

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **16-20476 CREZLOCH**

18 U.S.C. § 1349
18 U.S.C. § 1347
18 U.S.C. § 371
42 U.S.C. § 1320a-7b(b)(2)(A)
18 U.S.C. § 2
18 U.S.C. § 982

/HUNT

UNITED STATES OF AMERICA

vs.

DAYLIN CABRERA,
RACIEL LEON,
and
ALEXANDER LOPEZ HUERGO,

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 P.O.C. 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 a: (i) 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 HHA. 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.

11. Medicare paid for insulin injections by an HHA when a beneficiary was determined to be unable to inject his/her own insulin and the beneficiary had no available caregiver able or willing to inject the beneficiary. The basic requirement that the beneficiary be confined to the home or be homebound was a continuing requirement for a Medicare beneficiary to receive home health benefits.

The Defendants and Related Companies and Individuals

12. D&D&D Home Health Care, Inc. ("D&D&D HH") was a Florida corporation incorporated on or about February 22, 2006, that did business in Miami-Dade County as an HHA that purported to provide home health care services to eligible Medicare beneficiaries.

13. Mercy Home Care, Inc. ("Mercy HH") was a Florida corporation incorporated on or about August 15, 2006, that did business in Miami-Dade County as an HHA that purported to provide home health care services to eligible Medicare beneficiaries.

14. Sweet Life Staffing, Inc. ("Sweet Life") was a Florida corporation incorporated on or about January 28, 2013, that did business in Miami-Dade County as a staffing company that purported to provide home health care and physical therapy staffing services to Medicare beneficiaries.

15. Supreme Billing & Consulting was a Florida corporation incorporated on or about January 14, 2015, that did business in Miami-Dade County.

16. Defendant **DAYLIN CABRERA** was a resident of Miami-Dade County.

17. Defendant **RACIEL LEON**, a resident of Miami-Dade County, was the president and registered agent of Supreme Billing & Consulting.

18. Defendant **ALEXANDER LOPEZ HUERGO**, a resident of Miami-Dade County, was the vice president of D&D&D HH.

19. Jesus Perez was a resident of Miami-Dade County.

20. Joel Alvarez was a resident of Miami-Dade County.
21. Sandra Jaramillo was a resident of Miami-Dade County.
22. Adolfo Larrea was a resident of Miami-Dade County.
23. Karla Garcia was a resident of Miami-Dade County.
24. Maria Pupo was a resident of Miami-Dade County.
25. Yovani Suarez was a resident of Miami-Dade County.
26. Carlos Nerey was a resident of Miami-Dade County.

COUNT 1

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

1. Paragraphs 1 through 26 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around October 2014, and continuing through in or around May 2016, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**DAYLIN CABRERA,
RACIEL LEON,
and
ALEXANDER LOPEZ HUERGO,**

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate, and agree with Jesus Perez, Joel Alvarez, Sandra Jaramillo, Karla Garcia, Maria Pupo, Yovani Suarez, Carlos Nerey, and with 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, and 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 did knowingly transmit and cause to be transmitted, by means of wire communication in interstate commerce, writings, signs, signals, pictures, and sounds for the purpose 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 the defendants 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; and (b) concealing 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. **DAYLIN CABRERA** and her co-conspirators accepted kickbacks from Jesus Perez, Joel Alvarez, and other co-conspirators in return for providing patients and fraudulent documentation for those patients, including medical records, for Medicare beneficiaries at Mercy HH and D&D&D HH, who were recruited to serve as patients.

5. **DAYLIN CABRERA, RACIEL LEON, ALEXANDER LOPEZ HUERGO**, and their co-conspirators used these fraudulent documents, as well as fraudulent home health care prescriptions, to cause several Miami-Dade County HHAs, including Mercy HH and D&D&D

HH, to submit false and fraudulent claims, via interstate wires, to Medicare seeking payment for home health services purportedly provided to Medicare beneficiaries when, in fact, such services were not medically necessary and not provided.

6. As a result of such false and fraudulent claims, **DAYLIN CABRERA, RACIEL LEON, ALEXANDER LOPEZ HUERGO** and their co-conspirators caused Medicare to make payments to several Miami-Dade County HHAs, including Mercy HH and D&D&D HH.

7. **DAYLIN CABRERA, RACIEL LEON, ALEXANDER LOPEZ HUERGO**, and their co-conspirators diverted the fraud proceeds for their personal use and benefit, the use and benefit of others, and to further the fraud.

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

COUNTS 2-3
Health Care Fraud
(18 U.S.C. § 1347)

1. Paragraphs 1 through 26 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. From in or around October 2014, and continuing through in or around at least June 2015, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

DAYLIN CABRERA,

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 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 Medicare.

Purpose of the Scheme and Artifice

3. It was a purpose of the scheme and artifice for the defendant and her accomplices to unlawfully enrich themselves by, among other things: (a) buying and selling fraudulent home health therapy records and other medical documentation; (b) submitting and causing the submission of false and fraudulent claims to Medicare; and (c) concealing the submission of false and fraudulent claims to Medicare.

The Scheme and Artifice

4. The allegations contained in paragraphs 4 through 7 of the Manner and Means section of Count 1 of this Indictment are realleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice as those allegations relate to **DAYLIN CABRERA**.

Acts in Execution or Attempted Execution of the Scheme and Artifice

5. On or about the dates set forth as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

DAYLIN CABRERA,

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 a health care benefit program affecting commerce, as defined by 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 Medicare, that is, the defendant submitted and caused the submission of false and fraudulent claims to Medicare, as listed below:

Count	Beneficiary Name	Approx. Claim Receipt Date	Services Claimed	Approximate Amount Billed to Medicare by D&D&D	Claim Number
2	G.P.	3/24/15	Home Health Services	\$2,080	21508302125607FLR
3	B.F.	4/17/15	Home Health Services	\$2,080	21510703197107FLR

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

COUNT 4
Conspiracy to Defraud the United States and Pay and Receive Health Care Kickbacks
(18 U.S.C. § 371)

1. Paragraphs 1 through 26 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around October 2014, and continuing through in or around May 2016, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

DAYLIN CABRERA,
RACIEL LEON,
and
ALEXANDER LOPEZ HUERGO,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with Sandra Jaramillo, Joel Alvarez, Jesus Perez, Carlos Nerey, Karla Garcia, Maria Pupo, Yovani Suarez, each other 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 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;

c. to violate Title 42, United States Code, Section 1320a-7b(b)(1)(A), by knowingly and willfully soliciting and receiving remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for referring 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 defendants and their co-conspirators to unlawfully enrich themselves by: (a) offering, paying, soliciting, and receiving kickbacks and bribes in return for referring Medicare beneficiaries to Mercy HH and D&D&D HH to serve as patients; and (b) submitting and causing the submission of claims to Medicare for home health services and therapy that Mercy HH and D&D&D HH purported to provide to those beneficiaries.

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 others, the following:

4. **RACIEL LEON, ALEXANDER LOPEZ HUERGO** and their co-conspirators offered and paid kickbacks to co-conspirator patient recruiters in return for referring Medicare beneficiaries to Mercy HH and D&D&D HH to serve as patients.

5. **DAYLIN CABRERA** and her co-conspirators at Sweet Life solicited and received kickbacks in return for referring Medicare beneficiaries to D&D&D HH and Mercy HH to serve as patients.

6. **DAYLIN CABRERA, RACIEL LEON, ALEXANDER LOPEZ HUERGO** and their co-conspirators caused conspirators at several Miami-Dade County home health agencies, including Mercy HH and D&D&D HH to submit claims to Medicare for home health services purportedly provided to the recruited Medicare beneficiaries.

7. **DAYLIN CABRERA, RACIEL LEON, ALEXANDER LOPEZ HUERGO** and their co-conspirators caused Medicare to pay Mercy HH and D&D&D HH based upon the claims for 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 January 9, 2015, **RACIEL LEON** caused a co-conspirator to deliver check number 6868 from Mercy HH to him.

2. On or about January 30, 2015, **DAYLIN CABRERA** endorsed the back of check number 1075 from Mercy HH signed by Jesus Perez.

3. On or about February 13, 2015, **RACIEL LEON** endorsed check number 1117 from Mercy HH.

4. On or about February 26, 2015, **ALEXANDER LOPEZ HUERGO** caused Joel Alvarez to sign D&D&D HH check number 13067.
5. On or about February 26, 2015, **DAYLIN CABRERA** endorsed the back of D&D&D HH check number 13070.
6. On or about May 27, 2015, **ALEXANDER LOPEZ HUERGO** cashed D&D&D HH check number 13342.
7. On or about June 5, 2015, **ALEXANDER LOPEZ HUERGO** cashed D&D&D HH check number 13368.
8. On or about June 16, 2015, **ALEXANDER LOPEZ HUERGO** withdrew \$9,600 cash from D&D&D HH's corporate account ending 0963 for D&D&D HH.
9. On or about June 17, 2015, **ALEXANDER LOPEZ HUERGO** withdrew \$23,100 cash from D&D&D HH's corporate account ending 5070 for D&D&D HH.
10. On or about June 18, 2015, **ALEXANDER LOPEZ HUERGO** withdrew \$35,500 cash from D&D&D HH's corporate account ending 5070 for D&D&D HH.
11. On or about June 22, 2015, **ALEXANDER LOPEZ HUERGO** withdrew \$19,600 cash from D&D&D HH's corporate account ending 5070 for D&D&D HH.
12. On or about June 23, 2015, **ALEXANDER LOPEZ HUERGO** withdrew \$8,000 cash from D&D&D HH's corporate account ending 5070 for D&D&D HH.
13. On or about June 25, 2015, **ALEXANDER LOPEZ HUERGO** withdrew \$9,600 cash from D&D&D HH's corporate account ending 5070 for D&D&D HH.
14. On or about June 26, 2015, **ALEXANDER LOPEZ HUERGO** withdrew \$20,000 cash from D&D&D HH's corporate account ending 5070 for D&D&D HH.

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

COUNTS 5-6
Payment of Kickbacks in Connection with a Federal Health Care Program
(42 U.S.C. § 1320a-7b(b)(2)(A))

1. Paragraphs 1 through 9, 11 through 15, and 18 through 26 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,

ALEXANDER LOPEZ HUERGO,

as set forth below, did knowingly and willfully offer and pay remuneration, that is, 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, as set forth below:

Count	Approximate Date	Approximate Kickback Amount
5	May 27, 2015	\$9,000
6	June 5, 2015	\$5,940

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

CRIMINAL FORFEITURE
(18 U.S.C. § 982)

1. The General Allegations and all other allegations contained in this Indictment are re-alleged and incorporated by reference as though fully set forth herein for the purpose of alleging criminal forfeiture to the United States of America of certain property in which one or more of the defendants,

DAYLIN CABRERA,
RACIEL LEON,
and
ALEXANDER LOPEZ HUERGO,

have an interest.

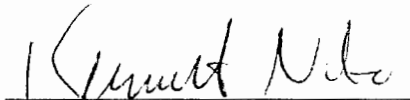
2. Upon conviction of any violation alleged in Counts 1 through 6 of this Indictment, the defendant so convicted shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(7), all property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violation.

3. The property which is subject to forfeiture includes, but is not limited to, a sum of money equal in value to the property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the federal healthcare offenses alleged in this Indictment, which the United States of America will seek as a forfeiture money judgment against the defendants upon conviction and as part of their respective sentence; and

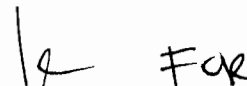
All pursuant to Title 18, United States Code, Sections 982(a)(7), and the procedures set forth in Title 21, United States Code, Section 853, as made applicable by Title 18, United States Code, Section 982(b).

A TRUE BILL


FOREPERSON



WIFREDO A. FERRER
UNITED STATES ATTORNEY



GEJAA GOBENA
DEPUTY CHIEF
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE



ELIZABETH YOUNG
LISA H. MILLER
TRIAL ATTORNEY
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE