15

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Case: 2:20-cr-20275
Judge: Steeh, George Caram
MJ: Grand, David R.
Filed: 06-25-2020 At 10:12 AM
INDI USA V. SEALED MATTER (DA)

v.

VIO: 18 U.S.C. § 1347
18 U.S.C. § 2
18 U.S.C. § 982

EMILIO BERRIOS-ANTUNA, M.D.

Defendant.

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# INDICTMENT

**THE GRAND JURY CHARGES:**

## GENERAL ALLEGATIONS

At all times relevant to this Indictment:

### The Medicare Program

1. The Medicare Program ("Medicare") was a federal health care program providing benefits to individuals who were the age of 65, 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. The benefits available under Medicare were governed by federal

statutes and regulations. 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 1320a-7b(f).

3. Medicare was divided into four parts which helped cover specific services: hospital insurance (Part A), medical insurance (Part B), Medicare Advantage (Part C), and prescription drug benefits (Part D).

4. Specifically, Medicare Part B covered medically necessary physician office services and outpatient care, including the ordering of durable medical equipment, prosthetics, orthotics, and supplies ("DME") that were ordered by licensed medical doctors or other qualified health care providers.

5. Physicians, clinics, laboratories, and other health care providers that provided services to Medicare beneficiaries were able to apply for and obtain a "provider number." 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.

6. To receive Medicare reimbursement, providers had to fill out an application and execute a written provider agreement, known as CMS Form 855. The Medicare application was required to be signed by an authorized representative

of the provider. The application contained certifications that the provider agreed to abide by the Medicare laws and regulations, and that the provider "will not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare, and will not submit claims with deliberate ignorance or reckless disregard of heir truth or falsity." Medicare providers were given access to Medicare manuals and service bulletins describing procedures, rules, and regulations.

7. CMS contracted with various companies to receive, adjudicate, process, and pay Part B claims, including claims for DME. Wisconsin Physicians Service was the CMS contracted carrier for Medicare Part B in the state of Michigan. AdvanceMed was the Zone Program Integrity Contractor ("ZPIC") in the state of Michigan for Medicare since May 2015. The ZPIC was the contractor charged with investigating fraud, waste and abuse.

**Durable Medical Equipment**

8. Medicare covered an individual's access to DME, such as off-the-shelf ("OTS") ankle braces, knee braces, back braces, elbow braces, wrist braces, and hand braces (collectively, "braces"). OTS braces required minimal self-adjustment for appropriate use and did not require expertise in trimming, bending, molding, assembling, or customizing to fit the individual.

9. A claim for DME submitted to Medicare qualified for reimbursement only if it was medically necessary for the treatment or diagnosis of the beneficiary's

illness or injury and prescribed by a licensed physician. In claims submitted to Medicare for the reimbursement of provided DME, providers were required to set forth, among other information, the beneficiary's name and unique Medicare identification number, the equipment provided to the beneficiary, the date the equipment was provided, the cost of the equipment, and the name and provider number of the provider who prescribed or ordered the equipment. To be reimbursed from Medicare for DME, the claim had to be reasonable, medically necessary, documented, and actually provided as represented to Medicare.

10. Medicare claims were required to be properly documented in accordance with Medicare rules and regulations. For certain DME products, Medicare promulgated additional requirements that a DME order was required to meet for an order to be considered "reasonable and necessary." For example, for OTS knee braces billed to Medicare under the Healthcare Common Procedures Coding System ("HCPCS") Code L1851, an order would be deemed "not reasonable and necessary" and reimbursement would be denied unless the ordering/referring physician documented the beneficiary's knee instability using an objective description of joint laxity determined through a physical examination of the beneficiary.

**Telemedicine**

11. Telemedicine provided a means of connecting patients to doctors by using telecommunications technology to interact with a patient.

12. Telemedicine companies provided telemedicine services to individuals by hiring doctors and other health care providers. Telemedicine companies typically paid doctors a fee to conduct consultations with patients. In order to generate revenue, telemedicine companies typically either billed insurance or received payment from patients who utilized the services of the telemedicine company.

13. Medicare Part B covered expenses for specified telemedicine services if certain requirements were met. These requirements included, but were not limited to, that (a) the beneficiary was located in a rural or health professional shortage area; (b) services were delivered via a two-way, real-time interactive audio and video telecommunications system; and (c) the beneficiary was at a practitioner's office or a specified medical facility – not at a beneficiary's home – during the telemedicine consultation with a remote practitioner.

**The Defendant and Related Entities**

14. The defendant, EMILIO BERRIOS-ANTUNA, a resident of Sterling Heights, Michigan, was a medical doctor licensed to practice medicine in Michigan. In 2009, EMILIO BERRIOS-ANTUNA applied for and obtained a Medicare

provider number, and in doing so, agreed to abide by all the terms, rules, and regulations of Medicare. EMILIO BERRIOS-ANTUNA worked as an independent contractor for various purported telemedicine companies.

15. Company 1, a company known to the Grand Jury, was an Arizona for-profit corporation registered on or about December 1, 2011. Company 1 operated as a purported telemedicine company.

16. V.W. was a beneficiary residing in the Eastern District of Michigan.

17. B.J. was a beneficiary residing in the Eastern District of Michigan.

18. C.B. was a beneficiary residing in the Eastern District of Michigan.

19. D.H. was a beneficiary residing in the Eastern District of Michigan.

20. F.B. was a beneficiary residing in the Eastern District of Michigan.

**COUNTS 1 through 5**
**(18 U.S.C. §§ 1347 and 2 - Health Care Fraud)**

21. Paragraphs 1 through 20 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

22. From in or around April 2018, and continuing through in or around May 2019, the exact dates being unknown to the Grand Jury, in Macomb County, in the Eastern District of Michigan, and elsewhere, the defendant, EMILIO BERRIOS-ANTUNA, 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 Medicare, a federal health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), 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 program, in connection with the delivery of, and payment for, health care benefits, items, and services.

23. The scheme to defraud is more fully described in Paragraphs 24 to 33 of this Indictment and is re-alleged and incorporated by reference as if fully set forth herein.

**Purpose of the Scheme and Artifice**

24. It was a purpose of the scheme and artifice for EMILIO BERRIOS-ANTUNA and his accomplices to unlawfully enrich themselves by: (a) submitting and causing the submission of false and fraudulent claims to Medicare that were (i) medically unnecessary, (ii) not eligible for Medicare reimbursement, and (iii) not provided as represented; (b) concealing the submission of false and fraudulent claims and the receipt and transfer of the proceeds from the fraud; and (c) diverting proceeds of the fraud for their personal use and benefit.

**The Scheme and Artifice**

25. On or about April 6, 2009, EMILIO BERRIOS-ANTUNA falsely certified to Medicare that he would comply with all Medicare rules and regulations.

For all times during the charged period, EMILIO BERRIOS-ANTUNA was a Medicare provider and was required to abide by all Medicare rules and regulations and federal laws, including that he would not knowingly present or cause to be presented a false and fraudulent claim for payment by Medicare.

26. Thereafter, EMILIO BERRIOS-ANTUNA devised and engaged in a scheme to submit claims to Medicare for: (a) DME that were not medically necessary and (b) DME that were not eligible for reimbursement from Medicare.

27. EMILIO BERRIOS-ANTUNA worked with Company 1 as an independent contractor to sign doctors' orders for DME that were used to submit false and fraudulent claims to Medicare.

28. EMILIO BERRIOS-ANTUNA received unsigned prescriptions for DME from accomplices working on behalf of Company 1 for EMILIO BERRIOS-ANTUNA to sign.

29. EMILIO BERRIOS-ANTUNA electronically signed doctors' orders for DME for Medicare beneficiaries, including for beneficiaries located in the Eastern District of Michigan, such as beneficiaries V.W., B.J., C.B., D.H. and F.B., (a) without seeing, speaking to, and otherwise communicating with and examining them; and (b) without regard to whether beneficiaries needed the DME. These orders, as EMILIO BERRIOS-ANTUNA knew, were (a) not medically necessary; and (b) not the product of a doctor-patient relationship and examination.

30. EMILIO BERRIOS-ANTUNA further concealed and disguised the scheme by preparing and causing to be prepared false and fraudulent documentation, and submitting and causing the submission of false and fraudulent documentation to Medicare. Specifically, EMILIO BERRIOS-ANTUNA submitted and caused to be submitted false and fraudulent documents certifying that he had consulted with the beneficiaries prior to ordering DME, when, in fact, EMILIO BERRIOS-ANTUNA never saw the beneficiaries face-to-face, and never had any telephone conversations with the beneficiaries.

31. EMILIO BERRIOS-ANTUNA submitted orders for DME on behalf of beneficiaries residing in the Eastern District of Michigan, and elsewhere, which caused DME providers to submit claims to Medicare for reimbursement.

32. EMILIO BERRIOS-ANTUNA used his JP Morgan Chase Bank account number ending x5640 for the purpose of, among other things, receiving payments from Company 1 in exchange for signing doctors' orders for DME.

33. From in or around April 2018, through in or around May 2019, EMILIO BERRIOS-ANTUNA submitted and caused the submission of approximately $1,248,928.53 in false and fraudulent claims to Medicare for DME that were ineligible for Medicare reimbursement because the DME was not medically necessary and not provided as represented.

**Acts in Execution of the Scheme and Artifice**

34. On or about the dates specified below, in Macomb County, in the Eastern District of Michigan, and elsewhere, EMILIO BERRIOS-ANTUNA, aided and abetted by others, and aiding and abetting others known and unknown to the Grand Jury, submitted and caused to be submitted the following false and fraudulent claims to Medicare for DME that were, among other things, not legitimately prescribed, not needed, and not used, and in execution of the scheme as described in paragraphs 24 to 33, with each execution set forth below forming a separate count:

| Count | Medicare Bene. | Approx. Date of Service | Approx. Date of Claim | Description of Devices Billed; HCPCS Code | Approx. Amount Billed |
|---|---|---|---|---|---|
| 1 | V.W. | 12/27/18 | 1/4/19 | Right and Left knee orthosis (L1851); Right and Left Addition to lower extremity orthosis, suspension sleeve (L2397); Lumbar-sacral orthosis (L0650); Right shoulder elbow wrist hand orthosis (L3960) | $4,728.60 |
| 2 | B.J. | 1/10/19 | 1/15/19 | Right and Left knee orthosis (L1851); Right and Left Addition to lower extremity orthosis, suspension sleeve (L2397); Lumbar-sacral orthosis (L0650); Right shoulder elbow wrist hand orthosis (L3960) | $4,728.60 |

| Count | Medicare Bene. | Approx. Date of Service | Approx. Date of Claim | Description of Devices Billed; HCPCS Code | Approx. Amount Billed |
|---|---|---|---|---|---|
| 3 | C.B. | 1/22/19 | 1/23/19 | Right and Left knee orthosis (L1851); Right and Left Addition to lower extremity orthosis, suspension sleeve (L2397); Lumbar-sacral orthosis (L0650) | $3,950.73 |
| 4 | D.H. | 2/12/19 | 2/13/19 | Right and Left knee orthosis (L1851); Right and Left Addition to lower extremity orthosis, suspension sleeve (L2397); Lumbar-sacral orthosis (L0650); Right shoulder elbow wrist hand orthosis (L3960) | $4,728.60 |
| 5 | F.B. | 2/28/19 | 3/4/19 | Right and Left knee orthosis (L1851); Left Addition to lower extremity orthosis, suspension sleeve (L2397); Left and Right ankle foot orthosis (L1971); Right shoulder elbow wrist hand orthosis (L3960); Foot heel stabilizer (L3170) | $4,519.72 |

All in violation of 18 U.S.C. §§ 1347 and 2.

## FORFEITURE ALLEGATIONS

**(18 U.S.C. § 982(a)(7) - Criminal Forfeiture)**

35. The allegations contained in this Indictment above are incorporated by reference as if set forth fully herein for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 982.

36. As a result of the violations alleged in Counts 1 through 5 under Title 18, United States Code, Sections 1347 and 2, as set forth in this Indictment, defendant EMILIO BERRIOS-ANTUNA shall forfeit to the United States pursuant to Title 18, United States Code, Section 982(a)(7), any property, real or personal, that constitutes or is derive, directly or indirectly, from gross proceeds traceable to the commission of the offense.

37. Substitute Assets: 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 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), to

seek to forfeit any other property of defendant EMILIO BERRIOS-ANTUNA up to the value of the forfeitable property described above.

38. Money Judgment: The government shall also seek a forfeiture money judgment from the defendant for a sum of money representing the total amount of proceeds obtained as a result of defendant's violations of 18 U.S.C. § 1347, as alleged in this Indictment.

THIS IS A TRUE BILL.

*s/Grand Jury Foreperson*
Grand Jury Foreperson

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Date: June 25, 2020

| United States District Court<br>Eastern District of Michigan | **Criminal Case Cov** |
|---|---|

NOTE: It is the responsibility of the Assistant U.S. Attorney signing this form to compl

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Filed: 06-25-2020 At 10:12 AM
INDI USA V. SEALED MATTER (DA)

| **Companion Case Information** | **Companion Case Number:** |
|---|---|
| This may be a companion case based upon **LCrR 57.10 (b)(4)[1]:** | **Judge Assigned:** |
| ☐ **Yes** ☒ **No** | **AUSA's Initials:** CTS |

**Case Title:** USA v. EMILIO BERRIOS-ANTUNA, M.D.

**County where offense occurred :** Macomb County

**Check One:** ☒**Felony** ☐**Misdemeanor** ☐**Petty**

✓ Indictment/____Information --- **no** prior complaint.
____Indictment/____Information --- based upon prior complaint [**Case number:** ]
____Indictment/____Information --- based upon **LCrR 57.10 (d)** ***[Complete Superseding section below]***.

## Superseding Case Information

**Superseding to Case No:** _____ **Judge:** _____

☐ Corrects errors; no additional charges or defendants.
☐ Involves, for plea purposes, different charges or adds counts.
☐ Embraces same subject matter but adds the additional defendants or charges below:

| **Defendant name** | **Charges** | **Prior Complaint (if applicable)** |
|---|---|---|

**Please take notice that the below listed Assistant United States Attorney is the attorney of record for the above captioned case.**

June 25, 2020
Date

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[1] Companion cases are matters in which it appears that (1) substantially similar evidence will be offered at trial, or (2) the same or related parties are present, and the cases arise out of the same transaction or occurrence. Cases may be companion cases even though one of them may have already been terminated.