


 BENJAMIN G. GREENBERG
 UNITED STATES ATTORNEY


 CHRISTOPHER J. CLARK
 ASSISTANT UNITED STATES ATTORNEY