

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **18-20508** CR-ALTONAGA

18 U.S.C. § 1349

18 U.S.C. § 1347

18 U.S.C. § 2

18 U.S.C. § 982(a)(7)

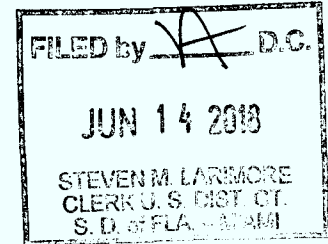
/GOODMAN

UNITED STATES OF AMERICA

vs.

OSCAR GUARDARRAMA-SUAREZ,
SANDY BASULTO, and
NOEMI DELGADO,

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 D of Medicare (the "Medicare Part D Program") subsidized the costs of

prescription drugs for Medicare beneficiaries in the United States. The Medicare Part D Program 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 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 plan. 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.

5. 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.

6. 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.

7. Medicare and Medicare drug plan sponsors, were "health care benefit program[s]," as defined by Title 18, United States Code, Section 24(b).

The Defendants and Related Entity

8. Antares Pharmacy Discount, Inc. ("Antares Pharmacy") was a Florida corporation first located at 6741 Coral Way, Miami, Florida and later located at 103400 Overseas Highway, Key Largo, Florida, purportedly providing prescription drugs to Medicare beneficiaries.

9. **OSCAR GUARDARRAMA-SUAREZ**, a resident of Miami-Dade County, was the incorporator and a corporate officer and registered agent of Antares Pharmacy.

10. **SANDY BASULTO**, a resident of Miami-Dade County and licensed pharmacy technician, was an operator of Antares Pharmacy.

11. **NOEMI DELGADO**, a resident of Miami-Dade County and a licensed pharmacy technician, was an employee of Antares Pharmacy.

COUNT 1
CONSPIRACY TO COMMIT HEALTH CARE FRAUD AND WIRE FRAUD
(18 U.S.C. § 1349)

1. The General Allegations section of this Indictment is re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around February 2014, through the date of this Indictment, in Miami-Dade and Monroe Counties, in the Southern District of Florida, and elsewhere, the defendants,

**OSCAR GUARDARRAMA-SUAREZ,
SANDY BASULTO and
NOEMI DELGADO,**

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly 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), specifically, 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, 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 the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing the scheme and artifice, did knowingly transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, certain writings, signs, signals, pictures and sounds, 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) offering and paying kickbacks for the

referral of fraudulent Medicare prescriptions to Antares 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 (c) 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. **OSCAR GUARDARRAMA-SUAREZ, SANDY BASULTO** and other co-conspirators recruited and paid kickbacks to co-conspirators, including **NOEMI DELGADO**, in exchange for referring Medicare beneficiaries to be used in conjunction with false and fraudulent billing of the Medicare Part D Program through Antares Pharmacy.

5. **OSCAR GUARDARRAMA-SUAREZ, SANDY BASULTO, NOEMI DELGADO** and their co-conspirators submitted and caused the submission of claims, via interstate wire communications, that falsely and fraudulently represented that prescription drugs were medically necessary and had been provided to the Medicare beneficiaries by Antares Pharmacy.

6. 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 the corporate bank account of Antares Pharmacy.

7. **OSCAR GUARDARRAMA-SUAREZ, SANDY BASULTO, NOEMI DELGADO** and their co-conspirators used the proceeds from the false and fraudulent Medicare Part D claims for her own use and the use of others, and to further the fraud.

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

COUNTS 2-12
HEALTH CARE FRAUD
(18 U.S.C. § 1347)

1. The General Allegations section of this Indictment is re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around February 2014, through the date of this Indictment, in Miami-Dade and Monroe Counties, in the Southern District of Florida, and elsewhere, the defendants,

OSCAR GUARDARRAMA-SUAREZ,
SANDY BASULTO and
NOEMI DELGADO,

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 a health care benefit program 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 a purpose of the scheme and artifice for the defendants and their accomplices to unlawfully enrich themselves by, among other things: (a) offering and paying kickbacks for the referral of fraudulent Medicare prescriptions to Antares 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 the Manner and Means section of Count 1 of this Indictment are re-alleged 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 and Monroe Counties, in the Southern District of Florida, and elsewhere, the defendants, **OSCAR GUARDARRAMA-SUAREZ, SANDY BASULTO and NOEMI DELGADO**, 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 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, in that the defendants submitted and caused the submission of false and fraudulent claims seeking the identified dollar amounts and representing that Antares Pharmacy provided pharmaceutical items and services to Medicare beneficiaries pursuant to physician's valid orders and prescriptions:

Count	Approximate Date of Service	Medicare Beneficiary	Medicare Claim Number	Item Claimed; Approx. Amount Claimed
2	02/19/2015	G.H.	57719810303	Invega; \$814

Count	Approximate Date of Service	Medicare Beneficiary	Medicare Claim Number	Item Claimed; Approx. Amount Claimed
3	02/19/2015	G.H.	57719810305	Seroquel; \$1200
4	03/02/2015	S.E.	56352700429	Seroquel XR; \$1200
5	04/02/2015	Y.L	61612741227	Namenda XR; \$309
6	04/29/2015	Y.L	61612741228	Namenda XR; \$335
7	05/01/2015	X.G.	63032411749	Seroquel XR; \$595
8	06/23/2015	X.G.	62317353132	Namenda; \$328
9	07/20/2015	S.E.	56352700441	Budesonide; \$613
10	09/02/2015	S.E.	56352700502	Atripla; \$2136
11	09/03/2015	R.S.	62317353153	Seroquel XR; \$1200
12	09/03/2015	R.S.	62317353145	Diclofenac Gel; \$798

In violation of Title 18, United States Code, Sections 1347 and 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 certain property in which the defendants **OSCAR GUARDARRAMA-SUAREZ, SANDY BASULTO** and **NOEMI DELGADO** have an interest.

2. Upon conviction of any violation of Title 18, United States Code, Sections 1347 or 1349, as alleged in Counts 1 through 12 of the Indictment, the defendant so convicted shall forfeit to the United States all of his or her right, title and interest in 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).

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



BENJAMIN G. GREENBERG
UNITED STATES ATTORNEY



JON M. JUENGER
ASSISTANT UNITED STATES ATTORNEY