

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.

16-20400

CR-SCOLA

18 U.S.C. § 1349
18 U.S.C. § 1347
18 U.S.C. § 371
42 U.S.C. § 1320a-7b(b)(2)(A)
18 U.S.C. § 2
18 U.S.C. § 982(a)(7)

TOTAZO-REYES

UNITED STATES OF AMERICA

vs.

NEREIDA MONTEJO,
NERTA RODRIGUEZ,
and
CARLOS HERNANDEZ,

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. It 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 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 either directly to the plan or to the 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 fees were 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) and Federal health care program[s], as defined by Title 42, United States Code, Section 1320a-7b(f).

The Medicaid Program

8. The Medicaid Program (Medicaid) was a jointly funded program between federal and state governments that provided medical assistance and health coverage for categories of individuals whose income and resources were insufficient to meet the costs of medical services. The Medicaid Program was authorized by Title XIX of the Social Security Act.

9. The Florida Medicaid Program was authorized by Chapter 409, Florida State Statutes, and Chapter 59G, Florida Administrative Code. Medicaid was administered by CMS and the State of Florida Agency for Health Care Administration ("AHCA".)

10. In Florida, Medicaid contracted with a private company to pay claims. This company was referred to as the Medicaid fiscal agent. The fiscal agent also performed a variety of other functions for Medicaid including enrollment of providers and management of the recipient eligibility system. In addition, it provided management of pharmacy benefits through the PBM vendor. On July 1, 2008, Electronic Data Systems (EDS) became the fiscal agent for the Medicaid program in Florida. On March 12, 2010, EDS changed its name to HP Enterprises Services, LLC.

11. Medicaid reimbursement for prescribed drug services was on a fee-for-service basis. The Florida Point of Sale (POS) System was the system that processed drug claims. Pharmacies

that did not use POS processing could submit Medicaid claims via electronic media (batch) to take advantage of speed and accuracy in processing. Pharmacies submitted electronic claims themselves or chose a billing agent that offered electronic claim submission services.

12. Medicaid also offered an electronic funds transfer system to pay claims submitted by pharmacies. Any pharmacy that utilized the electronic funds transfer system was certifying with each use of the system that the claim(s) for which the pharmacy was being paid were in compliance with the provisions found on the claim form and with all federal and state laws.

13. Medicaid and Medicaid fiscal agents were “health care benefit program[s],” as defined by Title 18, United States Code, Section 24(b) and Federal health care program[s], as defined by Title 42, United States Code, Section 1320a-7b(f).

Medicare Drug Plan Sponsors

14. United HealthCare Insurance Company (“United”); First Health Life & Health Insurance Company (“First Health”); and Humana Insurance Company (“Humana”) were Medicare drug plan sponsors.

The Defendants, Related Companies and Individuals

15. New Pharmacy Discount, Corp. (“NPD”) was incorporated on or about December 5, 2006, with its principal place of business in Miami-Dade County, in the Southern District of Florida. NPD was a pharmacy that purportedly provided prescription drugs to Medicare beneficiaries and Medicaid recipients.

16. Defendant **NEREIDA MONTEJO** was a resident of Miami-Dade County and the owner, operator, and president of NPD.

17. Defendant **NERTA RODRIGUEZ** was a resident of Miami-Dade County and an operator of NPD.

18. Defendant **CARLOS HERNANDEZ** was a resident of Miami-Dade County.
19. Co-conspirator A was a resident of Miami-Dade County.
20. Co-conspirator B was a resident of Miami-Dade County.

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

1. Paragraphs 1 through 19 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around January of 2009, and continuing through in or around February of 2016, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

NEREIDA MONTEJO
and
NERTA RODRIGUEZ,

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, including Co-conspirator A, 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), that is Medicare, Medicare drug plan sponsors, Medicaid and Medicaid fiscal agents, 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 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) 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 personal use and benefit, the use and benefit of 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 objects and purpose of the conspiracy included, among other things, the following:

4. **NEREIDA MONTEJO, NERTA RODRIGUEZ**, and their co-conspirators, including Co-conspirator A, offered and paid kickbacks and bribes to individuals, in return for referring Medicare beneficiaries and Medicaid recipients to serve as patients at NPD.

5. **NEREIDA MONTEJO, NERTA RODRIGUEZ**, and their co-conspirators, including Co-conspirator A, submitted, and caused the submission of claims via interstate wires, that falsely and fraudulently represented that various health care benefits, primarily prescription drugs, were medically necessary, prescribed by a doctor, and had been provided to Medicare beneficiaries and Medicaid recipients by NPD.

6. As a result of such false and fraudulent claims, Medicare and Medicare drug plan sponsors, through their PBMs, and Medicaid through Medicaid fiscal agents, made over-payments funded by Medicaid and the Medicare Part D Program to NPD in the approximate amount of \$5,243,051.

7. **NEREIDA MONTEJO, NERTA RODRIGUEZ**, and their co-conspirators, including Co-conspirator A, used the proceeds from the false and fraudulent Medicare Part D claims and Medicaid claims for their own use, the use of others, and to further the fraud.

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

COUNTS 2-10
Health Care Fraud
(18 U.S.C. § 1347)

1. Paragraphs 1 through 16 and 19 through 20 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around January of 2009, and continuing through in or around February of 2016, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

NEREIDA MONTEJO,

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 health a care benefit program affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare, Medicare drug plan sponsors, Medicaid and Medicaid fiscal agents, 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 the purpose of the scheme and artifice for the defendant and her accomplices

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 personal use and benefit, the use and benefit of others, and to further the fraud.

The Scheme and Artifice

4. The allegations contained in paragraphs 4 through 7 of 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 County, in the Southern District of Florida, and elsewhere, the defendant, **NEREIDA MONTEJO**, 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, Medicare drug plan sponsors, Medicaid and Medicaid fiscal agents, 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 defendant submitted and caused the submission of false and fraudulent claims seeking the identified dollar amounts, and representing that NPD provided pharmaceutical items and services to Medicare beneficiaries and Medicaid recipients pursuant to physicians' orders and prescriptions:

| Count | Medicare Beneficiary | Approx. Claim Submission Date | Medicare Claim Number | Item Claimed; Approx. Amount Claimed | Medicare Drug Plan Sponsor |
|-------|----------------------|-------------------------------|--|--------------------------------------|----------------------------|
| 2 | N.R. | 10/12/2012 | 122894953677096998 | Abilify; \$1,676 | United |
| 3 | N.R. | 02/26/2013 | 130574486555090997 | Calcipotriene; \$580 | United |
| 4 | R.P. | 10/02/2013 | 287626963795927440 643177310362204240 4381 | Seroquel XR; \$1,212 | First Health |
| 5 | R.P. | 10/02/2013 | 939306073795927440 966762307205204240 4381 | Abilify; \$981 | First Health |
| 6 | C.H. | 02/28/2014 | 140703774264043999 | Abilify; \$1,124 | United |
| 7 | C.H. | 03/03/2014 | 140623827406039999 | Seroquel XR; \$1,121 | United |
| 8 | H.G. | 05/14/2014 | 145340401101 0000485013841 | Seroquel XR; \$1,293 | Humana |
| 9 | H.G. | 06/06/2014 | 145574614861 0000485155626 | Seroquel XR; \$1,293 | Humana |
| 10 | H.G. | 07/03/2014 | 145897621541 0000485667643 | Seroquel XR; \$1,293 | Humana |

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

COUNT 11

Conspiracy to Defraud the United States and Pay and Receive Health Care Kickbacks (18 U.S.C. § 371)

1. Paragraphs 1 through 20 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around January of 2009, and continuing through in or around February of 2016, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**NEREIDA MONTEJO,
NERTA RODRIGUEZ,
and
CARLOS HERNANDEZ,**

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, including Co-conspirator A and Co-conspirator B, to commit certain offenses against the United States, that is:

- a. to defraud the United States by impairing, impeding, obstructing, and defeating through deceitful and dishonest means, the lawful government functions of the United States Department of Health and Human Services in its administration and oversight of the Medicare and Medicaid programs in violation of Title 18, United States Code, Section 371; and to commit certain offenses against the United States, that is:
- b. 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 any 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, Medicare drug plan sponsors, Medicaid and Medicaid fiscal agents; and
- c. to violate Title 42, United States Code, Section 1320a-7b(b)(1)(A), by knowingly and willfully soliciting and receiving any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for referring an individual to a person for the furnishing and arranging for the

furnishing of an item and service for which payment may be made in whole and in part by a Federal health care program, that is, Medicare, Medicare drug plan sponsors, Medicaid and Medicaid fiscal agents.

PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by: (1) offering, paying, soliciting and receiving kickbacks and bribes in return for referring Medicare beneficiaries and Medicaid recipients to serve as patients at NPD; and (2) submitting and causing the submission of claims to Medicare, Medicare drug plan sponsors, Medicaid and Medicaid fiscal agents for medical items and services, primarily prescription drugs, that NPD purportedly provided to those beneficiaries.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendants and their co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among others, the following:

4. **NEREIDA MONTEJO, NERTA RODRIGUEZ**, and their co-conspirators, including Co-conspirator A, offered and paid kickbacks and bribes to individuals, in return for referring Medicare beneficiaries and Medicaid recipients to serve as patients at NPD.

5. **CARLOS HERNANDEZ, NERTA RODRIGUEZ**, and their co-conspirators, including Co-conspirator A and Co-conspirator B, solicited and received kickbacks and bribes in return for referring Medicare beneficiaries and Medicaid recipients to serve as patients at NPD.

6. **NEREIDA MONTEJO, NERTA RODRIGUEZ**, and their co-conspirators, including Co-conspirator A, caused NPD to submit claims to Medicare, Medicare drug plan sponsors, Medicaid and Medicaid fiscal agents for medical items and services, primarily prescription drugs, purportedly provided to Medicare beneficiaries and Medicaid recipients by NPD.

7. Medicare, Medicare drug plan sponsors, Medicaid and Medicaid fiscal agents paid NPD based upon claims for medical items and services purportedly provided to Medicare beneficiaries and Medicaid recipients by NPD.

OVERT ACTS

In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one co-conspirator 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 November 13, 2009, **NEREIDA MONTEJO**, as the owner of NPD, signed a provider agreement with Express Scripts, Inc. (ESI), a plan benefit manager for drug plan sponsors, agreeing to comply with ESI's audit requests in return for participation in the ESI pharmacy network.

2. In or around October of 2012, **NERTA RODRIGUEZ** provided NPD with a prescription for Abilify, for herself, as a Medicare beneficiary, in exchange for a kickback payment.

3. In or around February of 2013, **NERTA RODRIGUEZ** provided NPD with a prescription for Calcipotriene, for herself, as a Medicare beneficiary, in exchange for a kickback payment.

4. In or around February of 2014, **CARLOS HERNANDEZ** provided NPD with a prescription for Abilify, for himself, as a Medicare beneficiary, in exchange for a kickback payment.

5. In or around March of 2014, **CARLOS HERNANDEZ** provided NPD with a prescription for Seroquel, for himself, as a Medicare beneficiary, in exchange for a kickback payment.

6. On or about April 14, 2014, **NERTA RODRIGUEZ**, informed Co-conspirator B that the kickback payment for patient R.P. was located in a file cabinet drawer at NPD.

7. On or about May 2, 2014, **NEREIDA MONTEJO** paid Co-conspirator A, a kickback in the amount of \$4,547 via NPD check number 4788.

8. On or about May 16, 2014, **NEREIDA MONTEJO** opened a corporate bank account at Bank of America for NPD, ending in x9365 for the purposes of receiving Medicare and Medicaid funds and paying out kickbacks.

9. On or about June 2, 2014, **NEREIDA MONTEJO** paid Co-conspirator A, a kickback in the amount of \$4,927 via NPD check number 1017.

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

COUNTS 12-15

**Payment of Kickbacks in Connection with a Federal Health Care Program
(42 U.S.C. § 1320a-7b(b)(2)(A))**

1. Paragraphs 1 through 16 and 19 through 20 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,

NEREIDA MONTEJO,

did knowingly and willfully offer and pay any remuneration, that is, kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by check, as set forth below, 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, Medicare drug plan sponsors, Medicaid and Medicaid fiscal agents, as set forth below:

| Count | Approximate Date | Approximate Kickback Amount |
|-------|------------------|-----------------------------|
| 12 | May 2, 2014 | \$4,547 |
| 13 | June 2, 2014 | \$4,927 |
| 14 | July 25, 2014 | \$2,308 |
| 15 | August 1, 2014 | \$2,120 |

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 re-alleged 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 each of the defendants, **NEREIDA MONTEJO**, **NERTA RODRIGUEZ**, and **CARLOS HERNANDEZ**, has an interest.

2. Upon conviction of a violation of Title 18, United States Code, Sections 371, 1347, 1349, or Title 42, United States Code, Section 1320a-7b(b), as alleged in this Indictment, each 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. Upon conviction of a conspiracy to violate Title 18, United States Code, Section 1343, as alleged in this Indictment, each defendant shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to the commission of the offense pursuant to Title 18, United States Code, Section 981(a)(1)(C).

4. The property subject to forfeiture includes a money judgment in the amount of approximately \$5,243,051 in United States currency, which sum represents the value of the gross proceeds traceable to the commission of the violations alleged in this Indictment.

5. If any of the property described above, as a result of any act or omission of any 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), including but not limited to the following:

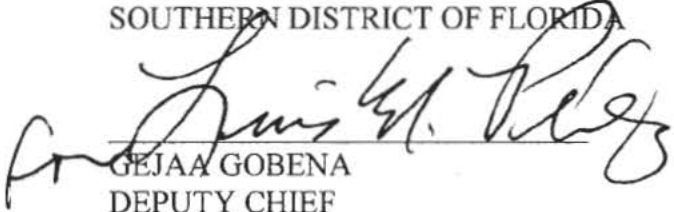
- 1) the real property located at 825 Euclid Avenue, Unit 11, Miami Beach, Florida, titled in the name of **NEREIDA MONTEJO**;
- 2) the real property located at 14555 SW 176 Terrace, Miami, Florida, titled in the name of **NEREIDA MONTEJO**;
- 3) the real property located at 16701 Collins Avenue, Unit 829, Sunny Isles Beach, Florida, titled in the name of Westgate Miami Beach, Ltd.;
- 4) the real property located at 400 SW 2nd Street, #102, Miami, Florida titled in the name of **NERTA RODRIGUEZ**;
- 5) one 2014 Mercedes-Benz GLK Class,
VIN: WDCGG5HB3EG268711, titled in the name of **NEREIDA MONTEJO**; and
- 6) one 2015 Volvo S60, VIN: YV149MFKXF2361671, titled in the name of **NERTA RODRIGUEZ**.

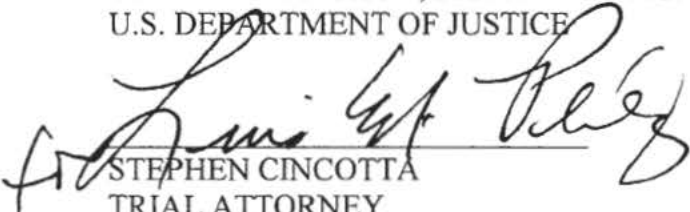
All pursuant to Title 18, United States Code, Sections 982(a)(7) and 981(a)(1)(C), as incorporated by Title 28, United States Code, Section 2461(c), and the procedures set forth in Title 21, United States Code, Section 853.

A TRUE BILL,


FOREPERSON


WIFREDO A. FERRER
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF FLORIDA


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


STEPHEN CINCOTTA
TRIAL ATTORNEY
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE