UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

16-20442-CR-COOKE/TORRES

Case No. _____

18 U.S.C. § 1349
18 U.S.C. § 982
18 U.S.C. § 2

UNITED STATES OF AMERICA

vs.

ALEXIS AVILA,
RAIZA RUIZ, and
YIS FERNANDEZ,

Defendants.
_____/

INFORMATION

The United States Attorney charges that:

GENERAL ALLEGATIONS

At all times relevant to this Information:

The Medicare Program

1. The Medicare Program ("Medicare") was a federal program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and 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 ("HHS"). 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).

3. The Medicare program was divided into different "parts." "Part A" of the Medicare program covered health services provided by hospitals, skilled nursing facilities, hospices, and home health agencies. "Part B" of the Medicare program covered, among other things, medical services provided by physicians, medical clinics, and other qualified health care providers, as well as medications rendered "incident to" such services. The Medicare Advantage Program, formerly known as "Part C" or "Medicare+Choice," is described in further detail below.

4. Medicare Part B was administered in Florida by First Coast Service Options, a company that contracted with CMS to receive, adjudicate, process, and pay certain Part B claims.

5. Payments under the Medicare Program were often made directly to the physician, medical clinic, or other qualified provider of the medical goods or services, rather than to the beneficiary. This occurred when the provider accepted assignment of the right to payment from the beneficiary. In that case, the provider submitted the claim to Medicare for payment, either directly or through a billing company.

6. Physicians, medical clinics, and other health care providers that provided services to Medicare beneficiaries were able to apply for and obtain a "provider number." A health care provider who was issued a Medicare provider number was able to file bills, known as "claims," with Medicare to obtain reimbursement for services provided to beneficiaries. The claim form was required to contain certain important Information, including: (a) the Medicare beneficiary's name and Health Insurance Claim Number ("HICN"); (b) a description of the health care benefit, item, or service that was provided or supplied to the beneficiary; (c) the billing codes for the benefit, item, or service; (d) the date upon which the benefit, item, or service was

provided or supplied to the beneficiary; and (e) the name of the referring physician or other health care provider, as well as a unique identifying number, known either as the Unique Physician Identification Number ("UPIN") or National Provider Identifier ("NPI"). The claim form could be submitted in hard copy or electronically.

7. When a claim was submitted to Medicare, the provider certified that the contents of the form were true, correct, complete, and that the form was prepared in compliance with the laws and regulations governing the Medicare program. The provider further certified that the services being billed were medically necessary and were in fact provided as billed.

8. Pursuant to federal statutes and regulations, Medicare only paid for health care benefits, items or other services that were medically necessary and ordered by a licensed doctor or other licensed, qualified health care provider.

Medicare Part D

9. 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.

10. A pharmacy could participate in Part D by entering a retail network agreement with one or more Pharmacy Benefit Managers ("PBM's"). 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.

11. 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.

12. 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 fee was adjusted periodically based upon 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 of a portion of those additional expenses.

13. Medicare and Medicare drug plan sponsors were "health care benefit programs," as defined by Title 18, United States Code, Section 24(b).

Medicare Drug Plan Sponsors

14. United Health Care ("UHC"), Blue Cross and Blue Shield of Florida ("BCBS"), Silverscript Insurance Company ("Silverscript"), and Medco Containment Life Insurance Company ("Medco") were Medicare drug plan sponsors.

The Defendants and Related Entity

15. La Esperanza Pharmacy Discount, Inc. ("La Esperanza") was a Florida corporation with a place of business located at 5858 W. 20th Ave., Hialeah, Florida. La Esperanza was purportedly a pharmacy that provided Medicare beneficiaries with various pharmaceutical items and services.

16. Defendants **ALEXIS AVILA, RAIZA RUIZ** and **YIS FERNANDEZ** were

residents of Miami-Dade County.

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

From in or around November of 2011, and continuing through in or around July of 2015, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

ALEXIS AVILA,
RAIZA RUIZ,
and
YIS FERNANDEZ,

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 United States Attorney, to commit offenses against the United States of America, 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, UHC, BCBS, Silverscript, and Medco, 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 program, 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, and sounds, in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE CONSPIRACY

17. It was the 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 a health care benefit program; (b) concealing the submission of false and fraudulent claims to a health care benefit program; (c) concealing the receipt of the fraud proceeds; and (d) diverting the fraud proceeds for their personal use and benefit, and 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 others, the following:

18. **ALEXIS AVILA, RAIZA RUIZ,** and **YIS FERNANDEZ** submitted and caused the submission of claims, via interstate wire, which falsely and fraudulently represented that various health care benefits, primarily prescription drugs, were medically necessary, prescribed by a doctor, and had been provided by La Esperanza to Medicare beneficiaries.

19. As a result of such false and fraudulent claims, Medicare prescription drug plan sponsors, through their PBMs, made payments funded by the Medicare Part D Program to the corporate bank accounts of La Esperanza in the approximate amount of $6,747,469.

20. **ALEXIS AVILA, RAIZA RUIZ, YIS FERNANDEZ,** and others used the proceeds of the health care fraud for their personal use and benefit, 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 forfeiture to the United States of America of certain property in which the defendants, **ALEXIS AVILA, RAIZA RUIZ,** and **YIS FERNANDEZ,** have an interest.

2. Upon conviction of any violation of Title 18, United States Code, Section 1349, as alleged in Count 1 of this Information, the defendants shall forfeit to the United States all of their respective right, title, and interest in 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, the following:

(a) the sum of $6,747,469 in United States currency, which amount is equal to the gross proceeds traceable to the commission of the violations alleged in this Information, which the United States will seek as a forfeiture money judgment as part of the defendants' sentence.

4. If the property described above as being subject to forfeiture, 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 subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the above forfeitable property and, in addition, to seek a court order requiring the defendants to return any such property to the jurisdiction of the court for seizure and forfeiture.

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

CHRISTOPHER J. CLARK
ASSISTANT UNITED STATES ATTORNEY