

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.

16-20431

CR-COOKE

/TORRES

18 U.S.C. § 1349

18 U.S.C. § 1035(a)(2)

18 U.S.C. § 2

18 U.S.C. § 982

UNITED STATES OF AMERICA

vs.

**YADIRA ROBERTSON and
DAYAMI RAEZ MARTINEZ,**

Defendants.

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), and a Federal health care program as defined by Title 42, United States Code, Section 1320a-7b(f).

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.

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.

5. Physicians, clinics and other health care providers, including HHAs, 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. A Medicare claim was

required to set forth, among other things, the beneficiary's name and Medicare information number, the services that were performed for the beneficiary, the date that the services were provided, the cost of the services, and the name and provider number of the physician or other health care provider who ordered the services.

Part A Coverage and Regulations

Reimbursements

6. 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 ("P.O.C."); 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 P.O.C.

Record Keeping Requirements

7. 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 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.

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

9. Medicare Part A regulations required provider HHAs to maintain medical records of every visit made by a nurse, therapist, and home health aide to a beneficiary. 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 instruction provided to the patient and the understanding of the patient, and any changes in the patient's physical or emotional condition. The home health nurse, therapist, and aide were 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 "clinical notes" and "home health aide notes/observations."

10. Medicare regulations allowed Medicare certified HHAs to subcontract home health care services to nursing companies, therapy staffing services agencies, registries, or groups (nursing groups), which would bill the certified home health agency. The Medicare certified HHA would, in turn, bill Medicare for all services rendered to the patient. The HHA's

professional supervision over subcontracted-for services required the same quality controls and supervision as of its own salaried employees.

The Defendant and Related Entities

11. R.C. Therapy Group Inc. ("R.C. Therapy"), was a Florida corporation that purportedly operated a therapy staffing company that provided physical therapy, occupational therapy, and skilled nursing services to HHAs in the Southern District of Florida. R.C. Therapy was located at 4445 West 16th Avenue, Suite 602, Hialeah, Florida 33012.

12. Maya Home Health Care Corp. ("Maya"), was a Florida corporation that purportedly provided home health care services to Medicare beneficiaries in the Southern District of Florida. Maya was located at 126 East 49th Street, Hialeah, Florida 33013.

13. Floridian Home Health Care Corp. ("Floridian"), was a Florida corporation that purportedly provided home health care services to Medicare beneficiaries in the Southern District of Florida. Floridian was located at 9220 SW 72 St. #206, Miami, Florida 33173.

14. Defendant **YADIRA ROBERTSON**, a resident of Broward County, was a physical therapy assistant who worked for R.C. Therapy.

15. Defendant **DAYAMI RAEZ MARTINEZ**, a resident of Miami-Dade County, was the director of nursing for Maya and Floridian.

16. Rosa Clavell, a resident of Miami-Dade County, was the owner and operator of R.C. Therapy.

17. Marlen Trujillo was an owner of Maya and Floridian.

18. Antonio Suarez was an owner of Maya and Floridian.

19. Cielo Zapata, a resident of Miami-Dade County, was an occupational therapist for R.C. Therapy.

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

1. Paragraphs 1 through 19 of the General Allegations section of the Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around May of 2011, and continuing through in or around April of 2014, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

YADIRA ROBERTSON
and DAYAMI RAEZ MARTINEZ,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate, and agree with Rosa Clavell, Marlen Trujillo, Antonio Suarez, Cielo Zapata, each other, and with others known and unknown to the Grand Jury, to commit certain offenses against the United States, that is:

a. to knowingly and willfully 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 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, 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, for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations and promises were false and fraudulent when made, and knowingly transmit and cause to be transmitted, by means of wire communication in interstate commerce, writings,

signs, signals, pictures, and sounds for the purposes of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE CONSPIRACY

3. It was a purpose of the conspiracy for **YADIRA ROBERTSON, DAYAMI RAEZ MARTINEZ** and their co-conspirators to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to Medicare for services that were not medically necessary, not eligible for Medicare reimbursement, and not provided to Medicare beneficiaries; and (b) concealing and causing the concealment of the submission of false and fraudulent claims to Medicare.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendants and their co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among other things:

4. **YADIRA ROBERTSON, DAYAMI RAEZ MARTINEZ** and their co-conspirators caused Maya and Floridian to submit, via interstate wires, false and fraudulent claims to Medicare for home health services that were not medically necessary and not provided to Medicare beneficiaries.

5. **YADIRA ROBERTSON** and **DAYAMI RAEZ MARTINEZ** signed treatment notes and other documents certifying that they had provided services during specific dates and times, when, in fact, they had not provided these services.

6. As a result of these false and fraudulent claims, **YADIRA ROBERTSON, DAYAMI RAEZ MARTINEZ**, and their co-conspirators caused Medicare to make payments to Maya and Floridian.

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

COUNTS 2-13
False Statements Relating to Health Care Matters
(18 U.S.C. § 1035(a)(2))

1. Paragraphs 1 through 11 and 13 through 18 of the General Allegations section of the Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about the dates enumerated as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

YADIRA ROBERTSON and
DAYAMI RAEZ MARTINEZ,

in any matter involving a health care benefit program, knowingly and willfully made any materially false, fictitious, and fraudulent statements and representations, and made and used any materially false writing and document knowing the same to contain any materially false, fictitious and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items, and services, that is, the defendants signed physical and occupational therapy treatment notes and other documents certifying they had provided services on the dates enumerated below, when in truth and in fact, and as the defendants then and there well knew, they did not provide those services on those dates:

Count	Defendant	Home Health Agency	Medicare Beneficiary	Purported Service Date	Description of Service
2	YADIRA ROBERTSON	Floridian	F.R.	7/29/2013	Physical Therapy
3	YADIRA ROBERTSON	Floridian	J.T.	7/29/2013	Physical Therapy
4	YADIRA ROBERTSON	Floridian	P.S.	7/29/2013	Physical Therapy
5	YADIRA ROBERTSON	Floridian	F.R.	7/31/2013	Physical Therapy
6	YADIRA ROBERTSON	Floridian	J.T.	7/31/2013	Physical Therapy
7	YADIRA ROBERTSON	Floridian	P.S.	7/31/2013	Physical Therapy
8	YADIRA ROBERTSON	Floridian	J.T.	8/2/2013	Physical Therapy
9	YADIRA ROBERTSON	Floridian	P.S.	8/2/2013	Physical Therapy
10	YADIRA ROBERTSON	Floridian	I.V.	8/3/2013	Physical Therapy
11	YADIRA ROBERTSON	Floridian	M.R.	8/3/2013	Physical Therapy
12	DAYAMI RAEZ MARTINEZ	Floridian	I.V.	9/10/2013	Discharge Assessment
13	DAYAMI RAEZ MARTINEZ	Floridian	M.R.	9/10/2013	Discharge Assessment

In violation of Title 18, United States Code, Sections 1035(a)(2) and 2.

FORFEITURE
(18 U.S.C. § 982)

1. The General Allegations section and the allegations set forth in Counts 1 through 13 of 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 defendants, **YADIRA ROBERTSON** and **DAYAMI RAEZ MARTINEZ**, have an interest.

2. Upon conviction of a violation of Title 18, United States Code, Sections 1349 or 1035(a)(2), as alleged in this Indictment, the defendants, **YADIRA ROBERTSON** and **DAYAMI RAEZ MARTINEZ**, 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 the offense pursuant to Title 18, United States Code, Section 982(a)(7).

3. The property which is subject to forfeiture includes, but is not limited to, the sum of at least \$834,000, which represents the gross proceeds of the offenses alleged in the Indictment.

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 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 the procedures set forth in Title 21, United States Code, Section 853, made applicable by Title 18, United States Code Section 982(b)(1).

A TRUE BILL



~~FOR~~ PERSON

15 Sept 2011

WIFREDO A. FERRER
UNITED STATES ATTORNEY

for Luis E. Perez
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CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE

for Luis E. Perez
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