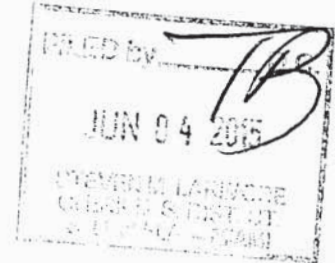


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **15-20409**

18 U.S.C. § 1349
18 U.S.C. § 1347
18 U.S.C. § 2
18 U.S.C. § 982

CR-UNGARO
/OTAZO-REYES



UNITED STATES OF AMERICA

vs.

LAZARO DEL RIO,
HECTOR ANZARDO,
YANELLA NUNEZ,
and
YOCIS NUNEZ

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, 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 B of the Medicare Program covered, among other things, medical services provided by physicians, medical clinics, and other qualified health care providers, as well as medications prescribed incident to such services. Part D of the Medicare Program subsidized the costs of prescription drugs for Medicare beneficiaries.

The Medicare Part B Program

3. Medicare Part B was administered in Florida by First Coast Service Options, a company that contracted with CMS to receive, adjudicate, process, and pay certain Part B claims.

4. Payments under the Medicare Program were often made directly to the physician, medical clinic, or other qualified provider of the medical goods or services, rather than the beneficiary. This occurred when the provider accepted assignment of the right to payment from the beneficiary. In that case, the provider submitted the claim to Medicare for payment, either directly or through a billing company.

5. Physicians, medical clinics, 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 who was issued a Medicare provider number was able to file bills, known as “claims,” with Medicare to obtain reimbursement for services provided to beneficiaries. The claim form was required to contain certain important information, including: (a) the Medicare beneficiary’s name and Health Insurance Claim Number (“HICN”); (b) a description of the health care benefit, item, or service that was provided or supplied to the beneficiary; (c) the billing codes for the benefit, item, or service; (d) the date upon which the benefit, item, or service was provided or supplied to the beneficiary; and (e) the name of the referring physician or other health care provider, as well as a unique identifying number, known either as the Unique Physician Identification Number (“UPIN”)

or National Provider Identifier (“NPI”). The claim form could be submitted in hard copy or electronically.

6. When a claim was submitted to Medicare, the provider certified that the contents of the form were true, correct, complete, and that the form was prepared in compliance with the laws and regulations governing the Medicare program. The provider further certified that the services being billed were medically necessary and were in fact provided as billed.

7. Pursuant to federal statutes and regulations, Medicare only paid for health care benefits, items or other services that were medically necessary and ordered by a licensed doctor or other licensed, qualified health care provider.

The Medicare Part D Program

8. 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.

9. A pharmacy could participate in the Part D Program by entering a retail network agreement directly with a plan or with one or more Pharmacy Benefit Managers (“PBMs”). A 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 either directly to the plan or to a PBM that represented the beneficiary’s Medicare drug plan. The plan or PBM determined whether the pharmacy was entitled to payment for each claim and periodically paid the pharmacy for outstanding claims. The drug plan’s sponsor reimbursed the PBM for its payments to the pharmacy.

10. A pharmacy could also submit claims to a Medicare drug plan to whose network the pharmacy did not belong. Submission of such out-of-network claims was not common and often resulted in smaller payments to the pharmacy by the drug plan sponsor.

11. 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.

12. 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

13. Silverscript Insurance Company ("Silverscript"), Wellcare Prescription Insurance, Inc. ("Wellcare"), United American Insurance Company ("United American"), and Medco Containment Life Insurance Company ("Medco"), were Medicare drug plan sponsors.

The Defendants and Related Companies

14. Vivi Pharmacy LLC ("Vivi Pharmacy") was a Florida corporation, incorporated on or about March 10, 2011, with its principal place of business in Miami-Dade County, in the Southern District of Florida. Vivi Pharmacy did business as a pharmacy that purportedly provided prescription drugs to Medicare beneficiaries, among others.

15. Health Marketing & Consulting, Corp. ("Health Marketing") was a Florida corporation, incorporated on or about January 5, 2009, with its principal place of business in Miami-Dade County, in the Southern District of Florida.

16. Alex Hope of Miracle Inc. ("Alex Hope") was a Florida corporation, incorporated on or about April 20, 2012, with its principal place of business in Miami-Dade County, in the Southern District of Florida.

17. **LAZARO DEL RIO**, a resident of Miami-Dade County, was a manager and registered agent of Vivi Pharmacy.

18. **HECTOR ANZARDO**, a resident of Miami-Dade County, was a manager of Vivi Pharmacy, and the president and registered agent of Health Marketing.

19. **YANELLA NUNEZ**, a resident of Miami-Dade County, was a manager of Vivi Pharmacy.

20. **YOCIS NUNEZ**, a resident of Miami-Dade County, was the president and registered agent of Alex Hope.

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

1. Paragraphs 1 through 20 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 April of 2012 and continuing through at least in or around February of 2014, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

LAZARO DEL RIO,
HECTOR ANZARDO,
YANELLA NUNEZ,
and
YOCIS NUNEZ,

did knowingly and willfully, that is with the intent to further the objects of the conspiracy, combine, conspire, confederate and agree with each other and others known and unknown to the Grand Jury, to commit 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 various Medicare drug plan sponsors, including Silverscript, Wellcare, United American and Medco, and 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 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 the purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by, among other things: (a) paying kickbacks and bribes to ensure that Medicare beneficiaries would serve as patients at Vivi Pharmacy; (b) submitting and causing the submission of false and fraudulent claims to health care benefit programs; (c) concealing the

submission of false and fraudulent claims to health care benefit programs; and (d) diverting fraud proceeds for the personal use and benefit of themselves and others, and to further the fraud.

MANNER AND MEANS OF THE CONSPIRACY

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

4. **HECTOR ANZARDO** and **YOCIS NUNEZ** paid kickbacks and bribes to individuals to recruit Medicare beneficiaries and induce said Medicare beneficiaries to obtain prescriptions for pharmaceutical drugs to be used in conjunction with false and fraudulent billing of the Medicare Part D Program through Vivi Pharmacy.

5. Co-conspirators provided false and fraudulent prescriptions for recruited Medicare beneficiaries to **LAZARO DEL RIO, HECTOR ANZARDO, YANELLA NUNEZ** and **YOCIS NUNEZ** for use in filing false and fraudulent prescription drug claims under Medicare Part D through Vivi Pharmacy.

6. **LAZARO DEL RIO, HECTOR ANZARDO, YANELLA NUNEZ** and **YOCIS NUNEZ** and their co-conspirators submitted and caused Vivi Pharmacy to submit, via interstate wire transmissions, claims that falsely and fraudulently represented that various health care benefits, primarily prescription drugs, were medically necessary, prescribed by a doctor, and had been provided by Vivi Pharmacy to Medicare beneficiaries.

7. As a result of such false and fraudulent claims, Medicare prescription drug plan sponsors, through their PBMs, made overpayments funded by the Medicare Part D Program to Vivi Pharmacy's corporate bank accounts.

8. **LAZARO DEL RIO, HECTOR ANZARDO, YANELLA NUNEZ and YOCIS NUNEZ** and their co-conspirators used the proceeds from the false and fraudulent Medicare Part D claims for their own use and the use of others, and to further the fraud.

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

COUNTS 2-7
Health Care Fraud
(18 U.S.C. § 1347)

1. Paragraphs 1 through 20 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 April of 2012 and continuing through in or around at least February of 2014, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**LAZARO DEL RIO,
HECTOR ANZARDO,
YANELLA NUNEZ,
and
YOCIS NUNEZ,**

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 various Medicare drug plan sponsors, including Silverscript, Wellcare, United American and Medco, 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 defendants and their accomplices to unlawfully enrich themselves by, among other things: (a) paying kickbacks and bribes to ensure that Medicare beneficiaries would serve as patients at Vivi Pharmacy; (b) submitting and causing the submission of false and fraudulent claims to health care benefit programs; (c) concealing the submission of false and fraudulent claims to health care benefit programs, and the receipt and transfer of fraud proceeds; and (d) diverting fraud proceeds for the personal use and benefit of themselves and others, and to further the fraud.

The Scheme and Artifice

4. The allegations contained in paragraphs 4 through 8 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.

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 defendants,

**LAZARO DEL RIO,
HECTOR ANZARDO,
YANELLA NUNEZ,
and
YOCIS NUNEZ,**

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 various Medicare drug plan sponsors, including Silverscript, Wellcare, United American and Medco, 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 defendants submitted and caused the submission of false and fraudulent claims seeking the identified dollar amounts, and representing that Vivi Pharmacy provided pharmaceutical items and services to Medicare beneficiaries pursuant to physicians' orders and prescriptions:

Count	Medicare Beneficiary	Approximate Date of Submission of Claim	Claim Number	Medicare Drug Plan Sponsor	Item Claimed; Approximate Amount Paid
2	M.C.	05/02/2013	167373162.-100001811	Wellcare	Calcipotrien Cream .005%; \$643
3	E.M.	08/08/2013	10514735831445714049	United American	Advair Disku AER 250/50; \$183
4	E.M.	09/09/2013	59990878563940024059	United American	Nexium Cap 40 MG; \$220
5	P.M.	12/24/2013	30740779112144154072	Medco	Acitretin Capsule 10 MG; \$1,822
6	P.M.	12/24/2013	93085779112144154037	Medco	Carac Cream 5%; \$1956
7	P.M.	01/23/2014	20730259790837154024	Medco	Diclofenac 3% Gel; \$2,663

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

FORFEITURE ALLEGATIONS
(18 U.S.C. § 982(a)(7))

1. The allegations contained in this Indictment are realleged 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 the defendants, **LAZARO DEL RIO, HECTOR ANZARDO, YANELLA NUNEZ** and **YOCIS NUNEZ**, have an interest.

2. Upon conviction of a violation of Title 18, United States Code, Section 1349 or Title 18, United States Code, Section 1347, as alleged in 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), any 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, the following:

Forfeiture Money Judgment:

No less than \$3,164,744.78 (US), which is a sum of money approximately equal in value to the gross proceeds traceable to the commission of the violations alleged in this Indictment, and which the United States will seek as a forfeiture money judgment, jointly and severally, against the convicted defendants as part of their respective sentence.

Specific Property:

(a) All principal, deposits, interest, dividends and other amounts credited to account number 2000060005519 held at Wells Fargo, N.A., in the name of Vivi Pharmacy, LLC.;

(b) All principal, deposits, interest, dividends and other amounts credited to account number 478835379 held at JP Morgan Chase Bank, N.A. in the name of Vivi Pharmacy,

LLC.;

(c) All principal, deposits, interest, dividends and other amounts credited to account number 008983332101 held at Bank of America, N.A., in the name of **HECTOR ANZARDO**;

(d) All principal, deposits, interest, dividends and other amounts credited to account number 898025950237 held at Bank of America, N.A., in the name of Health Marketing & Consulting, Corp.;

(e) All principal, deposits, interest, dividends and other amounts credited to account number 229024291582 held at Bank of America, N.A., in the name of Health Marketing & Consulting, Corp.;

(f) All principal, deposits, interest, dividends and other amounts credited to account number 507156755 held at JP Morgan Chase Bank, N.A., in the name of Capital Pharmacy and Discount, Inc.;

(g) All principal, deposits, interest, dividends and other amounts credited to account number 2982589883 held at JP Morgan Chase Bank, N.A., in the name of **YANELLA NUNEZ**;

(h) All principal, deposits, interest, dividends and other amounts credited to account number 201276583 held at JP Morgan Chase Bank, N.A., in the name of **YANELLA NUNEZ**;


(i) All principal, deposits, interest, dividends and other amounts credited to account number 2975117607 held at JP Morgan Chase Bank, N.A., in the name of **YOCIS NUNEZ**; and

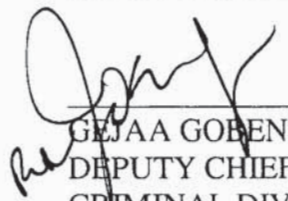
(j) All principal, deposits, interest, dividends and other amounts credited to account number 467404344 held at JP Morgan Chase Bank, N.A., in the name of Alex Hope of Miracle Inc.

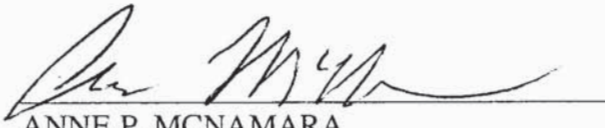
All pursuant to Title 18, United States Code, Section 982(a)(7), and the procedure set forth at Title 21, United States Code, Section 853.

A TRUE BILL


FOREPERSON


WIFREDO A. FERRER
UNITED STATES ATTORNEY


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


ANNE P. MCNAMARA
TRIAL ATTORNEY
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE