

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. **15-20399**

**CR-MOORE**

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

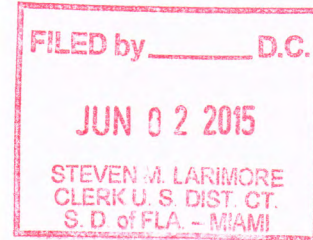
McALILEY

UNITED STATES OF AMERICA

vs.

EVELIO FERNANDEZ PENARANDA

Defendant.



INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times material to this Indictment:

The Medicare Program

1. The Medicare Program (“Medicare”) was a federally funded program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. The benefits available under Medicare were governed by federal statutes and regulations. The United States Department of Health and Human Services, through its agency, the Centers for Medicare and Medicaid Services (“CMS”), oversaw and administered Medicare. Individuals who received benefits under Medicare were commonly referred to as Medicare “beneficiaries.”

2. Medicare programs covering different types of benefits were separated into different program “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 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 PBM would process the claim on behalf of the Medicare drug plan, determining whether the pharmacy was entitled to payment for each claim and, if so, paying the pharmacy for the claims for the prescription drug event (*e.g.* the dispensing of prescription drugs to a beneficiary), minus any co-pay to be paid by the Medicare beneficiary. The drug plan’s sponsor reimbursed the PBM for its payments to the pharmacy.

5. 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 on 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 for a portion of those additional expenses.

6. 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**

7. Blue Cross and Blue Shield of Florida, Inc. (“Blue Cross/Blue Shield”), Health First Health Plans (“Health First”), and Medco Containment Life Insurance Company (“Medco”) were, among others, Medicare drug plan sponsors.

**The Pharmacy**

8. Naranja Pharmacy, Inc. (“Naranja”) was a Florida corporation, incorporated on or about June 1, 2012, that did business in Miami-Dade County purportedly providing prescription drugs to Medicare beneficiaries. Naranja’s principal place of business was 26059 S. Dixie Highway, Homestead, FL.

**The Defendant**

9. **EVELIO FERNANDEZ PENARANDA**, a resident of Miami-Dade County, assumed an ownership interest in Naranja in or around May of 2013. He later became the president, director and registered agent of Naranja.

**COUNTS 1-3**  
**Health Care Fraud**  
**(18 U.S.C. § 1347)**

1. Paragraphs 1 through 9 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. Beginning in or around May 2013, and continuing through in or around March 2014, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

**EVELIO FERNANDEZ PENARANDA,**

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 health care benefit programs affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare and Medicare drug plan sponsors, 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.

#### **Purpose of the Scheme and Artifice**

3. It was the purpose of the scheme and artifice for the defendant to unlawfully enrich himself 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; and (c) diverting fraud proceeds for the personal use and benefit of himself and others.

#### **The Scheme and Artifice**

The manner and means by which the defendant sought to accomplish the object and purpose of the scheme included, among other things, the following:

4. **EVELIO FERNANDEZ PENARANDA** submitted, and caused the submission, of false and fraudulent claims that represented that various health care benefits, primarily prescription drugs, were medically necessary, prescribed by a doctor, and had been provided by Naranja to Medicare beneficiaries.

5. As a result of such false and fraudulent claims, Medicare and Medicare prescription drug plan sponsors, through their PBMs, made overpayments funded by Medicare to Naranja's corporate bank account.

6. **EVELIO FERNANDEZ PENARANDA** used the proceeds from the false and fraudulent Medicare claims for his own use and the use of others, and to further the fraud.

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

7. On or about the dates set forth as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, **EVELIO FERNANDEZ PENARANDA**, 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 health care benefit programs affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare and Medco, Health First, and Blue Cross/Blue Shield, 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 that the defendant submitted and caused the submission of false and fraudulent claims seeking the identified dollar amounts, and representing that Naranja provided pharmaceutical items and services to Medicare beneficiaries pursuant to physicians' orders and prescriptions:

<b>Count</b>	<b>Beneficiary</b>	<b>Approx. Claim Date</b>	<b>Medicare Claim Number</b>	<b>Medicare Drug Plan Sponsor</b>	<b>Item Claimed; Approx. Amount Paid</b>
1	L.M.	07/02/2013	73034884800273614015	Medco	Soriatane Cap. 25MG; \$1,017
2	A.R.	08/22/2013	132694666758001999	Health First	Abilify 20 MG; \$963
3	L.R.	10/07/2013	132803353011014994	Blue Cross/Blue Shield	Abilify 20 MG; \$966

In violation of Title 18, United States Code, Sections 1347 and 2.

**FORFEITURE**  
**(18 U.S.C. § 982)**

1. The allegations contained in this Indictment are realleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States

of America of certain property in which the defendant, **EVELIO FERNANDEZ PENARANDA**, has an interest.

2. Upon conviction of any violation of Title 18, United States Code, Section 1347, as alleged in Counts 1 through 3 of the 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 violations, 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 money equal in value to the gross proceeds traceable to the commission of the violation alleged in this Indictment, which the United States will seek as a forfeiture money judgment as part of each defendant's sentence.

4. 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 co-mingled 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 the procedures set forth at Title 21, United States Code, Section 853, as made applicable through Title 18, United States Code, Section 982(b)(1).

A TRUE BILL,

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FOREPERSON

  
WIFREDO A. FERRER  
UNITED STATES ATTORNEY  
SOUTHERN DISTRICT OF FLORIDA

  
SHUBHRA SHIVPURI  
TRIAL ATTORNEY  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE