

United States Courts
Southern District of Texas
FILED

JUN 08 2015

David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Sealed
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to this instrument are
prohibited by court order.

UNITED STATES OF AMERICA

v.

DERRICK BELTON,

Defendant.

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Criminal No.

UNDER SEAL

15CR307

INDICTMENT

The Grand Jury charges:

General Allegations

At all times material to this Indictment, unless otherwise specified:

1. The Medicare Program ("Medicare") was a federal healthcare program providing benefits to individuals who were over the age of 65 or disabled. Medicare was administered by the Centers for Medicare and Medicaid Services ("CMS"), a federal agency under the United States Department of Health and Human Services. Medicare was a "healthcare benefit program" as defined by Title 18, United States Code, Section 24(b).

2. Medicare was subdivided into multiple Parts. Medicare Part B covered partial hospitalization programs ("PHPs") connected with the treatment of mental illness. The treatment program of PHPs closely resembled that of a highly structured, short-term hospital inpatient program, but it was a distinct and organized intensive treatment program that offered less than 24-hour daily care.

3. Patients eligible for Medicare coverage of a PHP comprised two groups: (1) those patients who were discharged from an inpatient hospital treatment program, and the PHP is

in lieu of continued inpatient treatment and (2) those patients who, in the absence of partial hospitalization, would require inpatient hospitalization.

4. Medicare guidelines required that patients admitted to a PHP required PHP services at levels of intensity and frequency comparable to patients in an inpatient setting for similar psychiatric illnesses.

5. Under the PHP benefit, Medicare covered the following services: (1) individual and group psychotherapy with physicians, psychologists or other mental health professionals; (2) occupational therapy requiring the skills of a qualified occupational therapist; (3) services of social workers, trained psychiatric nurses and other staff trained to work with psychiatric patients; (4) drugs and biologicals furnished for therapeutic purposes that could not be self-administered; (5) individualized activity therapies that were not primarily recreational or diversionary; (6) family counseling services for which the primary purpose was the treatment of the patient's condition; (7) patient education programs where the educational activities were closely related to the care and treatment of the patient; and (8) diagnostic services.

6. Medicare guidelines specifically excluded meals and transportation from coverage under the PHP benefit.

7. Medicare did not cover programs providing primarily social, recreational or diversionary activities. Medicare excluded from coverage programs attempting to maintain psychiatric wellness and treatment of chronic conditions without acute exacerbation. Psychosocial programs that provided only a structured environment, socialization or vocational rehabilitation were not covered by Medicare.

8. Medicare required that the PHP was provided at a facility that was hospital based or hospital affiliated or at a community mental health center.

9. Individuals who qualified for Medicare benefits were commonly referred to as Medicare “beneficiaries.” Each beneficiary was given a Medicare identification number.

10. Hospitals, physicians and other healthcare providers that provided services to Medicare beneficiaries were referred to as Medicare “providers.” To participate in Medicare, providers were required to submit an application in which the providers agreed to comply with all Medicare related laws and regulations. If Medicare approved a provider’s application, Medicare assigned the provider a Medicare “provider number.” A healthcare provider with a Medicare provider number could file claims with Medicare to obtain reimbursement for services rendered to beneficiaries.

11. Medicare paid hospitals and other healthcare providers for services rendered to beneficiaries. To receive payment from Medicare, providers submitted or caused the submission of claims to Medicare, either directly or through a billing company.

12. CMS contracted with Medicare Administrative Contractors (“MACs”) to process claims for payment. The MAC that processed and paid Medicare Part B claims for PHP services in Texas was TrailBlazer Health Enterprises, LLC (“TrailBlazer”).

13. To bill Medicare for services rendered, a provider submitted a claim form (Form 1500) to TrailBlazer. When a Form 1500 was submitted, usually in electronic form, the provider certified that: (1) the contents of the form were true, correct and complete; (2) the form was prepared in compliance with the laws and regulations governing Medicare; and (3) the contents of the claim were medically necessary.

14. A Medicare claim for PHP reimbursement was required to set forth, among other things, the beneficiary’s name and unique Medicare identification number, the item or service provided to the beneficiary, the date the item or service was provided, the cost of the item or

service, and the name and unique physician identification number of the physician who prescribed or ordered the item or service.

15. A Houston hospital ("the Hospital") was a Texas non-profit entity doing business in and around Houston, Texas. The Hospital billed Medicare for PHP services purportedly provided at the Hospital locations and for services purportedly provided by independent contractors at satellite locations.

16. Earnest Gibson III was the President and Administrator of the Hospital.

17. As Administrator of the Hospital, Earnest Gibson III would oversee the operations of the Hospital's PHPs.

18. Earnest Gibson IV was the Administrator of the PHP known as Devotions Care Solutions Partial Hospitalization Program ("Devotions PHP"), a satellite PHP of the Hospital.

19. Walid Hamoudi was a co-owner and operator of the PHP known as Dynamic PHP ("Dynamic PHP"), a satellite PHP of the Hospital.

20. William Bullock III was a co-owner and operator of Dynamic PHP, a satellite PHP of the Hospital, and a patient recruiter for the Hospital.

21. Robert Ferguson oversaw marketing for Dynamic PHP and was a patient recruiter for the Hospital.

22. Julian Kimble was a patient recruiter for the Hospital, Devotions PHP, and Dynamic PHP.

23. Defendant **DERRICK BELTON** was a patient recruiter for the Hospital, Devotions PHP, and Dynamic PHP.

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

24. Paragraphs 1 through 23 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein.

25. From in or around September 2010 through at least December 2010, the exact dates being unknown to the Grand Jury, in the Houston Division of the Southern District of Texas, and elsewhere, defendant

DERRICK BELTON,

did knowingly and willfully combine, conspire, confederate and agree with Julian Kimble, William Bullock III, Robert Ferguson, Earnest Gibson III, Earnest Gibson IV, and others known and unknown to the Grand Jury, to violate Title 18, United States Code, Section 1347, that is, to execute a scheme and artifice to defraud a healthcare 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 healthcare benefit program, in connection with the delivery of and payment for healthcare benefits, items and services.

Purpose of the Conspiracy

26. It was a purpose and object of the conspiracy for defendant **DERRICK BELTON** and his co-conspirators to unlawfully enrich themselves by, among other things: (a) submitting false and fraudulent claims to Medicare through the Hospital for services that were medically unnecessary, services that were not eligible for Medicare reimbursement, and services that were not provided; (b) offering and paying kickbacks and bribes to patient recruiters in exchange for those recruiters sending Medicare beneficiaries to the Hospital for PHP services

that were not medically necessary and, in some cases, not provided; (c) concealing the submission of false and fraudulent claims to Medicare and the payment of kickbacks and bribes to patient recruiters; and (d) diverting proceeds of the fraud for the personal use and benefit of the defendant and his co-conspirators.

Manner and Means of the Conspiracy

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

27. Earnest Gibson III would maintain a Medicare provider number for the Hospital that defendant **DERRICK BELTON** and his co-conspirators would use to submit claims to Medicare for PHP services.

28. Earnest Gibson IV would manage and control the day-to-day operations of Devotions PHP, a satellite PHP of the Hospital.

29. Earnest Gibson IV would submit claims to Medicare through the Hospital for PHP services purportedly provided at Devotions PHP that were not medically necessary and, in some cases, not provided.

30. William Bullock III and Walid Hamoudi would co-own and operate Dynamic PHP, a satellite PHP of the Hospital, and would submit claims to Medicare through the Hospital for PHP services purportedly provided at Dynamic PHP that were not medically necessary and, in some cases, not provided.

31. Robert Ferguson would oversee the payment of healthcare kickbacks to patient recruiters in exchange for those recruiters sending Medicare beneficiaries to Dynamic PHP, a satellite PHP of the Hospital, for PHP services that were not medically necessary and, in some cases, not provided.

32. Julian Kimble would operate an organization of patient recruiters that sent Medicare beneficiaries to Devotions PHP and Dynamic PHP in exchange for payment.

33. Defendant DERRICK BELTON was a patient recruiter in Julian Kimble's organization.

34. Defendant DERRICK BELTON would receive kickbacks in exchange for sending patients to Devotions PHP and Dynamic PHP for PHP services that were not medically necessary and, in some cases, not provided.

35. Defendant DERRICK BELTON would pay Medicare beneficiaries to attend Devotions PHP and Dynamic PHP.

36. From in or about September 2010 to in or about December 2010, defendant DERRICK BELTON, Earnest Gibson III, Earnest Gibson IV, William Bullock III, Robert Ferguson, Julian Kimble, and their co-conspirators would submit and cause to be submitted approximately \$15,758,045 in claims to Medicare for PHP services purportedly provided by the Hospital, when in fact, such PHP services were not medically necessary and, in some cases, never provided.

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

COUNT 2
Conspiracy to Pay and Receive Health Care Kickbacks
(18 U.S.C. § 371)

37. Paragraphs 1 through 23 and 26 through 36 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

38. From in or around September 2010 through at least in or about December 2010, the exact dates being unknown to the Grand Jury, in the Houston Division of the Southern District of Texas, and elsewhere, defendant

DERRICK BELTON

did knowingly and willfully combine, conspire, confederate and agree with Julian Kimble, Walid Hamoudi, William Bullock III, Robert Ferguson, Earnest Gibson III, Earnest Gibson IV, and others known and unknown to the grand jury, to commit certain offenses against the United States, that is,

a. to violate Title 42, United States Code, Section 1320a-7b(b)(1), by knowingly and willfully soliciting and receiving remuneration, specifically, kickbacks and bribes, directly and indirectly, overtly and covertly, in return for referring individuals 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 Medicare; and for the purchasing, leasing, ordering and arranging for and recommending the purchasing, leasing and ordering of any good, item and service for which payment may be made in whole and in part by a federal health care program, that is, Medicare; and

b. to violate Title 42, United States Code, Section 1320a-7b(b)(2), by knowingly and willfully offering and paying remuneration, specifically, kickbacks and bribes, directly and indirectly, overtly and covertly, in return for referring individuals 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 Medicare; and for the purchasing, leasing, ordering and arranging for and recommending the purchasing, leasing and ordering of any good, 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

39. It was a purpose of the conspiracy for defendant DERRICK BELTON and his co-conspirators to unlawfully enrich themselves by paying and receiving kickbacks and bribes in

exchange for the referral of Medicare beneficiaries for whom the Hospital would submit claims to Medicare.

Manner and Means of The Conspiracy

The manner and means by which defendant **DERRICK BELTON** and his co-conspirators sought to accomplish the object and purpose of the conspiracy included, among other things, the following:

40. Paragraphs 1-23, 26 through 36 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein.

Overt Acts

41. In furtherance of the conspiracy, and to accomplish its object and purpose, the conspirators committed and caused to be committed, in the Houston Division of the Southern District of Texas, the following overt acts:

a. On or about September 18, 2010, William Bullock III and Walid Hamoudi paid and caused the payment of approximately \$3,375 to defendant **DERRICK BELTON** in exchange for sending Medicare beneficiaries to Dynamic PHP.

b. In or about September 2010, defendant **DERRICK BELTON** and Julian Kimble agreed with Earnest Gibson IV to send Medicare beneficiaries to Devotions PHP in exchange for payment. In or about October 2010, defendant **DERRICK BELTON** sent Medicare beneficiaries to Devotions PHP in exchange for payment.

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

COUNT 3
Anti-Kickback Statute
(42 U.S.C. § 1320a-7b(b), 18 U.S.C. § 2)

42. Paragraphs 1 through 23, 26 through 37, and 43 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein.

43. On or about the date enumerated below, in Harris County, in the Southern District of Texas, and elsewhere, defendant

DERRICK BELTON

and others, including Julian Kimble, William Bullock III, and Robert Ferguson, aiding and abetting, and aided and abetted by, others known and unknown to the Grand Jury, as set forth below, did knowingly and willfully offer and pay and did knowingly and willfully solicit and receive remuneration, specifically, kickbacks and bribes, directly and indirectly, overtly and covertly, in return for referring individuals 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 Medicare; and for the purchasing, leasing, ordering and arranging for and recommending the purchasing, leasing and ordering of any good, item and service for which payment may be made in whole or in part by a federal health care program, that is, Medicare:

On or about September 18, 2010, defendant **DERRICK BELTON** received an approximately \$3,375 kickback for sending Medicare beneficiaries to Dynamic PHP.

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

NOTICE OF CRIMINAL FORFEITURE
(18 U.S.C. § 982(a)(7))

44. Pursuant to Title 18, United States Code, Section 982(a)(7), the United States of America gives notice to defendant **DERRICK BELTON** that upon conviction of any Counts in

this Indictment, all property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such offenses, is subject to forfeiture.

45. Defendant DERRICK BELTON is notified that upon conviction, a money judgment may be imposed equal to the total value of the property subject to forfeiture.

46. Defendant DERRICK BELTON is notified that if any of the forfeitable property, or any portion thereof, as a result of any act or omission of defendant or his co-conspirators:

- 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,

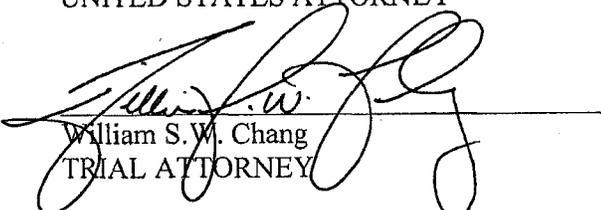
it is the intent of the United States to seek forfeiture of any other property of defendant **DERRICK BELTON** up to the total value of the property subject to forfeiture, pursuant to Title 21, United States Code, Section 853(p), incorporated by reference in Title 18, United States Code, Section 982(b)(1).

A TRUE BILL

Original Signature on File

FOREPERSON

KENNETH MAGIDSON
UNITED STATES ATTORNEY


William S. W. Chang
TRIAL ATTORNEY

CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE