UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-20482 CR-WILLIAMS / TORRES

18 U.S.C. § 371
42 U.S.C. § 1320a-7b(b)(1)(A)
18 U.S.C. § 2
18 U.S.C. § 982(a)(7)

UNITED STATES OF AMERICA

vs.

ENRIQUE VILARELLO
and
ALBERTO ORDAZ,

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 ("HHS"), 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 was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b), and a "Federal health care program," as defined by Title 42, United States Code, Section 1320a-7b(f).

3. Medicare programs covering different types of benefits were separated into different program "parts." "Part A" of the Medicare program covered certain eligible home health care costs for medical services provided by a home health agency ("HHA"), also referred to as a "provider," to persons who already qualified for Medicare and who additionally required home health services because of an illness or disability that caused them to be homebound.

4. Part D of Medicare 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.

Part A Coverage and Regulations

Reimbursements

5. CMS did not directly pay Medicare Part A claims submitted by Medicare-certified HHAs. CMS contracted with different private companies to administer the Medicare Part A program throughout different parts of the United States. In the State of Florida, CMS contracted with Palmetto Government Benefits Administrators ("Palmetto"). As administrator, Palmetto was to receive, adjudicate and pay claims submitted by HHA providers under the Part A program for home health claims. Additionally, CMS separately contracted with companies in order to review HHA providers' claims data. CMS first contracted with TriCenturion, a Program Safeguard Contractor. Subsequently, on December 15, 2008, CMS contracted with SafeGuard Services, a

Zone Program Integrity Contractor. Both TriCenturion and SafeGuard Services safeguarded the Medicare Trust Fund by reviewing HHA providers' claims for potential fraud, waste, and/or abuse.

6. Physicians, clinics and other health care providers, including HHAs, that provided services to Medicare beneficiaries were able to apply for and obtain a "provider number." A health care provider that received a Medicare provider number was able to file claims with Medicare to obtain reimbursement for services provided to beneficiaries. A Medicare claim was required to set forth, among other things, the beneficiary's name and Medicare information number, the services that were performed for the beneficiary, the date that the services were provided, the cost of the services, and the name and provider number of the physician or other health care provider who ordered the services.

7. The Medicare Part A program reimbursed 100% of the allowable charges for participating HHAs providing home health care services only if the patient qualified for home health benefits. A patient qualified for home health benefits only if the patient:

(a) was confined to the home, also referred to as homebound;

(b) was under the care of a physician who specifically determined there was a need for home health care and established the Plan of Care ("POC"); and

(c) the determining physician signed a certification statement specifying that the beneficiary needed intermittent skilled nursing, physical therapy, speech therapy, or a continued need for occupational therapy; the beneficiary was confined to the home; that a POC for furnishing services was established and periodically reviewed; and that the services were furnished while the beneficiary was under the care of the physician who established the POC.

Record Keeping Requirements

8. Medicare Part A regulations required HHAs providing services to Medicare patients to maintain complete and accurate medical records reflecting the medical assessment and diagnoses of their patients, as well as records documenting the actual treatment of patients to whom services were provided and for whom claims for reimbursement were submitted by the HHA. These medical records were required to be sufficiently complete to permit Medicare, through Palmetto and other contractors, to review the appropriateness of Medicare payments made to the HHA under the Part A program.

9. Among the written records required to document the appropriateness of home health care claims submitted under Part A of Medicare were: (i) a POC that included the physician order, diagnoses, types of services/frequency of visits, prognosis/rehab potential, functional limitations/activities permitted, medications/treatments/nutritional requirements, safety measures/discharge plans, goals, and the physician's signature; and (ii) a signed certification statement by an attending physician certifying that the patient was confined to his or her home and was in need of the planned home health services.

10. Medicare Part A regulations required HHAs to maintain medical records of every visit made by a nurse, therapist, or home health aide to a beneficiary. The record of a nurse's visit was required to describe, among other things, any significant observed signs or symptoms, any treatment and drugs administered, any reactions by the patient, any instruction provided to the patient and the understanding of the patient, and any changes in the patient's physical or emotional condition. The home health nurse, therapist, and aide were required to document the hands-on personal care provided to the beneficiary as the services were deemed necessary to maintain the

beneficiary's health or to facilitate treatment of the beneficiary's primary illness or injury. These written medical records were generally created and maintained in the form of "clinical notes" and "home health aide notes/observations."

11. Medicare regulations allowed Medicare certified HHAs to subcontract home health care services to nursing companies, therapy staffing service agencies, registries, or groups (nursing groups), which would bill the certified home health agency. The Medicare certified HHA would, in turn, bill Medicare for all services rendered to the patient. The HHA's professional supervision over subcontracted-for services required the same quality controls and supervision as of its own salaried employees.

Part D Coverage and Regulations

Reimbursements

12. In order to receive Part D benefits, a beneficiary must be 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.

13. 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.

14. 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.

15. 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.

16. Medicare and Medicare drug plan sponsors were "health care benefit program[s]," as defined by Title 18, United States Code, Section 24(b).

17. Medicare beneficiaries were each assigned unique benefit numbers which were referred to as a Health Insurance Claim Number ("HICN").

18. Doctors who prescribed goods and services paid for by the Medicare program were issued unique identification numbers which were called National Physician Identification Numbers ("NPIN").

The Defendants and Related Companies

19. Merfi Corp. ("Merfi"), located at 4800 SW 8th Street, Coral Gables, FL, was a Florida corporation, incorporated on or about February 6, 2001, with its principal place of business

in Miami-Dade County, in the Southern District of Florida. Merfi did business as a medical clinic that purportedly provided health care services to Medicare beneficiaries, among others.

20. City Center Rehab Corp. ("City Center"), located at 7821 Coral Way, Suite 100, Miami, FL, was a Florida corporation, incorporated on or about November 16, 2009, with its principal place of business in Miami-Dade County, in the Southern District of Florida. City Center did business as a medical clinic that purportedly provided health care services to Medicare beneficiaries, among others.

21. Vivi Pharmacy LLC ("Vivi Pharmacy"), located at 1250 NW 7th Street, Suites 101-102, Miami, FL, was a Florida corporation, incorporated on or about March 10, 2011, with its principal place of business in Miami-Dade County, in the Southern District of Florida. Vivi Pharmacy did business as a pharmacy that purportedly provided prescription drugs to Medicare beneficiaries, among others.

22. D&D&D Home Health Care, Inc. ("D&D&D HH"), located at 15190 SW 136th Street, Suite 13, Miami, FL, was a Florida corporation incorporated on or about February 22, 2006, that did business in Miami-Dade County, in the Southern District of Florida, as an HHA that purported to provide home health care services to eligible Medicare beneficiaries.

23. Defendant **ENRIQUE VILARELLO** was a resident of Miami-Dade County.

24. Defendant **ALBERTO ORDAZ** was a resident of Miami-Dade County.

COUNT 1
Conspiracy to Defraud the United States and Pay and Receive Health Care Kickbacks (18 U.S.C. § 371)

1. Paragraphs 1 through 21, and 23 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. From in or around January 2009, through in or around April 2015, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

ENRIQUE VILARELLO,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with others known and unknown to the Grand Jury, 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 program 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)(1)(A), by knowingly and willfully soliciting and receiving 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 under a Federal health care program, that is, Medicare;

c. to violate Title 42, United States Code, Section 1320a-7b(b)(2)(B), by knowingly and willfully offering and paying remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for purchasing, leasing, ordering, or arranging for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program, that is, Medicare.

Purpose of the Conspiracy

3. It was the purpose of the conspiracy for the defendant and his co-conspirators to unlawfully enrich themselves by: (a) offering and paying remuneration, including kickbacks and bribes, to the owners and operators of Merfi Corp., City Center, and other co-conspirators in return for ordering medications and home health care services for Medicare beneficiaries; (b) soliciting and receiving remuneration, including kickbacks and bribes, in return for referring Medicare beneficiaries to Vivi Pharmacy, Capital Pharmacy, and other health care providers to serve as patients; and (c) submitting and causing the submission of claims to Medicare for medication and health services that Vivi Pharmacy, Capital Pharmacy, and other health care providers purportedly provided to these beneficiaries.

Manner and Means of the Conspiracy

The manner and means by which **ENRIQUE VILARELLO** and his co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among other things, the following:

4. **ENRIQUE VILARELLO** and his co-conspirators offered and paid bribes and kickbacks to co-conspirators at Merfi Corp. and City Center in exchange for prescriptions for medications and home health therapy for Medicare beneficiaries, many of which were not medically necessary.

5. **ENRIQUE VILARELLO** and his co-conspirators solicited and received bribes and kickbacks from co-conspirators at Vivi Pharmacy, Capital Pharmacy, and other health care providers in return for referring Medicare beneficiaries for prescription medications and home health services.

6. **ENRIQUE VILARELLO** and his co-conspirators caused Vivi Pharmacy, Capital Pharmacy, and other health care providers to submit claims to Medicare for prescription drugs and home health services that were purportedly provided to the recruited Medicare beneficiaries.

7. **ENRIQUE VILARELLO** and his co-conspirators caused Medicare to pay Vivi Pharmacy, Capital Pharmacy, and other health care providers to submit claims to Medicare for prescription drugs and home health services that were purportedly provided to the recruited Medicare beneficiaries.

OVERT ACTS

In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one 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 June 23, 2006, Isabel Medina, as the President of Merfi Corp., signed Section 15 of a CMS-855 Medicare application certifying that, among other things, Merfi was bound to the laws, regulations, and program instructions of the Medicare program, including compliance with the Anti-Kickback Statute.

2. On or about April 5, 2013, **ENRIQUE VILARELLO** purchased prescriptions from Merfi Corp. for Medicare beneficiary W.M.

3. On or about April 15, 2013, **ENRIQUE VILARELLO** referred Medicare beneficiary W.M. to Vivi Pharmacy.

4. On or about November 14, 2014, **ENRIQUE VILARELLO** purchased a prescription from City Center Rehab for Medicare beneficiary M.F.

5. On or about November 14, 2014, **ENRIQUE VILARELLO** purchased a prescription from City Center Rehab for Medicare beneficiary E.H.

6. On or about November 14, 2014, **ENRIQUE VILARELLO** purchased a prescription from City Center Rehab for Medicare beneficiary N.R.

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

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

1. Paragraphs 1 through 18, 20, 22, and 24 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. From in or around June 2012, and continuing through in or around April 2015, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

ALBERTO ORDAZ,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with others known and unknown to the Grand Jury, 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 program 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)(1)(A), by knowingly and willfully soliciting and receiving 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 under a federal health care program, that is, Medicare;

c. to violate Title 42, United States Code, Section 1320a-7b(b)(2)(B), by knowingly and willfully offering and paying remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for purchasing, leasing, ordering, or arranging for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program, that is, Medicare.

Purpose of the Conspiracy

3. It was the purpose of the conspiracy for the defendant and his co-conspirators to unlawfully enrich themselves by: (a) offering and paying remuneration, including kickbacks and bribes, to the owners and operators of City Center Rehab and other co-conspirators in return for ordering home health care services for Medicare beneficiaries; (b) soliciting and receiving remuneration, including kickbacks and bribes, in return for referring Medicare beneficiaries to D&D&D HH and other health care providers to serve as patients; and (c) submitting and causing the submission of claims to Medicare for medication and home health services that D&D&D HH and other health care providers purportedly provided to these beneficiaries.

Manner and Means of the Conspiracy

The manner and means by which **ALBERTO ORDAZ** and his co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among other things, the following:

4. **ALBERTO ORDAZ** and his co-conspirators offered and paid bribes and kickbacks to co-conspirators at City Center Rehab in exchange for prescriptions for medications and home health therapy for Medicare beneficiaries, many of which were not medically necessary.

5. **ALBERTO ORDAZ** and his co-conspirators solicited and received bribes and kickbacks from co-conspirators at D&D&D HH and other health care providers in return for referring Medicare beneficiaries for home health services and prescription medications.

6. **ALBERTO ORDAZ** and his co-conspirators caused D&D&D HH and other health care providers to submit claims to Medicare for home health services that were purportedly provided to the recruited Medicare beneficiaries.

7. **ALBERTO ORDAZ** and his co-conspirators caused Medicare to pay D&D&D HH and other health care providers for home health services that were purportedly provided to the recruited Medicare beneficiaries.

OVERT ACTS

In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one 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 June 2, 2015, **ALBERTO ORDAZ** purchased a prescription from City Center Rehab for Medicare beneficiary B.C.

2. On or about June 2, 2015, **ALBERTO ORDAZ** purchased a prescription from City Center Rehab for Medicare beneficiary Y.V.

3. On or about June 12, 2015, **ALBERTO ORDAZ** submitted an inflated invoice to D&D&D HH for the purpose of masking kickback payments for the referral of Medicare beneficiary B.C. and Medicare beneficiary Y.V. among others, to D&D&D HH.

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

COUNTS 3-4
Receipt of Kickbacks in Connection with a Federal Health Care Program
(42 U.S.C. § 1320a-7b(b)(1)(A))

1. The General Allegations section of this Indictment is re-alleged and incorporated by reference as though fully set forth herein.

2. On or about the dates set forth below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

ALBERTO ORDAZ,

did knowingly and willfully, solicit and receive 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 under a federal health care program, that is, Medicare, as set forth below:

Count	Approximate Date of Kickback	Approximate Kickback Amount
3	May 27, 2015	$3,780
4	June 1, 2015	$3,780

In violation of Title 42, United States Code, Section § 1320a-7b(b)(1)(A), and Title 18 United States Code, Section 2.

FORFEITURE
(18 U.S.C. § 982(a)(7))

1. The General Allegations section of this Indictment is re-alleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of certain property in which **ENRIQUE VILARELLO** and **ALBERTO ORDAZ** have an interest.

2. Upon conviction of a conspiracy to violate or violation of Title 42, United States Code, Section 1320a-7b, as alleged in Counts 1 through 4 of this Indictment, the defendants shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(7), any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violation.

3. The property subject to forfeiture includes, but is not limited to, the following:

a. a sum of money equal in value to the property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the offenses alleged in this Indictment; and

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

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third party;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be divided without difficulty,

the United States shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p).

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).

A TRUE BILL

BENJAMIN G. GREENBERG
ACTING UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF FLORIDA

JOSEPH BEEMSTERBOER
DEPUTY CHIEF
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE

ANGELA ADAMS
TRIAL ATTORNEY
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

vs.

ENRIQUE VILARELLO and
ALBERTO ORDAZ,

Defendants.
_____/

CASE NO. _____

CERTIFICATE OF TRIAL ATTORNEY*

Superseding Case Information:

Court Division: (Select One)

X	Miami	____	Key West		
____	FTL	____	WPB	____	FTP

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

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 2 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	Petty	
II	6 to 10 days		Minor	
II	11 to 20 days		Misdem.	
IV	21 to 60 days		Felony	X
V:	61 days and over			

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

ANGELA ADAMS
DOJ ATTORNEY
Court No. A5502194

*Penalty Sheet(s) attached

REV 4/8/08

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: **ENRIQUE VILARELLO**

Case No:

Count #: 1

Conspiracy to Defraud the United States and Pay and Receive Health Care Kickbacks

Title 18, United States Code, Section 371

***Max Penalty**: Five (5) years' imprisonment

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.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: **ALBERTO ORDAZ**

Case No:

Count #: 2

Conspiracy to Defraud the United States and Pay and Receive Health Care Kickbacks

Title 18, United States Code, Section 371

***Max Penalty**: Five (5) years' imprisonment

Counts #: 3 – 4

Receipt of Kickbacks in Connection with a Federal Health Care Program

Title 42, United States Code, Section 1320a-7b(b)(1)(A)

***Max Penalty**: Five (5) years' imprisonment as to each count

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.**