

Jul 5, 2017

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

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

17-20462-CR-MARTINEZ/OTAZO-REYES

Case No. _____

18 U.S.C. § 1349

18 U.S.C. § 982

UNITED STATES OF AMERICA

vs.

ERNESTO VELASQUEZ,

Defendant.

_____ /

INFORMATION

The Acting United States Attorney charges that:

GENERAL ALLEGATIONS

At all times relevant 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 (“HHS”), through its agency, the Centers for Medicare & 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 1320-7b(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. 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.

5. 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.

Part A Coverage and Regulations

Reimbursements

6. 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 services, 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

7. 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 HHAs. 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.

8. Among the written records required to document the appropriateness of home health care claims submitted under Part A of Medicare was: (i) a POC that included the physician order, diagnoses, types of services/frequency of visits, prognosis/rehabilitation 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.

9. Medicare Part A regulations required provider HHAs to maintain medical records of every visit made by a nurse, therapist, and 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."

10. Medicare regulations allowed Medicare certified HHAs to subcontract home health care services to nursing companies, therapy staffing services 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.

The Defendant, Related Companies, and Individuals

11. Elite Professional Therapy, Inc. ("Elite") was a Florida corporation, located at 7600 W. 20th Ave., #107, Hialeah, FL, that purportedly provided physical therapy, occupational therapy, and skilled nursing services to HHAs in the Southern District of Florida.

12. Excellence Therapy Services Corp. ("Excellence Therapy") was a Florida corporation, located at 5901 N. W. 151 Street, #112, Miami Lakes, FL, that purportedly provided physical therapy, occupational therapy, and skilled nursing services to HHAs in the Southern District of Florida.

13. Cari Home Care, Inc., d/b/a Excellence Nursing Care ("Cari d/b/a Excellence") was a Florida corporation, located at 5801 N. W. 151 Street, #107, Miami Lakes, FL, that purportedly provided home health care services to Medicare beneficiaries in the Southern District of Florida.

14. Renovation Health Care, LLC ("Renovation Health") was a Florida corporation, located at 14505 Commerce Way, #550, Miami Lakes, FL, that purportedly provided home health care services to Medicare beneficiaries in the Southern District of Florida.

15. Paradise Home Health, Inc. ("Paradise") was a Florida corporation, located at 4155 S. W. 130 Ave., #114, Miami, FL, that purportedly provided home health care services to Medicare beneficiaries in the Southern District of Florida.

16. Miami United Home Health Care, Inc. ("Miami United") was a Florida corporation, located at 2666 N. W. 97 Avenue, #MB#3E, Doral, FL, that purportedly provided home health

care services to Medicare beneficiaries in the Southern District of Florida.

17. TGR Home Health Care, Inc. ("TGR Home Health") was a Florida corporation, located at 2668 N. W. 97 Ave., #MB#4E, Doral, FL, that purportedly provided home health care services to Medicare beneficiaries in the Southern District of Florida.

18. Defendant **ERNESTO VELASQUEZ**, a resident of Miami-Dade County, was an office manager and unlicensed therapist who worked for Elite and Excellence Therapy, among other staffing agencies.

19. Himar Garcia, a resident of Collier County, was an operator of Elite, Excellence Therapy, and Cari d/b/a Excellence.

20. Simona James, a resident of Miami-Dade County, was a licensed physical therapist who worked for Elite and Excellence Therapy, among others.

21. Patricia Marin, a resident of Miami-Dade County, was a licensed occupational therapist who worked for Elite and Excellence Therapy, among others.

Conspiracy to Commit Health Care Fraud
(18 U.S.C. §1349)

From in or around March of 2012, through in or around August of 2013, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

ERNESTO VELASQUEZ,

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 Acting United States Attorney, including Himar Garcia, Simona James, Patricia Marin, and others, to violate Title 18, United States Code, Section 1347, 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 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.

PURPOSE OF THE CONSPIRACY

22. It was a purpose of the conspiracy for the defendant and his co-conspirators to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to Medicare for services that were not medically necessary, not eligible for Medicare reimbursement, and not provided to Medicare beneficiaries; and (b) concealing and causing the concealment of the submission of false and fraudulent claims to Medicare.

MANNER AND MEANS OF THE CONSPIRACY

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

23. **ERNESTO VELASQUEZ** and other co-conspirators created forms and records that falsely and fraudulently represented that certain licensed therapists had provided home health care physical and occupational therapy services to Medicare beneficiaries, when in fact they had not.

24. Simona James, Patricia Marin, and other co-conspirators signed patient visitation forms and other medical records, which falsely and fraudulently certified that they had provided home health care physical and occupational therapy services to Medicare beneficiaries, when, in fact, they had not.

25. **ERNESTO VELASQUEZ**, and his co-conspirators, including Himar Garcia, Simona James, and Patricia Marin, caused multiple HHAs, including Cari d/b/a Excellence, Renovation Health, Paradise, Miami United, and TGR Home Health, to submit false and fraudulent claims to Medicare for home health therapy services that were not medically necessary and not provided to Medicare beneficiaries.

26. As a result of these false and fraudulent claims, multiple Miami-Dade HHAs, including Cari d/b/a Excellence, Renovation Health, Paradise, Miami United, and TGR Home Health, received substantial overpayments from Medicare.

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 re-alleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States certain property in which the defendant, **ERNESTO VELASQUEZ**, has an interest.

2. Upon conviction of a violation of Title 18, United States Code, Section 1349, as alleged in this Information, the 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. The property subject to forfeiture includes a money judgment in the amount of approximately \$3,236,187.97 in United States currency, which sum represents the value of the gross proceeds traceable to the commission of the violations alleged in this Information.

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

it is the intent of the United States to seek 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), as incorporated by Title 28, United States Code, Section 2461(c), and the procedures set forth in Title 21, United States Code, Section 853.



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



ALEXANDER J. KRAMER
TRIAL ATTORNEY
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE

UNITED STATES OF AMERICA

CASE NO. _____

vs.

CERTIFICATE OF TRIAL ATTORNEY*

ERNESTO VELASQUEZ,

Defendant.

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

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

ALEXANDER J. KRAMER
DOJ TRIAL ATTORNEY
Court No. A5502240

*Penalty Sheet(s) attached

REV 4/8/08

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: ERNESTO VELASQUEZ

Case No: _____

Count #: 1

Conspiracy to Commit Health Care Fraud

Title 18, United States Code, Section 1349

***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.**

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

United States of America

v.

Ernesto Velasquez,

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