UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

17CR 444
JUDGE LEE
MAGISTRATE JUDGE SCHENKIER

UNITED STATES OF AMERICA)
)
vs.)
)
JAMES CALHOUN (a/k/a JIM CALHOUN), and BETTY CALHOUN.)

No.

Violations: Title 18, United States Code, Sections 2, 1035, 1347, 1349 and 1519

UNDER SEAL

COUNT ONE

The SPECIAL DECEMBER 2016 GRAND JURY charges:

1. At times material to this Indictment:

The Medicare Program

a. Medicare was a federal health care program providing benefits to persons who were over the age of 65 or older, or were 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 referred to as Medicare "beneficiaries."

b. Medicare was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b).

c. The Medicare program included coverage under several components, called "parts," including medical insurance ("Part B") and prescription drug insurance ("Part D"). Part B covered the cost of physicians' services, medical equipment and supplies, and other ancillary

services, including medically necessary physician office visits. Part D covered the cost of prescription drugs for Medicare beneficiaries. It was enacted as part of the Medicare Prescription Drug Improvement and Modernization Act of 2003 and went into effect on January 1, 2006.

d. Upon certification, the medical provider, whether a pharmacy, physician, or other health care provider that provided services to Medicare beneficiaries, was able to apply for a Medicare Provider Identification Number ("PIN") for billing purposes. In its enrollment application, a provider was required to disclose to Medicare any person or company who held an ownership interest of 5% or more or who had managing control of the provider. A health care provider who was assigned a Medicare PIN and provided services to beneficiaries was able to submit claims for reimbursement to the Medicare contractor/carrier that included the PIN assigned to that medical provider.

e. A Medicare claim was required to set forth, among other things, the beneficiary's name, the date the services or prescriptions were provided, the billed amount of the services or prescriptions, and the name and identification number of the physician or other health care provider who had ordered the services or prescription.

f. By becoming a participating provider in Medicare, enrolled providers agreed to abide by the policies and procedures, rules, and regulations governing reimbursement. To receive Medicare funds, enrolled providers, together with their authorized agents, employees, and contractors, were required to abide by all provisions of the Social Security Act, the regulations promulgated under the Act, and applicable policies, procedures, rules, and regulations issued by CMS and its authorized agents and contractors. Health care providers were given and provided with online access to Medicare manuals and services bulletins describing proper billing procedures and billing rules and regulations.

g. Health care providers could only submit claims to Medicare for services they rendered or for prescriptions they dispensed. Medicare regulations required health care providers enrolled with Medicare to maintain complete and accurate patient medical records reflecting the medical assessment and diagnoses of their patients, as well as records documenting actual treatment of the patients to whom services were provided and for whom claims for payment were submitted by the physician. Medicare requires complete and accurate patient medical records so that Medicare may verify that the services were provided or prescription was dispensed as described on the claim form. These records were required to be sufficient to permit Medicare to review the appropriateness of Medicare payments made to the health care provider.

h. Medicare drug plans were operated by private companies approved by Medicare. Those companies were often referred to as drug plan "sponsors." In order to receive Part D benefits, a beneficiary enrolled in a Medicare drug plan. The enrolled beneficiary could fill a prescription at a pharmacy and use his or her drug plan to pay for some or all of the prescribed drugs.

i. 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 drug plan's PBM, a pharmacy could join the drug plan's network. When a Part D beneficiary presented a prescription to a pharmacy, the pharmacy submitted a claim to the PBM which represented the beneficiaries' 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 reimbursed the PBM for its payments to the pharmacy.

j. A pharmacy could also submit claims to a Medicare drug plan even if it did not belong to the pharmacy's network. Submission of such out-of-network claims was not common and often resulted in smaller payments to the pharmacy by the drug plan sponsor.

k. Medicare, Medicare drug plans, and PBMs were "health care benefit program[s]," as defined by Title 18, United States Code, Section 24(b), and as that term is used in Title 18, United States Code, Section 1347.

l. Medicare drug plan "sponsors" and PBMs act as Medicare's agent in their administration of Medicare covered insurance programs.

m. Medicare maintained an administrative appeal process through which beneficiaries challenged decisions regarding their Medicare insurance coverage. If a beneficiary's claim was paid less than they believed it should have been paid, or if a claim was denied when he believed it should have been allowed, the beneficiary could appeal the decision. The final level of appeal was with the Medicare Office of Hearings and Appeals and included a hearing before an administrative law judge.

n. By statute, certain individuals were "excluded" from participation in federal health care programs. Exclusions did not apply to prevent individuals from collecting benefits under a federal health care program, but affected an individual's ability to claim payment from federal health care programs for items or services that the individual rendered. Exclusions were based on, among other things, criminal convictions in connection with federal health care programs under 42 U.S.C. § 1320a-7(a), and convictions in connection with fraud, 42 U.S.C. § 1320a-7(b). Included among prohibited acts for an "excluded person," the individual could not submit claims or cause claims to be submitted for payment under any federal health care program. For an individual to be reinstated and removed from "exclusion," the individual had to apply to be reinstated.

o. To receive reimbursement for a covered service from Medicare, a provider must submit a claim, either electronically or using a form (*e.g.*, a CMS-1500 form or UB-92), containing the required information appropriately identifying the provider, patient, and prescription drug name and dosage, among other things.

Medicare Drug Plan Sponsors and PBMs

p. Caremark LLC d/b/a CVS/Caremark ("CVS/Caremark") and Catamaran Corporation ("Catamaran") were PBMs. At various times, Cal's Medical Enterprises, S.C. ("CALS") was enrolled as an in-network pharmacy for CVS/Caremark and Catamaran.

q. Wellcare Prescription Insurance Inc. ("Wellcare") and Sterling Rx ("Sterling") were Medicare drug plan sponsors. At various times, JAMES CALHOUN ("CALHOUN") and BETTY CALHOUN, and others, were enrolled as beneficiaries in Sterling Rx and Wellcare prescription drug plans.

The Defendants, Related Companies, and Individuals

r. Defendant CALHOUN, a resident of Cook County, Illinois, was the General Manager of CALS and the Vice President of Cal's Medical Equipment, in Oklahoma ("CALS OK"). CALHOUN was excluded from participation in federal health care programs, including Medicare in or around 2002.

s. Defendant BETTY CALHOUN, a resident of Cook County, Illinois, was a Vice President of CALS OK.

t. RELATIVE 1, a resident of Oakland, California, was, at times, CALS' President, and was identified as one of CALS' beneficiaries between 2012 and 2015.

u. RELATIVE 2, was a resident of Stuart, Florida, and was identified as one of CALS' beneficiaries between 2012 and 2015. He was deceased as of January 20, 2016.

v. CALS was a pharmacy enrolled in Medicare located at 515 West Taft Drive, South Holland, Illinois, and at P.O. Box 2032, Des Plains, Illinois 60017.

w. CALS OK was a medical equipment company incorporated in Lawton, Oklahoma.

2. From in or around February 2007 and continuing through in or around May 2015, at Cook County, in the Northern District of Illinois, and elsewhere,

JAMES CALHOUN and
BETTY CALHOUN,

defendants herein, did conspire with each other as well as others known and unknown to the Grand Jury:

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, 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 benefit, items, and services, in violation of Title 18, United States Code, Section 1347;

b. to knowingly and with the intent to defraud, devise, and intent 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 that the pretenses, representations and promises were false and fraudulent when made, and did knowingly transmit and cause to be transmitted, by means of wire communication in interstate commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343; and

c. to knowingly and with the intent to defraud, devise, and intent 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 that the pretenses, representations and promises were false and fraudulent when made, and did knowingly transmit and cause to be transmitted, by means of use of the U.S. Mails in interstate commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1341.

Purpose of the Conspiracy

3. It was purpose of the conspiracy for CALHOUN and BETTY CALHOUN, and their co-conspirators, to unlawfully enrich themselves by, among other things: (a) submitting

and causing the submission of false and fraudulent claims to Medicare for, among other things, prescription drugs that were medically unnecessary and never provided; (b) concealing and causing to be concealed the submission of false and fraudulent claims to Medicare; and (c) diverting the proceeds of the fraud scheme for their personal use and benefit.

Manner and Means

4. It was part of the conspiracy that, on or about July 23, 2007, CALHOUN obtained a national provider identification number for CALS (No. 1205036688).

5. It was further part of the conspiracy that CALHOUN was CALS' general manager overseeing the day-to-day operations at CALS.

6. It was further part of the conspiracy that, on or about September 1, 2007, CALS enrolled with Medicare as a pharmacy and medical supply company.

7. It was further part of the conspiracy that, on or about October 17, 2007, CALHOUN submitted or caused to be submitted an electronic funds transfer form to Medicare, identifying himself as CALS' "general manager," and listing Charter One bank account no. x3177 as the "depository account" for Medicare funds.

8. It was further part of the conspiracy that after CALS was inspected by Medicare in or around 2007, 2008, 2009, 2010, and 2011, CALHOUN submitted or caused to be submitted false and fraudulent proof of insurance, proof of licensure, proof of inventory, among other things, to maintain enrollment in Medicare.

9. It was further part of the conspiracy that, on or about September 14, 2011, CALHOUN incorporated CALS OK.

10. It was further part of the conspiracy that, in or around June 2011, CALHOUN obtained Oklahoma identification cards no. J083417079 and J999017439, falsely identifying himself as RELATIVE 2.

11. It was further part of the conspiracy that, on or about April 2, 2012, CALHOUN and BETTY CALHOUN opened bank account no. x8628 for CALS OK at Arvest Bank in Oklahoma, which defendants used to deposit and cash checks from Medicare payable to CALS.

12. It was further part of the conspiracy that, on or about February 1, 2012, CALHOUN and on or about March 1, 2013, BETTY CALHOUN each became enrolled as beneficiaries in a Medicare Advantage Prescription Drug Plan contract no. S4802, obtaining Part D prescription drug insurance.

13. It was further part of the conspiracy that, CALHOUN and BETTY CALHOUN made false and misleading representations to doctors in Oklahoma, including that they suffered from conditions that required Arixtra and that defendants were allergic to generic versions of Arixtra, for the purpose of obtaining medically unnecessary prescriptions for Arixtra.

14. It was further part of the conspiracy that, on or about May 1, 2014, BETTY CALHOUN submitted and caused to be submitted a "Request for Medicare Prescription Drug Coverage Determination" to Wellcare in which she falsely represented that her doctor prescribed her Arixtra.

15. It was further part of the conspiracy that, on or about January 1, 2015, CALHOUN submitted and caused to be submitted a "Request for Medicare Prescription Drug Coverage Determination" to Wellcare in which he falsely represented that his doctor prescribed

him Arixtra.

16. It was further part of the conspiracy that, on or about January 8, 2015, February 3, 2015, and February 5, 2015, CALHOUN falsely represented to Wellcare that he was CALS' pharmacist for the purpose of enrolling CALS in Wellcare's pharmacy network.

17. It was further part of the conspiracy, that on or about February 20, 2015 CALHOUN falsely represented to Wellcare that he was RELATIVE 1 for the purpose of obtaining payment from Wellcare for claims submitted, or caused to be submitted for RELATIVE 1.

18. It was further part of the conspiracy that CALHOUN, BETTY CALHOUN, and others, through the use of interstate wires and U.S. mails, submitted and caused the submission of false and fraudulent claims to Medicare for prescription drugs that were medically unnecessary and never provided.

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

COUNTS TWO through FIVE

The SPECIAL DECEMBER 2016 GRAND JURY further charges:

1. The allegations of Paragraph 1 of Count One of this Indictment are incorporated herein by reference as if fully restated.

2. On or about February 2012 through on or about May 2015 in the Northern District of Illinois, Eastern Division, and elsewhere,

JAMES CALHOUN,

defendant herein, devised, intended to devise, and participated in a scheme to defraud and to obtain money from health care benefit programs by means of materially false and fraudulent pretenses, representations, and promises, which scheme is further described below.

Purpose of the Scheme and Artifice

3. It was the purpose of the scheme and artifice for CALHOUN to unlawfully enrich himself through the submission of false and fraudulent Medicare claims for prescription drugs that were medically unnecessary and never provided.

The Scheme and Artifice

4. The allegations contained in paragraphs 4 through 18 of the Manner and Means section of Count One of this Indictment are realleged and incorporated by reference as though fully set forth herein.

Acts in Execution of the Scheme and Artifice

5. On or about the dates set forth as to each count below, in the Northern District of Illinois, and elsewhere, defendant knowingly, willfully, and with the intent to defraud, executed, and attempted to execute, the above described 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 its agents, and obtained 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:

Count	Defendant	Approximate Claim Date	Prescription No.
2	CALHOUN	3/12/2012	7903558
3	CALHOUN	5/15/2013	7903663
4	CALHOUN	10/6/2014	7903698
5	CALHOUN	1/11/2015	7903698

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

COUNT SIX

The SPECIAL DECEMBER 2016 GRAND JURY further charges:

6. The allegations of Paragraph 1 of Count One of this Indictment are realleged and incorporated herein by reference as if fully restated.

7. On or about the date enumerated below, in the Northern District of Illinois, Eastern Division, and elsewhere,

JAMES CALHOUN,

defendant herein, did knowingly and willfully make and cause to be made a materially false, fictitious, and fraudulent statement and representation, and make and cause to be made a materially false writing and document, knowing the same to contain any materially false, fictitious, and fraudulent statement and entry, in a matter involving a health care benefit program in connection with the payment for health care benefits and services, namely, statements contained in a Wellcare Direct Member Reimbursement Form dated February 2, 2015, in which CALHOUN falsely stated that he filled a prescription for Arixtra at CALS on January 27, 2015, that the prescription was authorized by a prescribing physician, and that he paid $2674.83 for the prescription, when in truth, CALHOUN did not fill nor did he pay for such prescriptions on that date.

In violation of Title 18 United States Code, Sections 1035(a)(2) and 2.

COUNT SEVEN

The SPECIAL DECEMBER 2016 GRAND JURY further charges:

8. The allegations of Paragraph 1 of Count One of this Indictment are realleged and incorporated herein by reference as if fully restated.

9. On or about the date enumerated below, in the Northern District of Illinois, Eastern Division, and elsewhere,

JAMES CALHOUN,

defendant herein, did knowingly and willfully make and cause to be made a materially false, fictitious, and fraudulent statement and representation, and make and cause to be made a materially false writing and document, knowing the same to contain any materially false, fictitious, and fraudulent statement and entry, in a matter involving a health care benefit program in connection with the payment for health care benefits and services, namely, statements contained in a Wellcare Direct Member Reimbursement Form dated February 12, 2015, in which CALHOUN falsely stated that he filled a prescription for Arixtra at CALS on February 4, 2015, that the prescription was authorized by a prescribing physician, and that he paid $2674.83 for the prescription, when in truth, CALHOUN did not fill nor did he pay for such prescriptions on that date.

In violation of Title 18 United States Code, Sections 1035(a)(2) and 2.

COUNT EIGHT

The SPECIAL DECEMBER 2016 GRAND JURY further charges:

10. The allegations of Paragraph 1 of Count One of this Indictment are realleged and incorporated herein by reference as if fully restated.

11. On or about the date enumerated below, in the Northern District of Illinois, Eastern Division, and elsewhere,

BETTY CALHOUN,

defendant herein, did knowingly and willfully make and cause to be made a materially false, fictitious, and fraudulent statement and representation, and make and cause to be made a materially false writing and document, knowing the same to contain any materially false, fictitious, and fraudulent statement and entry, in a matter involving a health care benefit program in connection with the payment for health care benefits and services, namely, statements contained in a Request for Medicare Prescription Drug Coverage Determination Form signed with a date of February 15, 2014, in which BETTY CALHOUN falsely stated that her doctor had prescribed her Arixtra, when in fact, she did not have a prescription for Arixtra from that doctor.

In violation of Title 18 United States Code, Sections 1035(a)(2) and 2.

COUNTS NINE through TWELVE

The SPECIAL DECEMBER 2016 GRAND JURY further charges:

12. The allegations of Paragraph 1 of Count One of this Indictment are realleged and incorporated herein by reference as if fully restated.

13. Beginning in or around January 2015 and continuing through in or around March 2016, in the Northern District of Illinois, Eastern Division, and elsewhere,

JAMES CALHOUN,

defendant herein, with intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of a department or agency of the United States, namely, the United States Department of Health and Human Services, and in relation to and contemplation of such a matter, did knowingly falsify, and make a false entry in a record, document, and tangible object, namely, bank checks, as follows:

Count	Proceeding Where Offered	Document	Amount
9	CALHOUN Appeal No. 1-3420923011	3/15/15 Arvest Bank Check No. 1120	$2670.83
10	CALHOUN Appeal No. 1-3420923011	3/29/15Arvest Bank Check No. 1128	$4000.70
11	CALHOUN Appeal No. 1-3420923011	4/22/15 Arvest Bank Check No. 1130	$5342.66
12	CALHOUN Appeal No. 1-3420923011	5/10/15 Arvest Bank Check No. 1141	$5670.83

All in violation of Title 18 United States Code, Sections 1519 and 2.

FORFEITURE ALLEGATIONS

The SPECIAL DECEMBER 2016 GRAND JURY further alleges:

1. All of the allegations contained above are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to the provisions of Title 18, United States Code, Section 982.

2. Upon conviction of a violation of Title 18, United States Code, Sections 1035, 1347, 1349, and 1519, as alleged in the foregoing Indictment, the defendants shall forfeit to the United States of America, pursuant to Title 18, United States Code Section 982(a)(7) and (a)(8), any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense, and pursuant to Title 18, United States Code, Section 982, and Title 28, United States Code, Section 2461(c) all property, real or personal, which constitutes or is derived from proceeds traceable to a violation of sections 1035, 1347, 1349 and 1519.

14. The property to be forfeited includes, but is not limited to the following:

a. A forfeiture money judgment of at least $1,600,000.

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

i. cannot be located upon the exercise of due diligence;

ii. has been transferred or sold to, or deposited with, a third party;

iii. has been placed beyond the jurisdiction of the Court;

iv. has been substantially diminished in value; or

v. has been commingled with other property that 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 to forfeit any other property of the defendants up to the value of the forfeitable property described above.

All pursuant to Title 18, United States Code, Section 982(a)(7) and (a)(8).

A TRUE BILL:

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FOREPERSON

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UNITED STATES DEPARTMENT OF JUSTICE
CRIMINAL DIVISION, FRAUD SECTION
ACTING DEPUTY CHIEF

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UNITED STATES DEPARTMENT OF JUSTICE
CRIMINAL DIVISION, FRAUD SECTION
CHIEF – HEALTH CARE UNIT