

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
APR 26 2012
THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

BRYAN DAY

12CR0307

Violations: Title 18, United States
Code, Section 1347

JUDGE KENDALL

MAGISTRATE JUDGE DENLOW

The SPECIAL FEBRUARY 2011-2 GRAND JURY charges:

1. At times material to this indictment:

a. Defendant BRYAN DAY operated and was part owner of Charm Development LLC ("Charm"), a business located in Chicago Heights that purported to provide psychotherapy services to patients, primarily residents of nursing homes and long-term care facilities. DAY was not a licensed medical provider.

b. Doctor A was a doctor licensed to practice medicine in the State of Illinois until July 31, 2008, after which he was no longer licensed. Doctor A was employed at Charm from on or about May 12, 2005, until he resigned from Charm on or about February 10, 2009.

The Medicare Program

c. Medicare was a health care benefit program, as defined at Title 18, United States Code, Section 24(b), that provided free or below-cost health care benefits to certain eligible individuals ("Medicare beneficiaries"), primarily individuals over the age of 65 and those with certain disabilities.

d. The Centers for Medicare and Medicaid Services ("CMS"), an agency of the U.S. Department of Health and Human Services, administered the Medicare program. CMS contracted with private carriers to process Medicare claims and to perform certain administrative

functions, including paying claims that appeared, based the information provided, to be eligible for reimbursement. In Illinois, CMS contracted with Wisconsin Physicians Service ("WPS"), a Medicare contractor, to process Medicare claims submitted for physician services.

e. Health care providers could apply for and obtain a Medicare provider number, enabling them to seek reimbursement for services provided to Medicare beneficiaries. To become an authorized Medicare provider, providers were required to agree to abide by the rules, regulations, policies and procedures governing reimbursement, among other things.

f. Medicare required that health care providers obtain a distinct Provider Identification Number ("PIN") for each group they are associated with 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.

g. 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 price of such services, and a certification that such services were personally rendered by the provider or rendered incident to the provider's professional service.

Physicians' Current Procedural Terminology

h. The amount Medicare paid for a service rendered by a provider, including a medical doctor or a clinical psychologist, was based upon the code the provider submitted. CMS utilized a national correct coding practice for payment of Medicare claims that relied on the American Medical Association ("AMA") Physicians' Current Procedural Terminology ("CPT") system, which was published in the *AMA Current Procedural Terminology* ("CPT

Manual"). The CPT Manual was a listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians.

i. According to the applicable CPT Manual, psychotherapy was the treatment for mental illness and behavioral disturbances in which the clinician establishes a professional contract with the patient and, through definitive therapeutic communication, attempts to alleviate the emotional disturbances, reverse or change maladaptive patterns of behavior, and encourage personality growth and development.

j. According to the applicable CPT Manual, CPT code 90806 was defined as individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an outpatient facility, with approximately 45 to 50 minutes face-to-face with the patient.

k. To be covered under Medicare, the provision of psychological services was required to be either:

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

ii) "incident to" the services of a physician, clinical psychologist, or other health care practitioner who submitted the charges.

l. To be covered under the Medicare "incident to" provision, services were required to be, among other requirements, performed under the direct supervision of a physician, clinical psychologist, or other health care practitioner who submitted the charges, *i.e.*, the physician, clinical psychologist, or other health care practitioner had to be physically present and immediately available.

m. Under Medicare rules and regulations, only Doctorate or Masters level Psychologists, Doctorate or Masters level Social Workers, Clinical Nurse Specialists, and

Licensed Clinical Professional Counselors, when performing within their scope of clinical practice as authorized under State law, were qualified to perform CPT Code 90806 psychological services under the "incident to" provision.

2. Beginning not later than in or about January 2008, and continuing through at least on or about June 23, 2009, at Chicago Heights, in the Northern District of Illinois, Eastern Division, and elsewhere,

BRYAN DAY,

defendant herein, and others known and unknown to the grand jury, did knowingly and willfully devise, intended to devise, and participate in a scheme to defraud a health care benefit program that affected interstate commerce, namely, Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money owned by and under the custody and control of Medicare, in connection with the delivery of, and payment for, health care benefits, items, and services, which scheme is further described below.

Defendant's Scheme to Defraud Medicare

3. It was part of the scheme that defendant BRYAN DAY submitted and caused to be submitted fraudulent claims to Medicare for individual psychotherapy services purportedly performed by Doctor A. In fact, as the defendant was aware, such services were not rendered by Doctor A. In addition, the claims included services that were purportedly provided at times when Doctor A was not present at Charm, and not licensed by the State of Illinois. The claims also included services that were purportedly provided by Doctor A after Doctor A was no longer employed by Charm.

4. It was further part of the scheme that defendant BRYAN DAY and Individual A arranged with certain nursing home facilities in the suburbs of Chicago to provide purported psychotherapy, among other services, to Medicare beneficiaries residing in those facilities.

5. It was further part of the scheme that defendant BRYAN DAY, knowing psychotherapy was reimbursable by Medicare only when performed by a physician, clinical psychologist or when "incident to" the services of a physician or clinical psychologist, paid Doctor A approximately \$3,000 a month to use his Medicare provider number and to act as on-site physician at Charm.

6. It was further part of the scheme that defendant BRYAN DAY submitted and caused to be submitted claims to Medicare for individual psychotherapy under CPT code 90806 that was not provided.

7. It was further part of the scheme that defendant BRYAN DAY submitted and caused to be submitted claims to Medicare for purported psychotherapy provided by individuals not authorized or qualified to provide psychotherapy.

8. It was further part of the scheme that defendant BRYAN DAY submitted and caused to be submitted claims to Medicare for individual psychotherapy purportedly provided at times that Doctor A was not present at Charm.

9. It was further part of the scheme that defendant BRYAN DAY submitted and caused to be submitted claims to Medicare for psychotherapy purportedly rendered by Doctor A after July 31, 2008, despite knowing that Doctor A's medical license had expired on July 31, 2008.

10. It was further part of the scheme that defendant BRYAN DAY submitted and caused to be submitted claims to Medicare for individual psychotherapy purportedly rendered by

Doctor A after February 10, 2009, despite knowing that Doctor A resigned from Charm on or about February 10, 2009.

11. It was further part of the scheme that defendant BRYAN DAY submitted and caused to be submitted claims to Medicare for individual psychotherapy purportedly rendered by Doctor A in excess of 24 hours per day.

12. It was further part of the scheme that defendant BRYAN DAY submitted and caused to be submitted claims to Medicare under CPT 90806 totaling approximately \$1,078,733 for services purportedly rendered by Doctor A, and caused Medicare to pay approximately \$438,852 for such services.

13. It was further part of the scheme that defendant BRYAN DAY obtained the proceeds of the scheme and converted them to his own use and benefit.

14. It was further part of the scheme that defendant BRYAN DAY did misrepresent, conceal and hide, and cause to be misrepresented, concealed and hidden, acts done in furtherance of the scheme and the purpose of those acts.

15. On or about the dates set forth below, each such date constituting a separate count of this indictment, at Chicago Heights in the Northern District of Illinois, Eastern Division, and elsewhere,

BRYAN DAY,

defendant herein, did knowingly and willfully execute and attempt to execute the above-described scheme by causing Medicare, through WPS, to transmit Medicare funds to Charm in the approximate amount set forth below, which funds included payments relating to patients who did not receive the psychotherapy services by Doctor A for which defendant had submitted claims to Medicare:

COUNT	DATE	AMOUNT
One	May 15, 2008	\$11,158.60
Two	July 17, 2008	\$25,845.82
Three	December 3, 2008	\$71,228.50
Four	December 5, 2008	\$54,158.17
Five	March 23, 2009	\$49,705.38
Six	June 23, 2009	\$62,358.02

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

FORFEITURE ALLEGATION

The SPECIAL FEBRUARY 2011-2 GRAND JURY further charges:

1. The allegations of Counts One through Six of this Indictment are realleged and incorporated here by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 982.

2. As a result their violations of Title 18, United States Code, Section 1347, as alleged in Counts One through Six,

BRYAN DAY,

defendant 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 they may have in any property, real and personal, that constitutes and is derived from the gross proceeds traceable to the charged offense.

3. The interests of defendant subject to forfeiture, pursuant to Title 18, United States Code, Section 982, include, but is not limited to, at least approximately \$438,852, representing property constituting gross proceeds derived from the offense of health care fraud alleged in this Indictment.

4. If any of the forfeitable property described above, as a result of any act or omission by 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 under the provisions of 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).

A TRUE BILL:

FOREPERSON

UNITED STATES ATTORNEY