

-FILED-

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

JUN 20 2018

At _____ M
ROBERT M. TRGOVICH, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA)	
)	Case No.
v.)	
)	
EDWARD T. KERR, JR.,)	
MARK K. ESTRADA,)	
TAMMY ESTRADA and)	18 U.S.C. §1347
BRENDA KERR)	18 U.S.C. §371

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INDICTMENT

THE GRAND JURY CHARGES:

COUNT ONE

(Conspiracy to Commit Health Care Fraud)

At times relevant to this Indictment:

THE MEDICARE PROGRAM

1. Medicare, a federal program administered by the Department of Health and Human Services (HHS), provided health care benefits for persons aged 65 and older, certain younger people with disabilities, and people with end-stage kidney disease.

2. Medicare is a health benefit program as defined by Title 18, United States Code, § 24(b).

3. HHS delegated the administration of the Medicare program to the Center for Medicare and Medicaid Services (CMS). In Indiana, CMS administered the Medicare program through a private insurance carrier. The private insurance

carrier reviewed and processed claims for medical reimbursement submitted by Medicare providers, and made payments on those claims appearing eligible for reimbursement under the Medicare program.

4. Enrolled providers of medical services to Medicare beneficiaries were eligible for reimbursement for covered medical services. By becoming a participating provider in Medicare, a provider agreed to abide by the rules, regulations, policies and procedures governing reimbursement, and to keep and allow access to records and information as required by Medicare. The State of Indiana required that these records be kept, and maintained for a period of seven years.

5. Medicare paid providers for medically necessary ambulance transportation to regularly scheduled, non-emergency dialysis appointments, if either, 1) the beneficiary was bed-confined, and it was documented that the beneficiary's condition was such that other methods of transportation were medically prohibited; or 2) if the beneficiary's condition, regardless of bed-confinement, was such that transportation by ambulance was medically required.

6. Obtaining a written order, certifying that medical necessity requirements for non-emergency medical transportation was met, is a further requirement for ambulance service providers. The certification of medical necessity had to be signed by the beneficiary's attending physician. The existence of a signed certification, however, did not alone demonstrate that ambulance transport was

medically necessary. Meeting all other program criteria was required in order for the provider to be entitled to payment.

7. For a beneficiary to be considered “bed-confined” the following criteria had to be satisfied: 1) the beneficiary was unable to get up from bed without assistance; 2) the beneficiary was unable to walk, and 3) the beneficiary was unable to sit in a chair or a wheelchair.

8. If medical necessity was not shown, ambulance transportation was not covered by Medicare even if no other means of transportation was available to the patient. Medicare mandated that providers must bill for the level of service that the beneficiary actually needed.

9. Payment for services rendered required a Medicare provider to submit a claim for payment either by mail or through the Medicare Claims Entry System.

10. Medicare providers were required to keep and maintain a written record of each patient transported. Such a record, sometimes referred to as a “run sheet”, must be filled out by the ambulance driver or emergency medical technician on board the ambulance. The completed form was required to include, among other things, the beneficiary’s physical condition, any medical services performed while the beneficiary was in the ambulance and the reason why an ambulance was needed.

THE DEFENDANTS

11. After working for several years as an emergency medical technician (EMT) for an ambulance transportation business, Edward T. Kerr, Jr. decided to open his own ambulance transportation business. The business he ultimately opened was United Mobile Care. Edward T. Kerr, Jr. shared ownership of the business with his family members, Tammy Estrada, Mark Estrada and Brenda Kerr. Each family member held a 25% interest in United Mobile Care.

12. On March 30, 2011, Tammy Estrada and Mark Estrada opened a business checking account at First Farmers Bank and Trust in Converse, Indiana in the name of United Mobile Care. Brenda Kerr, Tammy Estrada, Mark Estrada, and Edward T. Kerr, Jr. were all signatories on the United Mobile Care checking account.

13. In April 2011, Tammy Estrada and Brenda Kerr enrolled United Mobile Care as a provider with Medicare. On the application, Tammy Estrada was the only owner who actually disclosed an ownership interest in United Mobile Care. No other family members identified an ownership interest in the business. Brenda Kerr identified herself on the application as nothing more than a W-2 employee with the responsibility of audit and review.

THE CONSPIRACY

14. During the period beginning April 2011 and continuing through March 2016, in the Northern District of Indiana and elsewhere, the defendants

**EDWARD T. KERR, JR., MARK ESTRADA, TAMMY ESTRADA, and
BRENDA KERR**

did knowingly, intentionally and willfully combine, conspire, confederate and agree with each other to commit certain offenses against the United States, that is, to knowingly and willfully execute and attempt to execute, a scheme and artifice to a) defraud the Medicare health care benefit program; and b) to obtain hundreds of thousands of dollars owned by and under the custody and control of the Medicare health care benefit program by means of materially false and fraudulent pretenses, representations, and promises in connection with billing and payment for health care services, specifically ambulance transports of five Medicare beneficiaries to and from dialysis in violation of Title 18, United States Code, Section 1347.

15. It was the purpose and object of the conspiracy for Tammy Estrada, Mark Estrada, Brenda Kerr and Edward T. Kerr, Jr. to obtain reimbursement from Medicare for ambulance transports of dialysis patients for whom the defendants knew reimbursement was not available by submitting and causing the submission of claims falsely representing the physical conditions and abilities of the dialysis patients being transported by ambulance.

MANNER AND MEANS OF THE CONSPIRACY

16. Tammy Estrada, Mark Estrada, Brenda Kerr and Edward T. Kerr, Jr. submitted and caused to be submitted claims to Medicare falsely representing that ambulance services were provided to Medicare beneficiaries who were either bed-confined or in some other condition for which transportation by any other means

other than ambulance would be medically prohibited and endanger the patients' health, when in fact, the defendants knew that such ambulance services were not medically necessary.

17. Tammy Estrada, Mark Estrada, Brenda Kerr and Edward T. Kerr, Jr. submitted and caused to be submitted claims to Medicare that were materially false in that the claims falsely represented that ambulance transportation was provided to and from dialysis for only Medicare beneficiaries who were bed-confined or suffering from some other condition for which transportation by any means other than ambulance would be medically prohibited and dangerous to the beneficiaries health, when, in fact, the defendants knew that the conditions of the transported patients did not meet Medicare's criteria for ambulance transportation to non-emergency, scheduled, repetitive ambulance service.

OVERT ACTS IN FURTHERANCE OF THE CONSPIRACY

18. From in or about 2011 through March 2016, Tammy Estrada, Mark Estrada, Brenda Kerr and Edward T. Kerr, Jr. directed and caused employees to transport Medicare beneficiaries to and from dialysis by ambulance regardless of whether or not the beneficiaries were bed confined or had a medical condition for which transportation by any other means was contraindicated.

19. From 2011 through March 2016, Tammy Estrada, Mark Estrada, Brenda Kerr and Edward T. Kerr, Jr. directed or caused employees to omit facts from run sheets to disguise the true nature of the physical condition/ability of the beneficiary being transported to and from dialysis.

20. From 2011 through March 2016, Tammy Estrada, Mark Estrada, Brenda Kerr and Edward T. Kerr, Jr. told ambulance staff who questioned the ambulance transport of beneficiaries who could walk that even if a beneficiary was capable of walking the company could still bill for ambulance transport to dialysis if a physician certification statement was in the beneficiary's file.

21. From 2011 through March 2016, Edward T. Kerr, Jr. instructed employees that if a beneficiary's primary physician refused to certify medical necessity for ambulance transportation to and from dialysis, they should find someone who would authorize the ambulance transportation.

22. From 2011 through March 2016 Edward T. Kerr, Jr. instructed employees not to permit any beneficiary to walk to the ambulance.

23. From 2011 through March 2016 Edward T. Kerr, Jr. instructed employees that "wheelchair, walk, stand, or pivot" were prohibited words and should not appear on run sheets for beneficiaries transported to and from dialysis.

24. From 2011 through March 2016, Tammy Estrada, Mark Estrada, Brenda Kerr and Edward T. Kerr, Jr. would either ignore or alter or cause the alteration of physician certifications that did not support ambulance transport of Medicare beneficiaries to dialysis.

25. From 2011 through February 2016, Tammy Estrada, Mark Estrada, Brenda Kerr and Edward T. Kerr, Jr. did knowingly submit and cause to be submitted more than one hundred thousand dollars in ambulance transport claims for Medicare beneficiary RB that falsely representing that RB was either bed-

confined or otherwise had a condition for which transportation by any means other than ambulance would be contraindicated or endanger RB's health.

26. From 2011 through February 2016, however, RB was able to ambulate and routinely traveled to various appointments and outings by means other than ambulance. RB owned and operated her own automobile and used a walker and wheelchair to get around.

27. From May 2013 through March 2016, Tammy Estrada, Mark Estrada, Brenda Kerr and Edward T. Kerr, Jr. did knowingly submit and cause to be submitted tens of thousands of dollars in ambulance transport claims for Medicare beneficiary IC falsely representing that IC was either bed-confined or otherwise had a condition for which transportation by means other than ambulance would be contraindicated or endanger IC's health.

28. From May 2013 through March 2016, however, IC was able to ambulate and routinely traveled to various appointments and outings by means other than ambulance. IC owned and operated her own automobile.

29. From October 2013 through November 2014, Tammy Estrada, Mark Estrada, Brenda Kerr and Edward T. Kerr, Jr. did knowingly submit and cause to be submitted tens of thousands of dollars in ambulance transport claims for Medicare beneficiary LW falsely representing that LW was either bed-confined or otherwise had a condition for which transportation by means other than ambulance would be contraindicated or endanger LW's health.

30. From 2013 through November 2014, LW was able to ambulate and routinely traveled to various outings and appointments by means other than an ambulance. LW owned and operated her own automobile.

31. From July 2014 through April 2015, Tammy Estrada, Mark Estrada, Brenda Kerr and Edward T. Kerr, Jr. did knowingly submit and cause to be submitted tens of thousands of dollars in ambulance transport claims for Medicare beneficiary TM falsely representing that TM was either bed-confined or otherwise had a condition for which transportation by means other than ambulance would be contraindicated or endanger TM's health.

32. From July 2014 through April 2015, TM was able to ambulate and routinely traveled to various outings and appointments by means other than an ambulance.

33. From July 2014 through June 2015, Tammy Estrada, Mark Estrada, Brenda Kerr and Edward T. Kerr, Jr. did knowingly submit and cause to be submitted tens of thousands of dollars in ambulance transport claims for Medicare beneficiary NO falsely representing that NO was either bed-confined or otherwise had a condition for which transportation by any means other than ambulance would be contraindicated or endanger NO's health.

34. From 2011 through February 2016, NO was able to ambulate or use an electric wheelchair and routinely traveled to outings and other appointments by means other than an ambulance.

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

THE GRAND JURY FURTHER CHARGES:

COUNTS 2 THROUGH 11

(Health Care Fraud)

1. Paragraphs 1 through 13 of Count One are re-alleged here.

SCHEME TO COMMIT HEALTH CARE FRAUD

2. On or about April 2011 through March 2016, in the Northern District of Indiana and elsewhere, the defendants,

**EDWARD T. KERR, JR., MARK ESTRADA, TAMMY ESTRADA and
BRENDA KERR**

knowingly and willfully executed a scheme and artifice to obtain by means of materially false and fraudulent pretenses and representations money, specifically over \$100,000.00 under the custody and control of the Medicare health care benefit program, by submitting claims for payment, on behalf of United Mobile Care, for dialysis transportation provided to Medicare beneficiaries who did not qualify to have Medicare pay for ambulance transportation as the beneficiaries were physically capable of traveling by car, taxi or wheel chair van to and from their dialysis appointments.

ACTS OF HEALTH CARE FRAUD

3. On or about the dates listed below, in the Northern District of Indiana and elsewhere, Edward T. Kerr, Jr., Mark Estrada, Tammy Estrada and Brenda Kerr in connection with payments for ambulance transportation services, did knowingly and willfully execute, and attempt to execute, the above described scheme and artifice to defraud the Medicare health benefit program and to obtain,

by means of materially false and fraudulent pretenses and representations, money owned by and under the control of said health care benefit program, through the submission of fraudulent claims seeking the identified dollar amounts United Mobile Care claimed it was owed for transporting Medicare beneficiaries to dialysis:

Count	Beneficiary	Claim No.	Claim Date	Claim Amount
2	LW	221833260	11/22/13	\$1000.00
3	LW	2218140240	01/24/14	\$1000.00
4	NO	2218140240	10/29/14	\$1000.00
5	NO	2218151110	04/21/15	\$1000.00
6	RB	2218143180	11/14/15	\$1000.00
7	RB	2218153554	12/21/15	\$1000.00
8	IC	2218143250	12/07/15	\$1000.00
9	IC	2218160824	03/22/16	\$1000.00
10	TM	2218143250	11/21/14	\$1000.00
11	TM	2218143250	02/17/15	\$1000.00

All in violation of Title 18, United States Code, Section 1347.

FORFEITURE ALLEGATION

1. The allegations contained in Counts 1 through 11 of this indictment are alleged and incorporated by reference for purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 982(a)(7).

2. Upon conviction of any of the Counts 1 through 11 of this indictment and pursuant to Title 18, United States Code, Section 982(a) (7) defendants EDWARD T. KERR, MARK ESTRADA, TAMMY ESTRADA and BRENDA KERR shall forfeit to the United States any property, real or personal, that is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

3. 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 of America 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).

All pursuant to Title 18, United States Code, Section 982(a) (7) and Title 28,
United States Code, Section 2461(c).

A TRUE BILL:

/s/ FOREPERSON
FOREPERSON

APPROVED:

THOMAS L. KIRSCH II
UNITED STATES ATTORNEY

BY: /s/ Diane L. Berkowitz
Diane L. Berkowitz
Assistant United States Attorney