

9

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

v.

GERALD R. FUNDERBURG, JR

Defendant.

Case:2:11-cr-20494

Judge: Murphy, Stephen J.

MJ: Majzoub, Mona K.

Filed: 08-04-2011 At 04:45 PM

INDI: SEALED MATTER (KB)

VIO.: 18 U.S.C. § 1347
18 U.S.C. § 287
18 U.S.C. § 1028A
18 U.S.C. § 982
18 U.S.C. § 2

INDICTMENT

THE GRAND JURY CHARGES:

General Allegations

At all times relevant to this Indictment:

1. The Medicare program was a federal health care program providing benefits to persons who were over the age of 65 or disabled. Medicare was administered by the Centers for Medicare and Medicaid Services (CMS), a federal agency under the United State Department of Health and Human Services. Individuals who received 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. The Medicare program included coverage under two primary components, hospital insurance (Part A) and medical insurance (Part B). Part B of the Medicare Program

covered the cost of physicians' services and other ancillary services not covered by Part

A. The psychotherapy services discussed herein were covered by Part B.

4. Wisconsin Physicians Service was the CMS-contracted carrier for Medicare Part B, in the state of Michigan. TrustSolutions, LLC was the Program Safeguard Contractor for Medicare Part A and Part B in the state of Michigan.

5. By becoming a participating provider in Medicare, enrolled providers agree 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, are required to abide by all the provisions of the Social Security Act, the regulations promulgated under the Act, and applicable policies and procedures, rules, and regulations, issued by CMS and its authorized agents and contractors.

6. Upon certification, the medical provider, whether a clinic or an individual, is assigned a provider identification number for billing purposes (referred to as a PIN). When the medical provider renders a service, the provider submits a claim for reimbursement to the Medicare contractor/carrier that includes the PIN assigned to that medical provider. When an individual medical provider is associated with a clinic, Medicare Part B required that the individual provider number associated with the clinic be placed on the claim submitted to the Medicare contractor.

7. Health care providers are given and/or provided with online access to Medicare manuals and services bulletins describing proper billing procedures and billing rules and regulations. Providers can only submit claims to Medicare for services they rendered and providers must maintain patient records to verify that the services were provided as described on the claim form.

8. 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 services rendered.

9. Funderburg Clinical and Community Services, Inc. (FCCS), was a Michigan corporation that operated, at various times, at 25438 Saint James, Southfield, Michigan 48075; 18349 West 13 Mile Rd. – Apt. #34, Southfield, Michigan 48076; and 1386 E. Jefferson, Detroit, Michigan 48207. FCCS was a Medicare provider and submitted claims directly to Medicare.

10. GERALD R. FUNDERBURG, JR, a resident of Oakland County, Michigan, was an owner and controller of FCCS.

COUNT 1
(18 U.S.C. §§ 1347 and 2 – Health Care Fraud)

11. Paragraphs 1 through 10 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

12. From on or about January 2009 through on or about April 2011, at Oakland and Wayne Counties, in the Eastern District of Michigan, and elsewhere, GERALD R. FUNDERBURG, JR, and others known and unknown to the grand jury, in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt 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 Medicare, in connection with the delivery of and payment for health care benefits, items and services.

Purpose of the Scheme and Artifice

13. It was a purpose of the scheme and artifice that GERALD R. FUNDERBURG, JR would enrich himself through the submission of false and fraudulent Medicare claims for psychotherapy services that were medically unnecessary and not performed.

The Scheme and Artifice

14. GERALD R. FUNDERBURG, JR would incorporate FCCS in Wayne County, Michigan.

15. GERALD R. FUNDERBURG, JR would obtain and maintain a group Medicare provider number for FCCS to submit Medicare claims.

16. GERALD R. FUNDERBURG, JR would control the day-to-day operations at FCCS.

17. GERALD R. FUNDERBURG, JR would submit claims for psychotherapy services for Medicare beneficiaries who did not need and did not receive psychotherapy services.

18. GERALD R. FUNDERBURG, JR would obtain individual Medicare provider numbers through FCCS for licensed social workers, and then would bill Medicare using those social workers' individual provider numbers for services that were medically unnecessary and not provided, without the social workers' knowledge and authorization.

19. From on or about January 2009 through on or about April 2011, GERALD R. FUNDERBURG, JR would submit approximately \$2.9 million in claims for psychotherapy services. Medicare would pay approximately \$1.3 million on those claims.

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

COUNTS 2-6
(18 U.S.C. §§ 287 and 2 – False Claims)

20. Paragraphs 1 through 10 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

21. On or about the dates enumerated below, at Oakland and Wayne Counties, in the Eastern District of Michigan, and elsewhere, the GERALD R. FUNDERBURG, JR, and others known and unknown to the Grand Jury did make and present, and cause to be made and presented, to a person or officer in the civil, military, and naval service of the United States, and to a department and agency thereof, the following claims upon and against the United States Department of Health and Human Services, a department and agency of the United States, knowing such claims to be false, fictitious, and fraudulent:

Count	Beneficiary	ICN	On or About Claim Date	Billing Code/Procedure	Approximate Amount Billed
2	T.H.	1110133048070	13-May-10	90808 (75-80 Minute individual psychotherapy session)	\$102
3	T.H.	1110133048112	13-May-10	90808 (75-80 Minute individual psychotherapy session)	\$102
4	T.H.	1810341135080	7-Dec-10	90808 (75-80 Minute individual psychotherapy session)	\$100
5	L.F.	1811087195870	28-Mar-11	90808 (75-80 Minute individual psychotherapy session)	\$100
6	R.C.	1811087194760	28-Mar-11	90808 (75-80 Minute individual psychotherapy session)	\$100

All in violation of Title 18, United States Code, Sections 287 and 2.

COUNTS 7-9
(18 U.S.C. § 1028A – Aggravated Identity Theft)

22. Paragraphs 1 through 10 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

23. On or about the dates specified below, at Oakland and Wayne Counties, in the Eastern District of Michigan, and elsewhere, GERALD R. FUNDERBURG, JR, and others known and unknown to the grand jury, did knowingly transfer, possess, and use, without lawful authority, a means of identification of another person during and in relation to a felony violation of Title 18, United States Code, Sections §§ 1347, 287, as alleged in Counts 1 through 6 of this Indictment, to wit: the names and Provider Identification Numbers (“PINs”) of licensed social worker A.G. and C.S.M., as described in each count below:

Count	Beneficiary	On or About Service Date	Billing Code/Procedure	Approximate Amount Billed	PIN (last three digits)	Social Worker
7	T.H.	26-Nov-2010	90808 (75-80 Minute individual psychotherapy session)	\$100	002	A.G.
8	L.F.	26-Nov-2010	90808 (75-80 Minute individual psychotherapy session)	\$100	003	C.S.M.
9	R.C.	26-Nov-2010	90808 (75-80 Minute individual psychotherapy session)	\$100	003	C.S.M.

All in violation of Title 18, United States Code, Sections 1028A and 2.

CRIMINAL FORFEITURE
(18 U.S.C. § 982)

24. The allegations contained in Counts 1 through 6 are re-alleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of America of any property, real or personal obtained by GERALD R. FUNDERBURG, JR by commission of the offense charged in Counts 1 through 6 pursuant to the provisions of Title 18, United States Code, Sections 982(a)(1) and 982(a)(7).

25. Pursuant to Title 18, United States Code, Section 982(a)(7), upon conviction of GERALD R. FUNDERBURG, JR for any of the offenses charged in Counts 1 through 6 of this Indictment, he 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 health care fraud offense.

26. If the property described above as being subject to forfeiture pursuant to Title 18, United States Code, Section 982(a)(7), as a result of any act or omission of the defendants:

- 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 defendant up to the listed value.

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

THIS IS A TRUE BILL.

s/ GRAND JURY FOREPERSON
Grand Jury Foreperson

BARBARA L. MCQUADE
UNITED STATES ATTORNEY

s/WAYNE F. PRATT
WAYNE F. PRATT
Chief, Health Care Fraud Unit
Assistant United States Attorney
211 W. Fort Street, Suite 2001
Detroit, Michigan 48226
(313) 226-2548
Wayne.Pratt@usdoj.gov

s/ GEJAA T. GOBENA
GEJAA T. GOBENA
Trial Attorney
Criminal Division, Fraud Section
U.S. Department of Justice
1400 New York Avenue, N.W., Third Floor
Washington, D.C. 20005
(202) 305-1310
(313) 226-0831
Gejaa.Gobena@usdoj.gov

Dated: August 4, 2011

Case:2:11-cr-20494
 Judge: Murphy, Stephen J.
 MJ: Majzoub, Mona K.
 Filed: 08-04-2011 At 04:45 PM
 INDI: SEALED MATTER (KB)

United States District Court Eastern District of Michigan	Criminal Case Co
--	-------------------------

NOTE: It is the responsibility of the Assistant U.S. Attorney signing this form to complete it accurately in all respects.

Reassignment/Recusal Information This matter was opened in the USAO prior to August 15, 2008 []

Companion Case Information	Companion Case Number: N/A
This may be a companion case based upon LCrR 57.10 (b)(4) ¹ :	Judge Assigned: N/A
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	AUSA's Initials: G.T.U.

Case Title: USA v. Gerald R. Funderburg, JR.

County where offense occurred : Oakland County and Wayne County

Check One: Felony Misdemeanor Petty

 Indictment/ Information --- no prior complaint.
 X Indictment/ Information --- based upon prior complaint [Case number: 11-mj-30364]
 Indictment/ Information --- based upon LCrR 57.10 (d) [Complete Superseding section below].

Superseding Case Information

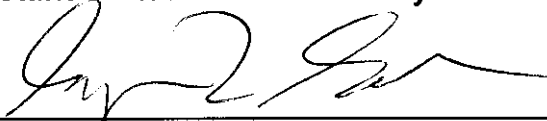
Superseding to Case No: _____ Judge: _____

- Original case was terminated; no additional charges or defendants.
- Corrects errors; no additional charges or defendants.
- Involves, for plea purposes, different charges or adds counts.
- Embraces same subject matter but adds the additional defendants or charges below:

<u>Defendant name</u>	<u>Charges</u>	<u>Prior Complaint (if applicable)</u>
-----------------------	----------------	--

Please take notice that the below listed Assistant United States Attorney is the attorney of record for the above captioned case.

August 4, 2011
Date



 Gejaa J. Gobena
 United States Trial Attorney
 211 W. Fort Street, Suite 2001
 Detroit, MI 48226-3277
 Phone: (313) 226-0831
 Fax: (313) 226-5892
 E-Mail address: gejaa.gobena@usdoj.gov

¹ Companion cases are matters in which it appears that (1) substantially similar evidence will be offered at trial, (2) the same or related parties are present, and the cases arise out of the same transaction or occurrence. Cases may be companion cases even though one of them may have already been terminated.