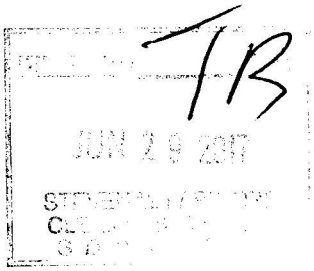
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-20452

CR-UNGARO

/O'SULLIVAN

18 U.S.C. § 1349
18 U.S.C. § 371
18 U.S.C. § 1035(a)(2)
18 U.S.C. § 2
18 U.S.C. § 981(a)(1)(C)
18 U.S.C. § 982



UNITED STATES OF AMERICA

vs.

JHONY A. ALFAU,
HECTOR J. GARCIA, and
SERGIO E. SANTANA,

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 & 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 were a: (i) 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 Defendants, Related Companies, and Relevant Individuals

11. Ayamey Group, Corp. ("Ayamey"), located at 4160 W. 16th Avenue, Suite 204, Hialeah, FL, was a Florida corporation that purportedly provided physical therapy, occupational therapy, and skilled nursing services to HHAs in the Southern District of Florida.

12. Olorun Staffing CTR, Inc. ("Olorun"), located at 3750 W. 16th Avenue, #242 U, Hialeah, FL, was a Florida corporation that purportedly provided physical therapy, occupational therapy, and skilled nursing services to HHAs in the Southern District of Florida.

13. Royal Care Therapy Services, Inc. ("Royal Care"), located at 4160 W. 16th Avenue, Suite 208, Hialeah, FL, was a Florida corporation that purportedly provided physical therapy, occupational therapy, and skilled nursing services to HHAs in the Southern District of Florida.

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

15. Paradise Home Health, Inc. ("Paradise"), located at 4155 SW 130th Avenue, Suite 114, Miami, FL, was a Florida corporation 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"), located at 2666 NW 97 Avenue, MB #3E, Doral, FL, was a Florida corporation 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"), located at 2668 NW 97 Avenue, MB #4E, Doral, FL, was a Florida corporation that purportedly provided home health

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

18. Acclaim Home HealthCare, Inc. ("Acclaim"), located at 10300 SW 72 Street, Suite 303, Miami, FL, was a Florida corporation that purportedly provided home health care services to Medicare beneficiaries in the Southern District of Florida.

19. Maya Home Health Care, Corp. ("Maya"), located at 126 East 49 Street, Hialeah, FL, was a Florida corporation that purportedly provided home health care services to Medicare beneficiaries in the Southern District of Florida.

20. Heartbeat Home Health Agency, Inc. ("Heartbeat"), located at 11420 N. Kendall Drive, Suite 108, Miami, FL, was a Florida corporation that purportedly provided home health care services to Medicare beneficiaries in the Southern District of Florida.

21. Defendant **JOHNY A. ALFAU**, a resident of Miami-Dade County, was a licensed physical therapy assistant who purportedly provided home health care physical therapy services to Medicare beneficiaries. **ALFAU** owned and operated A&S Physical Therapy Services Corp., a Florida corporation.

22. Defendant **HECTOR J. GARCIA**, a resident of Miami-Dade County, was a licensed physical therapy assistant who purportedly provided home health care physical therapy services to Medicare beneficiaries. **GARCIA** owned and operated ACR Solutions Miami, Inc., a Florida corporation.

23. Defendant **SERGIO E. SANTANA**, a resident of Miami-Dade County, was a licensed occupational therapy assistant who purportedly provided home health care physical therapy services to Medicare beneficiaries. **SANTANA** owned and operated Santa Ana Therapy, Inc. and Santa Ana Rehabilitation Services, Inc., Florida corporations.

24. Yenni Del Nodal, a resident of Miami-Dade County, was the owner and operator

of Ayamey and Olorun.

25. Yenisleidy Fernandez, a resident of Collier County, was the owner and operator of Royal Care.

26. Julio Fernandez, a resident of Collier County, was the owner and operator of Royal Care.

COUNT 1
Conspiracy to Commit Health Care Fraud and Wire Fraud
(18 U.S.C. § 1349)

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

2. From in or around August of 2009, through in or around September of 2014, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

JHONY A. ALFAU,
HECTOR J. GARCIA,
and
SERGIO E. SANTANA,

did knowingly, that is, with the intent to further the objects of the conspiracy, and willfully combine, conspire, confederate, and agree with each other and others known and unknown to the Grand Jury, including Yenni Del Nodal, Yenisleidy Fernandez, and Julio Fernandez, to commit certain offenses against the United States, that is:

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

b. to knowingly and with the intent to defraud, devise and intend 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 for the purpose of executing the scheme and artifice, did knowingly transmit and cause to be transmitted, by means of wire communication in interstate commerce, certain writings, signs, signals, pictures, and sounds, in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE CONSPIRACY

3. It was a purpose of the conspiracy for the defendants 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 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 defendants and their co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among other things:

4. 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.

5. **JHONY A. ALFAU, HECTOR J. GARICA, SERGIO E. SANTANA**, and their co-conspirators signed these forms and records falsely and fraudulently certifying that they had provided home health care physical and occupational therapy services to Medicare beneficiaries,

when, in fact, they had not.

6. **JHONY A. ALFAU, HECTOR J. GARCIA, SERGIO E. SANTANA**, and their co-conspirators, including Yenni Del Nodal, Yenisleidy Fernandez, and Julio Fernandez, caused multiple home health agencies, including Renovation Health, Paradise, Miami United, TGR Home Health, Acclaim, Maya, and Heartbeat, to submit false and fraudulent claims, via interstate wires, to Medicare for home health therapy services that were not medically necessary and not provided to Medicare beneficiaries.

7. As a result of these false and fraudulent claims, multiple Miami-Dade HHAs, including Renovation Health, Paradise, Miami United, TGR Home Health, Acclaim, Maya, and Heartbeat, received payments from Medicare.

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

COUNT 2
Conspiracy to Make False Statements Relating to Health Care Matters
(18 U.S.C. § 371)

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

2. From in or around August of 2009, through in or around September 2014, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

JHONY A. ALFAU,
HECTOR J. GARCIA,
and
SERGIO E. SANTANA,

did knowingly, that is, with the intent to further the object of the conspiracy, and willfully combine, conspire, confederate, and agree with each other, and others known and unknown to the Grand Jury, to commit certain offenses against the United States, that is, to violate Title 18, United States Code Section 1035(a)(2), by knowingly and willfully making any materially false writing and

document knowing the same to contain any materially false, fictitious and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items, and services involving a health care benefit program, that is, Medicare,

PURPOSE OF THE CONSPIRACY

3. It was a purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by, among other things: (a) concealing the fact that Medicare beneficiaries did not receive legitimate treatment from licensed therapists at multiple health care companies, including Ayamey, Olorun, and Royal Care; (b) causing false information to be written in medical documents at Ayamey, Olorun, Royal Care, and other companies to make it appear as though Medicare beneficiaries received legitimate treatment from these companies; and (c) causing false and fraudulent medical records to be created at multiple health care companies, including Ayamey, Olorun, and Royal Care to make it appear as though Medicare beneficiaries needed and received legitimate treatment in order to conceal the submission of false and fraudulent claims to Medicare.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendants and their co-conspirators sought to accomplish the object and purpose of the conspiracy, included, among others, the following:

4. Ayamey, Olorun, Royal Care, and other companies purported to provide treatment to Medicare beneficiaries by licensed professionals, when in fact many of these services were not necessary or even provided.

5. Co-conspirators created false and fraudulent medical forms and records to be signed by licensed therapists, including **JHONY A. ALFAU, HECTOR J. GARCIA, SERGIO E. SANTANA**, and their co-conspirators, that falsely and fraudulently represented that those licensed

therapists had provided home health care physical and occupational therapy services to Medicare beneficiaries, when in fact they had not.

6. **JHONY A. ALFAU, HECTOR J. GARCIA, SERGIO E. SANTANA**, and their co-conspirators signed these forms and records, falsely and fraudulently certifying that they had provided home health care physical and occupational therapy services to Medicare beneficiaries, when, in fact, they had not.

OVERT ACTS

In furtherance of the conspiracy, and to accomplish its object and purpose, at least one of the conspirators committed and caused to be committed, in the Southern District of Florida, at least one of the following overt acts, among others:

On or about the dates and times specified below, the following defendants signed documents falsely certifying that they had provided services on that date and time:

Defendant	Purported Service Date	Purported Service Time	Description
JHONY A. ALFAU	04/22/2013	2:00-2:45 PM	Physical Therapy Visit
HECTOR J. GARCIA	10/10/2012	5:15-6:00 PM	Physical Therapy Visit
SERGIO E. SANTANA	11/23/2012	9:30-10:30 AM	Occupational Therapy Visit

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

COUNTS 3-5
False Statements Relating to Health Care Matters
(18 U.S.C. § 1035(a)(2))

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

2. On or about the dates and times specified as to each count below, in Miami-Dade

County, in the Southern District of Florida, and elsewhere, the defendants, in any matter involving a health care benefit program, knowingly and willfully made, and caused to be made, any materially false, fictitious, and fraudulent statements and representations, and made and used, and caused to be made and used, any materially false writing and document knowing the same to contain any materially false, fictitious and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items, and services, that is, the defendants signed documents certifying they had provided services on the dates and times specified below, when in truth and in fact, and as the defendants then and there well knew, they did not provide those services on that date and time:

Count	Defendant	Beneficiary	Purported Service Date	Purported Service Time	Description
3	**JHONY A. ALFAU**	C.D.	04/22/2013	2:00-2:45 PM	Physical Therapy Visit
4	**HECTOR J. GARCIA**	C.T.	10/10/2012	5:15-6:00 PM	Physical Therapy Visit
5	**SERGIO E. SANTANA**	E.F.	11/23/2012	9:30-10:30 AM	Occupational Therapy Visit

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

FORFEITURE
(18 U.S.C. §§ 981(a)(1)(C) and 982)

1. The allegations contained in this Indictment are 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 each of the defendants, **JOHNY A. ALFAU, HECTOR J. GARCIA,** and **SERGIO E. SANTANA**, has an interest.

2. Upon conviction of a violation of Title 18, United States Code, Sections 1349 or 1035(a)(2), or a conspiracy to violate such an offense, as alleged in this Indictment, each 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. Upon conviction of a conspiracy to violate Title 18, United States Code, Section 1343, as alleged in this Indictment, each defendant shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to the commission of the offense pursuant to Title 18, United States Code, Section 981(a)(1)(C).

4. The property subject to forfeiture includes a sum of money equal in value to the gross proceeds traceable to the commission of the offenses.

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

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, Sections 982(a)(7) and 981(a)(1)(C), as incorporated by Title 28, United States Code, Section 2461(c), and the procedures set forth in Title 21, United States Code, Section 853.

A TRUE B[illegible]

FOREPER

BENJAMIN G. GREENBERG
ACTING UNITED STATES ATTORNEY

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

YISEL VALDES
TRIAL ATTORNEY
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

v.

JHONY A. ALFAU,
HECTOR J. GARCIA, and
SERGIO E. SANTANA,
Defendants.

_____ /

CASE NO. _____

CERTIFICATE OF TRIAL ATTORNEY*

Superseding Case Information:

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

Court Division: (Select One)

__X__ Miami _____ Key West
____ FTL _____ WPB ____FTP

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 5 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	
III	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 ____ No X

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 ___ No X

ALEXANDER KRAMER
DOJ TRIAL ATTORNEY
Court ID No. A5502240

*Penalty Sheet(s) attached

REV 5/3/17

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: **JHONY A. ALFAU**

Case No:

Count #: 1

Conspiracy to Commit Health Care Fraud and Wire Fraud

Title 18, United States Code, Section 1349

***Max Penalty**: Ten (10) years' imprisonment

Count #: 2

Conspiracy to Make False Statements Relating to Health Care Matters

Title 18, United States Code, Section 371

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

Count #: 3

False Statements Relating to Health Care Matters

Title 18, United States Code, Section 1035(a)(2)

*Max Penalty: Five (5) years' imprisonment

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: **HECTOR J. GARCIA**

Case No:

Count #: 1

Conspiracy to Commit Health Care Fraud and Wire Fraud

Title 18, United States Code, Section 1349

***Max Penalty**: Ten (10) years' imprisonment

Count #: 2

Conspiracy to Make False Statements Relating to Health Care Matters

Title 18, United States Code, Section 371

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

Count #: 4

False Statements Relating to Health Care Matters

Title 18, United States Code, Section 1035(a)(2)

*Max Penalty: Five (5) years' imprisonment

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: **SERGIO E. SANTANA**

Case No:

Count #: 1

Conspiracy to Commit Health Care Fraud and Wire Fraud

Title 18, United States Code, Section 1349

***Max Penalty**: Ten (10) years' imprisonment

Count #: 2

Conspiracy to Make False Statements Relating to Health Care Matters

Title 18, United States Code, Section 371

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

Count #: 5

False Statements Relating to Health Care Matters

Title 18, United States Code, Section 1035(a)(2)

*Max Penalty: Five (5) years' imprisonment

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.**