

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Jun 17, 2016**

STEVEN M. LARIMORE  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - MIAMI

Case No. \_\_\_\_\_  
18 U.S.C. § 1349  
18 U.S.C. § 982

**UNITED STATES OF AMERICA**

**vs.**

**MARLENIS FERNANDEZ,**

**Defendant.**

**INFORMATION**

The United States Attorney charges that:

**GENERAL ALLEGATIONS**

At all times material to this Information:

**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 ("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 subsidized the costs of prescription drugs for Medicare beneficiaries in the United States. It was enacted a 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 Part D by entering a retail network agreement with one or more Pharmacy Benefit Managers (“PBMs”). Each 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 to the PBM that represented the beneficiary’s Medicare drug plan. The 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 fees were adjusted periodically based on various factors, including the beneficiary’s medical condition. 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).

**Medicare Drug Plan Sponsors**

8. United Healthcare Insurance Company (“United”) and Medco Containment Life Insurance Company (“Medco”) were Medicare drug plan sponsors (collectively, “Medicare drug plan sponsors”).

**The Defendant and a Related Company**

9. United Care Pharmacy, LLC (“United Care Pharmacy”) was a Florida corporation, incorporated on or about August 5, 2011, that did business in Miami-Dade County, purportedly providing prescription drugs to Medicare beneficiaries. United Care Pharmacy’s principal place of business was 13339 Southwest 42nd Street, Miami, FL 33175.

10. Defendant **MARLENIS FERNANDEZ**, a resident of Miami-Dade County, was the manager and registered agent of United Care Pharmacy.

**CONSPIRACY TO COMMIT HEALTH CARE FRAUD  
(18 U.S.C. § 1349)**

From in or around August of 2013, and continuing through in or around June of 2014, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

**MARLENIS FERNANDEZ,**

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 United States Attorney, to commit an offense against the United States of America, that is: to 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 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.

### **PURPOSE OF THE CONSPIRACY**

11. It was a purpose of the conspiracy for the defendant and her co-conspirators to unlawfully enrich themselves by, among other things, (a) submitting and causing the submission of false and fraudulent claims to health care benefit programs; (b) 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 their own use and benefit, and use and benefit of others, and to further the fraud.

### **MANNER AND MEANS**

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

12. **MARLENIS FERNANDEZ** paid Medicare beneficiaries to induce said beneficiaries to obtain prescriptions for pharmaceutical drugs to be used in connection with false and fraudulent billing of Medicare Part D through United Care Pharmacy.

13. **MARLENIS FERNANDEZ** caused the submission of claims that falsely and fraudulently represented that various health care benefits, primarily prescription drugs, were medically necessary, prescribed by a doctor, and were provided by United Care Pharmacy to Medicare beneficiaries, when, in fact, they were not provided and not medically necessary.

14. As a result of such false and fraudulent claims, Medicare and Medicare drug plan sponsors, through their PBMs, made overpayments funded by the Medicare Part D Program to United Care Pharmacy, in the approximate amount of \$990,162.

15. **MARLENIS FERNANDEZ** and her co-conspirators used the proceeds from the false and fraudulent Medicare Part D claims for their own use and benefit, use and benefit of others, and to further the fraud.

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

**FORFEITURE**  
**(18 U.S.C. § 982)**

1. The allegations contained in this Information 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 defendant, **MARLENIS FERNANDEZ**, has an interest.

2. Upon conviction of the violation of Title 18, United States Code, Section 1349, as alleged in this Information, the defendant shall forfeit to the United States of America any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violation, pursuant to Title 18, United States Code, Section 982(a)(7).

3. The property subject to forfeiture includes, but is not limited to, at least \$990,162 in U.S. currency, which is a sum of money equal in value to the gross proceeds traceable to the commission of the violation alleged in this Information and which the United States may seek as a money judgment against the defendant as part of her sentence.

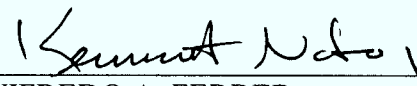
4. If any of the property described above, as a result of any act or omission of the defendant:

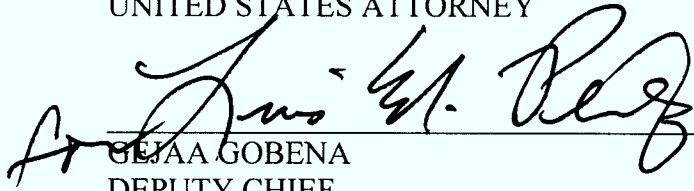
- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;

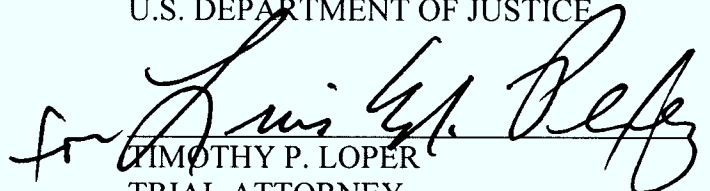
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1) and Title 28, United States Code, Section 2461(c).

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 by Title 18, United States Code, Section 982(b)(1).

  
WIFREDO A. FERRER  
UNITED STATES ATTORNEY

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

  
TIMOTHY P. LOPER  
TRIAL ATTORNEY  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE

UNITED STATES OF AMERICA

CASE NO. \_\_\_\_\_

vs.

**CERTIFICATE OF TRIAL ATTORNEY\***

MARLENIS FERNANDEZ,

Defendant.

Superseding Case Information:

Court Division: (Select One)

New Defendant(s) Yes \_\_\_\_\_ No \_\_\_\_\_  
Number of New Defendants \_\_\_\_\_  
Total number of counts \_\_\_\_\_

  X   Miami        Key West  
       FTL        WPB        FTP

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.
3. Interpreter: (Yes or No)   Yes    
List language and/or dialect   Spanish
4. This case will take   0   days for the parties to try.
5. Please check appropriate category and type of offense listed below:

(Check only one)

(Check only one)

I 0 to 5 days   X    
II 6 to 10 days         
II 11 to 20 days         
IV 21 to 60 days         
V: 61 days and over       

Petty         
Minor         
Misdem.         
Felony   X  

6. Has this case been previously filed in this District Court? (Yes or No)   No  

If yes:

Judge: \_\_\_\_\_

Case No. \_\_\_\_\_

(Attach copy of dispositive order)

Has a complaint been filed in this matter? (Yes or No)   No  

If yes:

Magistrate Case No. \_\_\_\_\_

Related Miscellaneous numbers: \_\_\_\_\_

Defendant(s) in federal custody as of \_\_\_\_\_

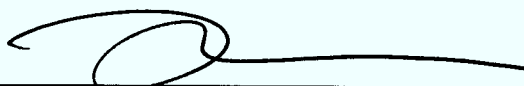
Defendant(s) in state custody as of \_\_\_\_\_

Rule 20 from the \_\_\_\_\_ District of \_\_\_\_\_

Is this a potential death penalty case? (Yes or No)   No  

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003?        Yes   X   No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007?        Yes   X   No

  
TIMOTHY P. LOPER  
DOJ TRIAL ATTORNEY  
Court No. A5502016

\*Penalty Sheet(s) attached

REV 4/8/08

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

**Defendant's Name:** MARLENIS FERNANDEZ

**Case No:** \_\_\_\_\_

Count #: 1

18 U.S.C. § 1349

Conspiracy to Commit Health Care Fraud

**\*Max Penalty:** Ten (10) years' imprisonment

Count #:

\_\_\_\_\_

\_\_\_\_\_

**\*Max Penalty:** \_\_\_\_\_

Count #:

\_\_\_\_\_

\_\_\_\_\_

**\*Max Penalty:** \_\_\_\_\_

Count #:

\_\_\_\_\_

\_\_\_\_\_

**\*Max Penalty:** \_\_\_\_\_

**\*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**



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UNITED STATES DISTRICT COURT

for the  
Southern District of Florida

United States of America

v.

Marlenis Fernandez,

*Defendant*

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Case No.

**WAIVER OF AN INDICTMENT**

I understand that I have been accused of one or more offenses punishable by imprisonment for more than one year. I was advised in open court of my rights and the nature of the proposed charges against me.

After receiving this advice, I waive my right to prosecution by indictment and consent to prosecution by information.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Defendant's signature*

\_\_\_\_\_  
*Signature of defendant's attorney*

\_\_\_\_\_  
*Printed name of defendant's attorney*

\_\_\_\_\_  
*Judge's signature*

\_\_\_\_\_  
*Judge's printed name and title*