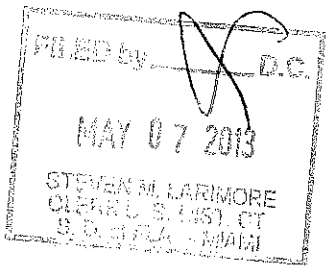
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 13-20316 CR-UNGARO / TORRES

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



UNITED STATES OF AMERICA

vs.

AZALIA GARCIA CHIRINO,

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) 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. 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.

5. Home health care agencies, pharmacies, physicians, and other health care providers that provided services to beneficiaries were able to apply for and obtain a Medicare Identification Number or "provider number." In the application, the provider acknowledged that to be able to participate in the Medicare program, the provider must comply with all Medicare related laws and regulations. A provider who was issued a Medicare Identification Number was able to file claims with Medicare to obtain reimbursement for services provided to beneficiaries. The Medicare Identification Number uniquely identified the provider on billing forms submitted to Medicare.

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. 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."

10. Medicare regulations allowed Medicare certified HHAs to subcontract home health care services to nursing companies, 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 Companies

11. Shalom Home Health Services, Inc. ("Shalom") was a corporation organized under the laws of the State of Florida on or about September 10, 2004, and did business in Miami-Dade County, providing home health services to Medicare beneficiaries. In 2007, Shalom received a Medicare Identification Number.

12. Defendant **AZALIA GARCIA CHIRINO** was a resident of Miami-Dade County.

13. Individual 1 was a resident of Miami-Dade County.

COUNT 1
Conspiracy to Pay Health Care Kickbacks
(18 U.S.C. § 371)

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

2. From at least as early as on or about November 22, 2011, and continuing through on or about August 31, 2012, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

AZALIA GARCIA CHIRINO,

did willfully, that is, with the intent to further the object of the conspiracy, and knowingly combine, conspire, confederate and agree with others known and unknown to the Grand Jury, to commit an offense against the United States, that is, 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) paying and accepting kickbacks and bribes for referring Medicare beneficiaries to Shalom so that their Medicare beneficiary numbers would serve as the bases of claims filed for home health care; and (b) submitting and causing the submission of claims to Medicare for home health services that were purportedly provided to these beneficiaries.

Manner and Means of the Conspiracy

The manner and means by which the defendant and her co-conspirators sought to accomplish the object and purpose of the conspiracy included, among others, the following:

4. **AZALIA GARCIA CHIRINO** and her co-conspirators offered and paid kickbacks and bribes to patient recruiters in return for referring Medicare beneficiaries to Shalom to serve as patients.

5. **AZALIA GARCIA CHIRINO** and her co-conspirators used the Medicare beneficiary information obtained through the payment of bribes and kickbacks to submit claims to Medicare for home health services through Shalom.

6. **AZALIA GARCIA CHIRINO** and her co-conspirators caused Medicare to pay Shalom based upon the claims submitted for home health services using the Medicare beneficiaries' information.

Overt Acts

In furtherance of the conspiracy, and to accomplish its object and purpose, at least one of the co-conspirators 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 4, 2012, **AZALIA GARCIA CHIRINO** paid Individual 1 approximately $1,700 cash as a kickback for referring Medicare beneficiary F.M. to Shalom to serve as a patient.

2. On or about January 18, 2012, **AZALIA GARCIA CHIRINO** paid Individual 1 approximately $1,700 cash as a kickback for referring Medicare beneficiary M.V. to Shalom to serve as a patient.

3. On or about February 16, 2012, **AZALIA GARCIA CHIRINO** paid Individual 1 approximately $1,600 cash as a kickback for referring Medicare beneficiary J.G. to Shalom to serve as a patient.

4. On or about March 2, 2012, **AZALIA GARCIA CHIRINO** paid Individual 1 approximately $1,700 cash as a kickback for referring Medicare beneficiary O.M. to Shalom to serve as a patient.

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 13 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,

AZALIA GARCIA CHIRINO,

as specified 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 for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole or in part by a Federal health care program, that is, Medicare, as set forth below:

Count	Approximate Date	Approximate Kickback Amount	Individual Referred
2	01/04/2012	$1,700	F.M.
3	01/18/2012	$1,700	M.V.
4	02/16/2012	$1,600	J.G.
5	03/2/2012	$1,700	O.M.

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 realleged 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 **AZALIA GARCIA CHIRINO** has an interest.

2. Upon conviction of any violation of Title 42, United States Code, Section 1320a-7(b), or any conspiracy to commit such violation, as alleged in Counts 1 through 5 of this Indictment, the defendant 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. If any of the property described above, as a result of any act or omission of the defendants:

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;

it is the intent of the United States of America to seek forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p).

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).

A TRUE BILL

FOREPERSON

WIFREDO A. FERRER
UNITED STATES ATTORNEY

MARLENE RODRIGUEZ
ASSISTANT U.S. ATTORNEY