

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	No.
v.)	
)	
KEENAN R. FERRELL and)	Violation: Title 18, United States
BRYCE WOODS)	Code, Section 1347

COUNT ONE

The SPECIAL MARCH 2010 GRAND JURY charges:

1. At times material to this indictment:

Medicare

a. Medicare was a national health insurance program pursuant to Title 18 of the Social Security Act. The Centers for Medicare and Medicaid Services (“CMS”) was a federal agency within the United States Department of Health and Human Services (“HHS”), which administered the Medicare program through its contractors. Medicare provided free or below-cost health care benefits to certain eligible beneficiaries, primarily persons who were 65 years of age and older.

b. CMS contracted with Wisconsin Physicians Service (“WPS”), a Medicare contractor, to process claims submitted for medically necessary physician’s services for beneficiaries in Illinois.

c. Medicare ordinarily authorized payment for physician services only if those services were actually provided and were “medically necessary,” that is, services were required because of disease, disability, infirmity, or impairment. Medicare would not pay for services and treatment that were not actually provided.

d. Enrolled providers of medical services to Medicare recipients were eligible for reimbursement for covered medical services. By becoming a participating provider in Medicare, enrolled providers agreed to abide by the rules, regulations, policies and procedures governing reimbursement.

e. Medicare required that health care providers obtain a distinct provider identification number for each group with which they were associated by submitting an application with their professional credentials and qualifications. This application also contained a section in which the provider could designate a third party payee to whom reimbursement checks would be made payable.

f. To be paid for services rendered, a Medicare provider was required to submit a claim for payment containing certain required information pertaining to the Medicare beneficiary, including the type of services provided, the procedure code, the date and charge of such services, and a certification that such services were personally rendered by the provider or rendered incident to the provider's professional service.

The Defendants

g. Defendants KEENAN R. FERRELL and BRYCE WOODS operated Take Action, Inc. ("Take Action") and Inner Arts, Inc. ("Inner Arts"), which claimed to provide psychotherapy services to Medicare beneficiaries residing in skilled nursing facilities in the Northern District of Illinois and elsewhere.

h. Defendant FERRELL was the owner and operator of Inner Arts, and an operator of Take Action, and he was licensed to practice psychology in various states.

i. Defendant WOODS was, at various times, the business manager, a director, an officer, and the treasurer of Inner Arts. Defendant WOODS also was a business manager and director of Take Action. Defendant WOODS was not licensed to practice medicine or to provide psychotherapy services in Illinois.

Billing Codes

j. Health care providers used a uniform system of coding to report professional services, procedures, supplies, and diagnoses. The American Medical Association (“AMA”) published the Physicians’ Current Procedural Terminology Manual (the “CPT Manual”) which set forth numerical codes (“CPT codes”) for medical procedures. Each claim form had to contain the five-digit CPT code identifying the service provided to a beneficiary on a particular date. The CPT Manual defined the procedural and medical requirements that needed to be met in order to bill for a particular service, including, in some instances, the amount of time associated with each unit of a particular service.

k. According to the CPT Manual, psychotherapy was a treatment for mental illness and behavioral disturbances in which the clinician established a professional contract with the patient and, through definitive therapeutic communication, attempted to alleviate the emotional disturbances, reverse or change

maladaptive patterns of behavior, and encouraged personality growth and development.

l. The relevant CPT codes relating to psychotherapy included the following:

i. *CPT Code 90801*: Psychiatric diagnostic interview examination, the services of which include eliciting a medical and psychiatric history, a mental status examination, establishment of an initial diagnosis, and evaluation of the patient's ability to respond to treatment;

ii. *CPT Code 90816*: Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an inpatient hospital, partial hospital or residential care setting, approximately 20 to 30 minutes face-to-face with the patient;

iii. *CPT Code 90818*: Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an inpatient hospital, partial hospital or residential care setting, approximately 45 to 50 minutes face-to-face with the patient; and

iv. *CPT Code 90853*: Group psychotherapy (other than a multiple-family group).

The descriptions for these codes remained unchanged between 2002 and 2011.

Coverage of Psychiatric Services under Medicare

m. To be covered under Medicare, the provision of psychiatric services was required to be:

i. personally provided by the physician, clinical psychologist, or clinical social worker; or

ii. “incident to” the services of the physician, clinical psychologist, or other health care practitioner who submitted the charges.

n. To be covered under Medicare, services furnished as “incident to” the services of a clinical psychologist were required to be:

i. services of the type that are commonly furnished in a clinical psychologist’s office;

ii. services furnished without charge or included in the clinical psychologist’s bill;

iii. services commonly furnished in a provider’s office;

iv. an integral, although incidental, part of the professional services performed by the clinical psychologist;

v. performed under the direct supervision of the clinical psychologist – *i.e.* – the clinical psychologist had to be present and immediately available to provide assistance and direction throughout the time the service was being performed; and

vi. performed by an individual who was an employee of either the clinical psychologist or the legal entity that employs the supervising clinical psychologist.

Claims Submission to Medicare

- o. Claims to Medicare for services could be submitted via either hard copy or Electronic Data Interchange (“EDI”) claims processing.
- p. Submission of claims via EDI required completion of an EDI Enrollment Form, which was signed by the provider.
- q. Paragraph 4 of the EDI Enrollment Form stated that the provider would ensure that every electronic entry could be readily associated and identified with an original source document, and that each source document would reflect the following information:
 - i. Beneficiary’s name;
 - ii. Beneficiary’s health insurance claim number;
 - iii. Date or dates of service;
 - iv. Diagnosis or nature of illness; and
 - v. Procedure or service performed.
- r. The EDI Enrollment Form further stated that the CMS-assigned unique identifier number constituted the provider’s legal electronic signature and constituted an assurance by the provider that services were performed as billed.
- s. Medicare could make payment to providers via either paper check or electronic funds transfer (“EFT”).

2. Beginning in or around September 2003, and continuing through in or around July 2011, in the Northern District of Illinois, Eastern Division, and elsewhere,

KEENAN R. FERRELL
and BRYCE WOODS,

defendants herein, participated in a scheme to defraud a health care benefit program that affected interstate commerce, and to obtain, by means of materially false and fraudulent pretenses, representations and promises and material omissions, money and property owned by, and under the custody and control of a health care benefit program, specifically, the Medicare program of the United States of America, in connection with the delivery of and payment for health care benefits, items, and services.

Defendants' Scheme to Defraud Medicare

3. It was part of the scheme that defendants FERRELL and WOODS submitted and caused to be submitted false and fraudulent claims to Medicare on behalf of patients in skilled nursing facilities under the provider number of FERRELL claiming that FERRELL had provided 45–50 minutes of one-on-one psychotherapy to the Medicare beneficiaries, when, in fact, (i) in some instances, the services billed for were provided by WOODS and psychology graduate students recruited by FERRELL, none of whom were licensed to provide psychology services, with limited or no psychologist supervision, and for less time than the periods for which Medicare was billed; (ii) in other instances, no one visited with the purported patients; and (iii) in other instances, the purported patients were deceased.

4. It was further part of the scheme that defendants FERRELL and WOODS arranged with certain skilled nursing facilities in the Northern District of Illinois, and elsewhere, to provide psychotherapy services to Medicare beneficiaries residing in those facilities.

5. It was further part of the scheme that defendants FERRELL and WOODS, knowing that psychotherapy services were reimbursable by Medicare only when performed by an enrolled provider or when “incident to” the services of an enrolled provider, arranged for defendant FERRELL, an enrolled Medicare provider and licensed medical doctor, to authorize Inner Arts and Take Action to accept assignment of his claims to Medicare.

6. It was further part of the scheme that defendants FERRELL and WOODS arranged with unlicensed psychology graduate students and other health care providers, including Provider A, and directed them to see patients at various skilled nursing facilities throughout the Northern District of Illinois, and elsewhere.

7. It was further part of the scheme that defendant FERRELL, knowing that he needed to be present at the nursing homes whenever a therapist conducted a therapy session for defendant FERRELL to be entitled to bill Medicare for the therapy session “incident to” his care, did not attend or otherwise participate in therapy sessions in the nursing home facilities. As a result, defendant FERRELL was neither physically present in the nursing home facilities nor immediately available when Take Action and Inner Arts therapists purportedly were in nursing home facilities to render psychotherapy services.

8. It was further part of the scheme that, under the direction of defendant FERRELL, defendant WOODS, and Provider A, the unlicensed students, in addition to defendant WOODS, Provider A, and others, purported to conduct group and individual therapy sessions with Medicare beneficiaries residing in skilled nursing facilities, and then prepared patient progress notes purporting to document the services provided.

9. It was further part of the scheme that defendants FERRELL and WOODS knowingly billed and caused to be billed Medicare for psychotherapy services under the provider number of defendant FERRELL, knowing that in fact he was not present at the time the services purportedly were provided and was not otherwise directly supervising the services.

10. It was further part of the scheme that defendants FERRELL and WOODS knowingly billed and caused to be billed Medicare for 45–50 minutes of individual psychotherapy sessions under the provider number of defendant FERRELL using CPT Code 90818, when they knew that, at most, the individual therapy sessions lasted only 5–30 minutes or that only group therapy had been provided by unlicensed students or other health care providers, including Provider A.

11. It was further part of the scheme that defendants FERRELL and WOODS knowingly billed and caused to be billed Medicare for psychotherapy sessions that never actually were performed, regardless of the CPT code.

12. It was further part of the scheme that defendants FERRELL and WOODS knowingly billed and caused to be billed Medicare for psychotherapy sessions for deceased individuals.

13. It was further part of the scheme that defendants FERRELL and WOODS knowingly billed and caused to be billed Medicare for psychotherapy sessions provided by defendant WOODS in Illinois, notwithstanding the fact that WOODS was not licensed to provide psychotherapy services in Illinois.

14. It was further part of the scheme that defendants FERRELL and WOODS received Medicare electronic fund transfers to the Inner Arts checking account number XXXX238 at North Community Bank in Chicago, Illinois; the Inner Arts small business checking account number XXXX767 at Republic Bank (formerly Citizen's Bank & Trust) in Chicago, Illinois; and the Take Action small business checking account number XXXX650 at Republic Bank in Chicago, Illinois. Defendants FERRELL and WOODS, along with Provider A, were signatories on these bank accounts and controlled these accounts.

15. It was further part of the scheme that defendants FERRELL and WOODS misrepresented, concealed and hid, and caused to be misrepresented, concealed, and hidden, acts done in furtherance of the scheme and the purposes of those acts.

16. It was further part of the scheme that between approximately September 2003 and approximately July 2011, defendants FERRELL and WOODS knowingly submitted and caused to be submitted to Medicare a total of approximately \$4,407,132

in false and fraudulent claims for psychotherapy services, resulting in the total payment of approximately \$1,863,415.

17. On or about February 18, 2011, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

KEENAN R. FERRELL
and BRYCE WOODS,

defendants herein, did knowingly and willfully execute and attempt to execute the above-described scheme by submitting and causing to be submitted to a health care benefit program, namely, Medicare, a materially false and fraudulent claim; namely, a claim representing that defendant FERRELL had provided individual psychotherapy in a residential care setting, for approximately 45–50 minutes, face-to-face, to Individual A on or about February 17, 2011;

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

COUNT TWO

The SPECIAL MARCH 2010 GRAND JURY further charges:

1. Paragraphs 1 through 16 of Count One are incorporated here.
2. On or about February 22, 2011, at Chicago, in the Northern District of

Illinois, Eastern Division, and elsewhere,

KEENAN R. FERRELL
and BRYCE WOODS,

defendants herein, did knowingly and willfully execute and attempt to execute the above-described scheme by submitting and causing to be submitted to a health care benefit program, namely, Medicare, a materially false and fraudulent claim; namely, a claim representing that defendant FERRELL had provided individual psychotherapy in a residential care setting, for approximately 45–50 minutes, face-to-face, to Individual A on or about February 18, 2011;

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

COUNT THREE

The SPECIAL MARCH 2010 GRAND JURY further charges:

1. Paragraphs 1 through 16 of Count One are incorporated here.
2. On or about June 30, 2006, at Chicago, in the Northern District of Illinois,

Eastern Division, and elsewhere,

KEENAN R. FERRELL
and **BRYCE WOODS**,

defendants herein, did knowingly and willfully execute and attempt to execute the above-described scheme by submitting and causing to be submitted to a health care benefit program, namely, Medicare, a materially false and fraudulent claim; namely, a claim representing that defendant FERRELL had provided individual psychotherapy in a residential care setting, for approximately 45–50 minutes, face-to-face, to Individual B on or about June 30, 2006;

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

COUNT FOUR

The SPECIAL MARCH 2010 GRAND JURY further charges:

1. Paragraphs 1 through 16 of Count One are incorporated here.
2. On or about July 22, 2010, at Chicago, in the Northern District of Illinois,

Eastern Division, and elsewhere,

KEENAN R. FERRELL
and BRYCE WOODS,

defendants herein, did knowingly and willfully execute and attempt to execute the above-described scheme by submitting and causing to be submitted to a health care benefit program, namely, Medicare, a materially false and fraudulent claim; namely, a claim representing that defendant FERRELL had provided individual psychotherapy in a residential care setting, for approximately 45–50 minutes, face-to-face, to Individual C on or about July 21, 2010;

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

COUNT FIVE

The SPECIAL MARCH 2010 GRAND JURY further charges:

1. Paragraphs 1 through 16 of Count One are incorporated here.
2. On or about March 31, 2010, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

**KEENAN R. FERRELL
and BRYCE WOODS,**

defendants herein, did knowingly and willfully execute and attempt to execute the above-described scheme by submitting and causing to be submitted to a health care benefit program, namely, Medicare, a materially false and fraudulent claim; namely, a claim representing that defendant FERRELL had provided individual psychotherapy in a residential care setting, for approximately 45–50 minutes, face-to-face, to Individual D on or about March 31, 2010;

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

COUNT SIX

The SPECIAL MARCH 2010 GRAND JURY further charges:

1. Paragraphs 1 through 16 of Count One are incorporated here.
2. On or about April 19, 2010, at Chicago, in the Northern District of Illinois,

Eastern Division, and elsewhere,

KEENAN R. FERRELL
and BRYCE WOODS,

defendants herein, did knowingly and willfully execute and attempt to execute the above-described scheme by submitting and causing to be submitted to a health care benefit program, namely, Medicare, a materially false and fraudulent claim; namely, a claim representing that defendant FERRELL had provided individual psychotherapy in a residential care setting, for approximately 45–50 minutes, face-to-face, to Individual E on or about April 19, 2010;

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

COUNT SEVEN

The SPECIAL MARCH 2010 GRAND JURY further charges:

1. Paragraphs 1 through 16 of Count One are incorporated here.
2. On or about April 7, 2010, at Chicago, in the Northern District of Illinois,

Eastern Division, and elsewhere,

KEENAN R. FERRELL
and BRYCE WOODS,

defendants herein, did knowingly and willfully execute and attempt to execute the above-described scheme by submitting and causing to be submitted to a health care benefit program, namely, Medicare, a materially false and fraudulent claim; namely, a claim representing that defendant FERRELL had provided individual psychotherapy in a residential care setting, for approximately 45–50 minutes, face-to-face, to Individual F on or about April 6, 2010;

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

COUNT EIGHT

The SPECIAL MARCH 2010 GRAND JURY further charges:

1. Paragraphs 1 through 16 of Count One are incorporated here.
2. On or about January 20, 2011, at Chicago, in the Northern District of

Illinois, Eastern Division, and elsewhere,

KEENAN R. FERRELL
and BRYCE WOODS,

defendants herein, did knowingly and willfully execute and attempt to execute the above-described scheme by submitting and causing to be submitted to a health care benefit program, namely, Medicare, a materially false and fraudulent claim; namely, a claim representing that defendant FERRELL had provided individual psychotherapy in a residential care setting, for approximately 45–50 minutes, face-to-face, to Individual G on or about January 19, 2011;

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

COUNT NINE

The SPECIAL MARCH 2010 GRAND JURY further charges:

1. Paragraphs 1 through 16 of Count One are incorporated here.
2. On or about March 3, 2011, at Chicago, in the Northern District of Illinois,

Eastern Division, and elsewhere,

KEENAN R. FERRELL
and BRYCE WOODS,

defendants herein, did knowingly and willfully execute and attempt to execute the above-described scheme by submitting and causing to be submitted to a health care benefit program, namely, Medicare, a materially false and fraudulent claim; namely, a claim representing that defendant FERRELL had provided individual psychotherapy in a residential care setting, for approximately 45–50 minutes, face-to-face, to Individual H on or about March 2, 2011;

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

FORFEITURE ALLEGATION

The SPECIAL MARCH 2010 GRAND JURY further alleges:

1. The allegations contained in this Indictment concerning the health care fraud in violation of Title 18, United States Code, Section 1347, are incorporated here for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 982(a)(7).

2. As a result of the violations of Title 18, United States Code, Section 1347, as alleged in this Indictment,

KEENAN R. FERRELL
and BRYCE WOODS,

defendants herein, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(7), any and all right, title and interest he may have in any property, real and personal, that constitutes and is derived, directly and indirectly, from gross proceeds traceable to the commission of the offense, which property is subject to forfeiture pursuant to Title 18, United States Code, Section 982(a)(7).

3. The interests of defendants subject to forfeiture pursuant to Title 18, United States Code, Section 982(a)(7), that represent property constituting gross proceeds derived as a result of these violations include, but are not limited to, funds in the amount of approximately \$1,863,415.

4. If any of the funds subject to forfeiture and described above, as a result of any act or omission of defendant:

a. cannot be located upon the exercise of due diligence;

- b. have been transferred to, or deposited with, a third party;
- c. have been placed beyond the jurisdiction of the Court; or
- d. have been commingled with other property which cannot be divided without difficulty;

the United States of America shall be entitled to forfeiture of substitute property under the provisions of Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1).

A TRUE BILL:

FOREPERSON

UNITED STATES ATTORNEY

