

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. **16-20401**

18 U.S.C. § 371

42 U.S.C. § 1320a-7b(b)(2)(A)

18 U.S.C. § 2

18 U.S.C. § 982(a)(7)

CR - DIMITROULEAS
MAGISTRATE JUDGE
SNOW

UNITED STATES OF AMERICA

v.

SULMAN BONILLA,

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 ("HHS"), 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 was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b).

3. Medicare programs covering different types of benefits were separated into

different program “parts.” “Part A” of the Medicare program covered certain eligible home health care costs for medical services provided by a home health agency (“HHA”), also referred to as a “provider,” to persons who already qualified for Medicare and who additionally required home health services because of an illness or disability that caused them to be homebound. Payments for home health care medical services were typically made directly to a Medicare-certified HHA or provider based on claims submitted to the Medicare program for qualifying services that had been provided to eligible beneficiaries.

4. CMS did not directly pay Medicare Part A claims submitted by Medicare-certified HHAs. CMS contracted with different private companies to administer the Medicare Part A program throughout different parts of the United States. In the State of Florida, CMS contracted with Palmetto Government Benefits Administrators (“Palmetto”). As administrator, Palmetto was to receive, adjudicate and pay claims submitted by HHA providers under the Part A program for home health claims. Additionally, CMS separately contracted with companies in order to review HHA providers’ claims data. CMS first contracted with TriCenturion, a Program Safeguard Contractor. Subsequently, on December 15, 2008, CMS contracted with SafeGuard Services, a Zone Program Integrity Contractor. Both TriCenturion and SafeGuard Services safeguarded the Medicare Trust Fund by reviewing HHA providers’ claims for potential fraud, waste, and/or abuse.

Part A Coverage and Regulations

Reimbursements

5. The Medicare Part A program reimbursed 100% of the allowable charges for participating HHAs providing home health care services only if the patient qualified for home health benefits. A patient qualified for home health benefits only if the patient:

- (a) was confined to the home, also referred to as homebound;
- (b) was under the care of a physician who specifically determined there was a need for home health care and established the Plan of Care ("POC"); and
- (c) the determining physician signed a certification statement specifying that the beneficiary needed intermittent skilled nursing, physical therapy, speech therapy, or a continued need for occupational therapy; the beneficiary was confined to the home; that a POC for furnishing services was established and periodically reviewed; and that the services were furnished while the beneficiary was under the care of the physician who established the POC.

Record Keeping Requirements

6. Medicare Part A regulations required HHAs providing services to Medicare patients to maintain complete and accurate medical records reflecting the medical assessment and diagnoses of their patients, as well as records documenting the actual treatment of the patients to whom services were provided and for whom claims for reimbursement were submitted by the HHA. These medical records were required to be sufficiently complete to permit Medicare, through Palmetto and other contractors, to review the appropriateness of Medicare payments made to the HHA under the Part A program.

7. Among the written records required to document the appropriateness of home health care claims submitted under Part A of Medicare were: (i) a POC that included the physician order, diagnoses, types of services/frequency of visits, prognosis/rehabilitation potential,

functional limitations/activities permitted, medications/treatments/nutritional requirements, safety measures/discharge plans, goals, and the physician's signature; and (ii) a signed certification statement by an attending physician certifying that the patient was confined to his or her home and was in need of the planned home health services.

~~8. Additionally, Medicare Part A regulations required HHAs to maintain medical~~
records of every visit made by a nurse, therapist, or home health aide to a patient. The record of a nurse's visit was required to describe, among other things, any significant observed signs or symptoms, any treatment and drugs administered, any reactions by the patient, any teaching and the understanding of the patient, and any changes in the patient's physical or emotional condition. The home health aide was required to document the hands-on personal care provided to the beneficiary as the services were deemed necessary to maintain the beneficiary's health or to facilitate treatment of the beneficiary's primary illness or injury. These written medical records were generally created and maintained in the form of "skilled nursing progress notes" and "home health aide notes/observations."

The Defendant and a Related Entity

9. Defendant **SULMAN BONILLA** was a resident of Miami-Dade County.

10. American Way Home Care, Inc. ("American Way") was incorporated on or about January 8, 2008, and did business in Miami-Dade County, purportedly providing skilled nursing services, physical therapy, occupational therapy, and home health aide services to Medicare beneficiaries. **SULMAN BONILLA** was listed in the corporate records as the registered agent of American Way.

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

1. Paragraphs 1 through 10 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

~~2. Beginning in or around November of 2011, and continuing through in or around~~
June of 2012, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

SULMAN BONILLA,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate, and agree with Victor Mora, Victor Gonzalez, Maria Pupo, Ricardo Corria, and others known and unknown to the Grand Jury, to commit certain offenses against the United States, that is:

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), by knowingly and willfully offering and paying any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to a 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 by a Federal health care program, that is, Medicare.

PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for the defendant and her co-conspirators to unlawfully enrich themselves by: (1) offering and paying kickbacks and bribes in return for referring beneficiaries to American Way to serve as patients; and (2) submitting and causing the submission of claims to Medicare for home health services that American Way purported to provide to those beneficiaries.

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 other things, the following:

4. **SULMAN BONILLA** and her co-conspirators offered and paid kickbacks to co-conspirator patient recruiters in cash and check in return for referring Medicare beneficiaries to American Way to serve as patients.

5. **SULMAN BONILLA** and her co-conspirators gave checks from the accounts of American Way to co-conspirators who cashed them and provided the cash to **BONILLA** and her co-conspirators so that they could pay patient recruiters who referred Medicare beneficiaries to American Way.

6. **SULMAN BONILLA** and her co-conspirators caused American Way to submit claims to Medicare for home health services purportedly provided to the recruited Medicare beneficiaries.

7. **SULMAN BONILLA** and her co-conspirators caused Medicare to pay American Way based upon the home health services purportedly provided to the recruited Medicare beneficiaries.

OVERT ACTS

In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one co-conspirator committed and caused to be committed, in the Southern District of Florida, at least one of the following overt acts, among others:

1. On or about December 7, 2011, **SULMAN BONILLA** paid a patient recruiter a kickback through American Way check number 2416 in the approximate amount of \$6,600.
2. On or about January 4, 2012, **SULMAN BONILLA** paid a patient recruiter a kickback through American Way check number 2520 in the approximate amount of \$2,200.
3. On or about January 10, 2012, **SULMAN BONILLA** paid a patient recruiter a kickback through American Way check number 2552 in the approximate amount of \$8,800.
4. On or about May 1, 2012, **SULMAN BONILLA** paid a patient recruiter a kickback through American Way check number 3087 in the approximate amount of \$12,000.

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

COUNTS 2-5

Payment of Kickbacks in Connection with a Federal Health Care Program (42 U.S.C. § 1320a-7b(b)(2)(A))

1. Paragraphs 1 through 10 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.
2. On or about the dates enumerated below as to each count, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

SULMAN BONILLA,

did knowingly and willfully offer and pay any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by check, as set forth below, to a 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:

Count	Approximate Date	Approximate Kickback Amount
2	December 7, 2011	\$6,600
3	January 4, 2012	\$2,200
4	January 10, 2012	\$8,800
5	May 1, 2012	\$12,000

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

FORFEITURE
(18 U.S.C. § 982(a)(7))

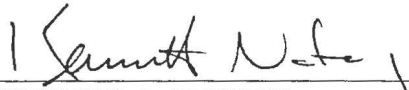
1. The allegations contained in this Indictment are re-alleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendant, **SULMAN BONILLA**, has an interest.

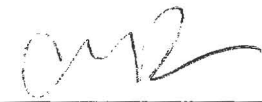
2. Upon conviction of any violation alleged in this Indictment, the defendant shall forfeit to the United States of America any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violation, pursuant to Title 18, United States Code, Section 982(a)(7).

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

FOREPERSON


WIFREDO A. FERRER
UNITED STATES ATTORNEY


AMANDA PERWIN
ASSISTANT UNITED STATES ATTORNEY