

United States Courts  
Southern District of Texas  
FILED

JUL 05 2017

David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA,

v.

MERCY O. AINABE,

Defendant.

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Criminal No. \_\_\_\_\_

UNDER SEAL

INDICTMENT

H 17

412

The Grand Jury Charges:

General Allegations

At all times material to this Indictment, unless otherwise specified:

The Medicare Program

1. The Medicare Program (“Medicare”) was a federal healthcare program providing benefits to individuals who were over the age of 65 or disabled. Medicare was administered by the United States Department of Health and Human Services, through its agency, the Centers for Medicare and Medicaid Services (“CMS”). Individuals receiving benefits under Medicare were 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. “Part A” of the Medicare program covered certain eligible home-healthcare costs for medical services provided by a home healthcare agency (“HHA”) to beneficiaries requiring home-health services because of an illness or disability causing them to be homebound. Payments for home-healthcare services were typically made directly to a HHA based on claims submitted to the

Medicare program for qualifying services that had been provided to eligible beneficiaries, rather than to the beneficiaries.

4. Physicians, clinics, and other healthcare providers, including HHAs that provided services to Medicare beneficiaries, were able to apply for and obtain a Medicare “provider number.” A healthcare provider that was issued 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 identification number, the services that were performed for the beneficiary, the date the services were provided, the cost of the services, and the name and identification number of the physician or other healthcare provider that ordered the services.

5. The Medicare program paid for home-health services only if the patient qualified for home-healthcare benefits. A patient qualified for home-healthcare benefits only if:

- a. the patient was confined to the home, also referred to as homebound;
- b. the patient was under the care of a physician who specifically determined there was a need for home healthcare and established the Plan of Care (or “POC”); and
- c. the determining physician signed a certification statement specifying that:
  - i. the beneficiary needed intermittent skilled nursing services, physical therapy, or speech therapy;
  - ii. the beneficiary was confined to the home;
  - iii. a POC for furnishing services was established and periodically reviewed; and
  - iv. the services were furnished while the beneficiary was under the care of the physician who established the POC.

6. Medicare 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 actual treatment of the patients to whom services were provided and for whom claims for payment were submitted by the HHA.

7. These medical records were required to be sufficient to permit Medicare, through its contractors, to review the appropriateness of Medicare payments made to the HHA.

8. Texas Tender Care, Inc. (“TTC”) was a Texas corporation doing business at 7457 Harwin Drive, Suite 325, Houston, Texas 77036. TTC submitted claims to Medicare for home health services.

9. Magdalene Akharamen (“Akharamen”) was a resident of Harris County, and was an Owner, Director, Officer, Administrator, and Managing Employee of TTC.

**DEFENDANT**

10. Defendant **MERCY O. AINABE**, a resident of Sugar Land, Fort Bend County, TX, was a patient recruiter and “shadow owner” of TTC, meaning that she received a portion of the Medicare payments for patients she recruited, after other conspirators were paid for their roles in the fraud, but she was not listed as an owner of the company in its corporate filings or elsewhere.

**COUNT 1**

**Conspiracy to Pay Healthcare Kickbacks  
(Violation of 18 U.S.C. § 371)**

11. Paragraphs 1 through 10 are re-alleged and incorporated by reference as if fully set forth herein.

12. From in or around August 2011 through in or around August 2015, the exact dates being unknown to the Grand Jury, in the Houston Division of the Southern District of Texas, and elsewhere, defendant

**MERCY O. AINABE**

did knowingly and willfully combine, conspire, confederate, and agree with Magdalene Akharamen, and others known and unknown to the Grand Jury, to commit certain offenses against the United States, that is,

a. violate Title 42, United States Code, Section 1320a-7b(b)(1), by knowingly and willfully soliciting and receiving remuneration, specifically, kickbacks and bribes, directly and indirectly, overtly and covertly, in return for referring individuals for the furnishing and arranging for the furnishing of any item and services for which payment may be made in whole or in part by Medicare; and for the purchasing, leasing, ordering, and arranging for, and recommending the purchasing, leasing, and ordering of any good, item, and service for which payment may be made in whole and in part by a federal health care program, that is, Medicare; and

b. to violate Title 42, United States Code, Section 1320a-7b(b)(2), by knowingly and willfully offering and paying remuneration, specifically, kickbacks and bribes, directly and indirectly, overtly and covertly, in return for referring individuals for the furnishing and arranging for the furnishing of any item and services for which payment may be made in whole or in part by Medicare; and for the purchasing, leasing, ordering, and arranging for, and recommending the purchasing, leasing, and ordering of any good, item, and service for which payment may be made in whole and in part by a federal health care program, that is, Medicare.

**Purpose of the Conspiracy**

13. It was a purpose of the conspiracy for defendant **MERCY O. AINABE**, her co-conspirator Akharamen, and others known and unknown to the Grand Jury to unlawfully enrich

themselves by paying and receiving kickbacks and bribes in exchange for the referral of Medicare beneficiaries for whom Akharamen and TTC submitted claims to Medicare.

**Manner and Means of the Conspiracy**

The manner and means by which Defendant **MERCY O. AINABE** and her co-conspirators sought to accomplish the purpose and object of the conspiracy included, among other things:

14. Akharamen would maintain a Medicare provider number for TTC that Akaharamen and Defendant **MERCY O. AINABE**'s other co-conspirators would use to submit claims to Medicare for home health services.

15. Akharamen would pay Defendant **MERCY O. AINABE** and other patient recruiters kickbacks in exchange for Defendant **MERCY O. AINABE** recruiting Medicare beneficiaries to purportedly receive home health services at TTC.

16. Defendant **MERCY O. AINABE** and her co-conspirators would pay and cause the payment of kickbacks to physicians in exchange for authorizing medically unnecessary home-health services for Medicare beneficiaries for whom defendant Akharamen submitted claims to Medicare.

17. From in or around August 2011 to in or around August 2015, TTC billed Medicare approximately \$3,590,141.92 for home-health services that it had purportedly provided. Medicare paid approximately \$3,228,381.00 on those claims.

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

**Overt Acts**

18. In furtherance of the conspiracy, and to accomplish its object and purpose, the conspirators committed and caused to be committed, in the Houston Division of the Southern District of Texas, the following overt acts:

a. On or about August 7, 2013, Akharamen did deliver or cause to be delivered Check 5213, from TTC's Chase account ending in 1049, to Defendant **MERCY O. AINABE**, in the amount of \$2820.00, in exchange for Defendant **MERCY O. AINABE** recruiting Medicare beneficiaries to TTC for home health services.

b. On or about August 7, 2013, Akharamen did deliver or cause to be delivered Check 5214, from TTC's Chase account ending in 1049, to Defendant **MERCY O. AINABE**, in the amount of \$4,000.00, in exchange for Defendant **MERCY O. AINABE** recruiting Medicare beneficiaries to TTC for home health services.

c. On or about August 14, 2013, Akharamen did deliver or cause to be delivered Check 5219, from TTC's Chase account ending in 1049, to Defendant **MERCY O. AINABE**, in the amount of \$2,000.00, in exchange for Defendant **MERCY O. AINABE** recruiting Medicare beneficiaries to TTC for home health services.

d. On or about August 23, 2013, Akharamen did deliver or cause to be delivered Check 5229, from TTC's Chase account ending in 1049, to Defendant **MERCY O. AINABE**, in the amount of \$7,635.83, in exchange for Defendant **MERCY O. AINABE** recruiting Medicare beneficiaries to TTC for home health services.

e. On or about August 27, 2013, Akharamen did deliver or cause to be delivered Check 5237, from TTC's Chase account ending in 1049, to Defendant **MERCY O. AINABE**, in the

amount of \$2,300.00, in exchange for Defendant **MERCY O. AINABE** recruiting Medicare beneficiaries to TTC for home health services.

f. On or about August 29, 2013, Akharamen did deliver or cause to be delivered Check 5240, from TTC's Chase account ending in 1049, to Defendant **MERCY O. AINABE**, in the amount of \$6,303.12, in exchange for Defendant **MERCY O. AINABE** recruiting Medicare beneficiaries to TTC for home health services.

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

**CRIMINAL FORFEITURE**  
**(18 U.S.C. § 982(a)(7))**

19. Paragraphs 1 through 18 are re-alleged and incorporated by reference as if fully set forth herein.

20. Pursuant to Title 18, United States Code, Section 982(a)(7), the United States of America gives notice to Defendant **MERCY O. AINABE** that upon conviction, all property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such offense is subject to forfeiture.

Money Judgment

21. Defendant **MERCY O. AINABE** is notified that upon conviction, a money judgment may be imposed equal to the total value of the property subject to forfeiture, which is approximately \$285,533.04.

Substitute Assets

22. Defendant **MERCY O. AINABE** is notified that if any of the forfeitable property, or any portion thereof, as a result of any act or omission of defendant or her co-conspirators:

- 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;

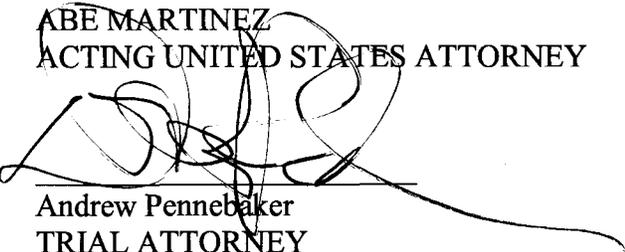
it is the intent of the United States to seek forfeiture of any other property of defendant up to the total value of the property subject to forfeiture, pursuant to Title 21, United States Code, Section 853(p), incorporated by reference in Title 18, United States Code, Section 982(b)(1).

A TRUE BILL      $\cap$

ORIGINAL SIGNATURE ON FILE

FOREPERSON

ABE MARTINEZ  
ACTING UNITED STATES ATTORNEY



Andrew Pennebaker  
TRIAL ATTORNEY  
CRIMINAL DIVISION  
FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE