

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

12-20274 CR-SEITZ

Case No. _____
18 U.S.C. § 1349
18 U.S.C. § 1347
18 U.S.C. § 2
42 U.S.C. § 1320a-7b(b)(2)(A)
18 U.S.C. § 982

MAGISTRATE JUDGE
SIMONTON

FILED by _____ D.C.
APR 24 2012
STEVEN M. LARIMORE
CLERK U. S. DIST. CT
S. D. of FLA. - MIAMI

UNITED STATES OF AMERICA

vs.

YUDERKIS PENA,
MAGGIE LEON,
and
EDUARDO VILAU,

Defendants.

_____ /

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times relevant to this Indictment:

The Medicare Program

1. The Medicare Program ("Medicare") was a federal program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and 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 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).

3. The Medicare program was divided into different "parts." "Part A" of the Medicare program covered health services provided by hospitals, skilled nursing facilities, hospices, and home health agencies. "Part B" of the Medicare program covered, among other things, medical services provided by physicians, medical clinics, and other qualified health care providers, as well as medications rendered "incident to" such services. The Medicare Advantage Program, formerly known as "Part C" or "Medicare+Choice," is described in further detail below.

4. Medicare Part B was administered in Florida by First Coast Service Options, a company that contracted with CMS to receive, adjudicate, process, and pay certain Part B claims.

5. Payments under the Medicare Program were often made directly to the physician, medical clinic, or other qualified provider of the medical goods or services, rather than to the beneficiary. This occurred when the provider accepted assignment of the right to payment from the beneficiary. In that case, the provider submitted the claim to Medicare for payment, either directly or through a billing company.

6. Physicians, medical clinics, and other health care providers that provided services to Medicare beneficiaries were able to apply for and obtain a "provider number." A health care provider who was issued a Medicare provider number was able to file bills, known as "claims," with Medicare to obtain reimbursement for services provided to beneficiaries. The claim form was required to contain certain important information, including: (a) the Medicare beneficiary's name and Health Insurance Claim Number ("HICN"); (b) a description of the health care benefit, item, or service that was provided or supplied to the beneficiary; (c) the billing codes for the benefit, item, or service; (d) the date upon which the benefit, item, or service was provided or supplied to the beneficiary; and (e) the name of the referring physician or other health care provider, as well as a

unique identifying number, known either as the Unique Physician Identification Number (“UPIN”) or National Provider Identifier (“NPI”). The claim form could be submitted in hard copy or electronically.

7. When a claim was submitted to Medicare, the provider certified that the contents of the form were true, correct, complete, and that the form was prepared in compliance with the laws and regulations governing the Medicare program. The provider further certified that the services being billed were medically necessary and were in fact provided as billed.

8. Pursuant to federal statutes and regulations, Medicare only paid for health care benefits, items or other services that were medically necessary and ordered by a licensed doctor or other licensed, qualified health care provider.

The Medicare Advantage Program

9. The Medicare Advantage Program, formerly known as “Part C” or “Medicare+Choice,” provided Medicare beneficiaries with the option to receive their Medicare benefits through a wide variety of private managed care plans, including health maintenance organizations (“HMOs”), provider sponsored organizations (“PSOs”), preferred provider organizations (“PPOs”), and private fee-for-service plans (“PFFS”), rather than through the original Medicare program (Parts A and B).

10. Private health insurance companies offering Medicare Advantage plans were required to provide Medicare beneficiaries with the same services and supplies offered under Parts A and B of Medicare. To be eligible to enroll in a Medicare Advantage plan, a person must be entitled to benefits under Part A and Part B of the Medicare Program.

11. A number of companies including Blue Cross and Blue Shield of Florida (“BCBS”) and their related subsidiaries and affiliates contracted with CMS to provide managed care to Medicare Advantage beneficiaries through various plans.

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

13. These entities, including BCBS, through their respective Medicare Advantage programs, often made payments directly to physicians, medical clinics, or other health care providers, rather than to the Medicare Advantage beneficiary that received the health care benefits, items, and services. This occurred when the provider accepted assignment of the right to payment from the beneficiary.

14. To obtain payment for treatment or services provided to a beneficiary enrolled in a Medicare Advantage plan, physicians, medical clinics, and other health care providers had to submit itemized claim forms to the beneficiary’s Medicare Advantage plan. The claim forms were typically submitted electronically via the internet. The claim form required certain important information, including: (a) the Medicare Advantage beneficiary’s name and HICN or other identification number; (b) a description of the health care benefit, item, or service that was provided or supplied to the beneficiary; (c) the billing codes for the benefit, item, or service; (d) the date upon which the benefit, item, or service was provided or supplied to the beneficiary; and (e) the name of the referring physician or other health care provider, as well as a unique identifying number, known either as the Unique Physician Identification Number (“UPIN”) or National Provider Identifier (“NPI”).

15. When a provider submitted a claim form to a Medicare Advantage program, the provider party certified that the contents of the form were true, correct, complete, and that the form

was prepared in compliance with the laws and regulations governing the Medicare program. The submitting party also certified that the services being billed were medically necessary and were in fact provided as billed.

16. The private health insurance companies offering Medicare Advantage plans were paid a fixed rate per beneficiary per month by the Medicare program, regardless of the actual number or type of services the beneficiary receives. These payments by Medicare to the insurance companies were known as “capitation” payments. Thus, every month, CMS paid the health insurance companies a pre-determined amount for each beneficiary who was enrolled in a Medicare Advantage plan, regardless of whether or not the beneficiary utilized the plan's services that month. CMS determined the per-patient capitation amount using actuarial tables, based on a variety of factors, including the beneficiary’s age, sex, severity of illness, and county of residence. CMS adjusted the capitation rates annually, taking into account each patient's previous illness diagnoses and treatments. Beneficiaries with more illnesses or more serious conditions would rate a higher capitation payment than healthier beneficiaries.

Leah Medical Office Inc. and Leon Medical & Therapy Services Inc.

17. Leah Medical Office, Inc. (“Leah”) and Leon Medical Therapy & Services, Inc. (“Leon”) were Florida corporations with a place of business in Miami-Dade County. Leon and Leah were purportedly medical clinics that provided Medicare Advantage beneficiaries with various medical items and services.

The Defendants

18. Defendant YUDERKIS PENA was a resident of Miami-Dade County. PENA incorporated Leah and served as Leah’s president and registered agent.

19. Defendant **MAGGIE LEON** was a resident of Miami-Dade County. **LEON** incorporated Leon and served as Leon's president and registered agent.

20. Defendant **EDUARDO VILAU** was a resident of Miami-Dade County.

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

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

2. From in or around April 2011, and continuing through in or around March 2012, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

YUDERKIS PENA,
MAGGIE LEON,
and
EDUARDO VILAU,

did knowingly and willfully combine, conspire, confederate and agree with each other and others known and unknown to the Grand Jury, 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 BCBS, 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

3. It was the 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 a health care benefit program; (b) concealing the submission of false and fraudulent claims to a health care benefit program; (c) concealing the receipt of the fraud proceeds; and (d) diverting the fraud proceeds for their personal use and benefit, and the use and benefit of others, and to further the fraud.

MANNER AND MEANS OF THE CONSPIRACY

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

4. On or about November 5, 2010, **YUDERKIS PENA** opened a bank account for Leah with Bank of America (account number ending 8234), listing herself as the sole signatory on the account.

5. On or about April 13, 2011, **YUDERKIS PENA** applied for and obtained a BCBS provider number authorizing Leah to submit reimbursement claims to BCBS for medical items and services that were provided to Medicare Advantage beneficiaries pursuant to physicians' orders and prescriptions.

6. On or about April 18, 2011, **MAGGIE LEON** applied for and obtained a BCBS provider number authorizing Leon to submit reimbursement claims to BCBS for medical items and services that were provided to Medicare Advantage beneficiaries pursuant to physicians' orders and prescriptions.

7. On or about May 27, 2011, **MAGGIE LEON** opened a bank accounts for Leon with Wachovia (account numbers ending 2585 and 2598), listing herself as the sole signatory on the account.

8. On or about August 12, 2011, **YUDERKIS PENA** opened a bank account for Leah with Bank of America (account number ending 2859), listing herself as the sole signatory on the account.

9. **YUDERKIS PENA, MAGGIE LEON, and EDUARDO VILAU**, and their co-conspirators recruited and paid, or caused to be recruited and paid, Medicare Advantage beneficiaries to come to Leah and Leon for the purpose of allegedly receiving medical benefits, items, and services for which Leon and Leah could file reimbursement claims with BCBS.

10. **YUDERKIS PENA, MAGGIE LEON, and EDUARDO VILAU**, and their co-conspirators submitted and caused Leah to submit approximately \$898,183 to BCBS in Medicare Advantage claims for reimbursement, such claims falsely and fraudulently representing that medical items and services were prescribed by a doctor and provided to Medicare Advantage beneficiaries by Leah.

11. As a result of such false and fraudulent claims, **YUDERKIS PENA, MAGGIE LEON, and EDUARDO VILAU** caused BCBS to deposit approximately \$339,643 into Leah's corporate bank account.

12. **YUDERKIS PENA, MAGGIE LEON, and EDUARDO VILAU**, and their co-conspirators submitted and caused Leon to submit approximately \$1,253,518 to BCBS in Medicare Advantage claims for reimbursement, such claims falsely and fraudulently representing that medical items and services were prescribed by a doctor and provided to Medicare Advantage beneficiaries by Leon.

13. As a result of such false and fraudulent claims, **YUDERKIS PENA, MAGGIE LEON, and EDUARDO VILAU** caused BCBS to deposit approximately \$631,860 into Leon's

corporate bank accounts.

14. YUDERKIS PENA, MAGGIE LEON, and EDUARDO VILAU, and their co-conspirators used the proceeds of the health care fraud for their personal use and benefit, and the use and benefit of others, and to further the fraud.

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

COUNTS 2-9
Health Care Fraud
(18 U.S.C. § 1347)

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

2. From in or around April 2011, and continuing through in or around March 2012, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

YUDERKIS PENA,
MAGGIE LEON,
and
EDUARDO VILAU,

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 BCBS, 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.

Purpose of the Scheme and Artifice

3. It was a purpose of the scheme and artifice for the defendants to unlawfully enrich

themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to a health care benefit program; (b) concealing the submission of false and fraudulent claims to a health care benefit program; (c) concealing the receipt of the fraud proceeds; and (d) diverting the fraud proceeds for their personal use and benefit, and the use and benefit of others, and to further the fraud.

The Scheme and Artifice

The allegations contained in paragraphs 4 through 14 of the Manner and Means section of Count 1 of this Indictment are realleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

Acts in Execution or Attempted Execution of the Scheme and Artifice

On or about the dates specified as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants, in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, the above-described scheme and artifice to defraud a health care benefit program affecting commerce, that is, Medicare and BCBS, 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 that the defendants submitted and caused the submission of false and fraudulent claims to BCBS seeking the identified dollar amounts, and representing that Leon and Leah provided medical items and services to Medicare Advantage beneficiaries pursuant to physicians' orders and prescriptions:

Count	Company	Medicare Beneficiary	Approx. Date of Submission of Claim	BCBS Claim Number	Services Claimed; Approx. Amount Claimed
2	Leah	A.F.	07/13/2011	Q100000252797958	Injection, Octreotide Intramuscular Injection, 1MG (J2353); \$5320
3	Leon	J.W.	08/03/2011	Q100000255846557	Injection, Octreotide Intramuscular Injection, 1MG (J2353); \$3744
4	Leah	A.F.	08/04/2011	Q100000256025576	Injection, Pyridoxine HCL, 100 MG; (J3415); \$1400
5	Leon	J.W.	08/05/2011	Q100000256230282	Injection, Octreotide Intramuscular Injection, 1MG; (J2353); \$5928
6	Leah	S.L.	08/08/2011	Q100000256462954	Injection, Thiamine HCL, 100 MG; (J3411); \$800
7	Leah	S.L.	08/11/2011	Q100000257069097	Injection, Octreotide Intramuscular Injection, 1 MG; (J2353); \$5040
8	Leon	J.W.	08/18/2011	Q100000258079622	Injection, Octreotide Intramuscular Injection, 1 MG; (J2353); \$5928
9	Leon	J.W.	08/24/2011	Q100000258905850	Injection, Pyridoxine HCL, 100 MG; (J3415); \$1400

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

COUNTS 10-11

**Payment of Kickbacks in Connection with a Federal Health Care Program
(42 U.S.C. § 1320a-7b(b)(2)(A))**

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

2. On or about the dates enumerated below as to each count, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

EDUARDO VILAU,

did knowingly and willfully offer and pay any remuneration, that is, kickbacks and bribes, in cash and in kind, that is, in the form of cash and check, directly and indirectly, overtly and covertly, to a person, that is, S.L., to induce such person for the furnishing of any item and to refer an individual for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part by a Federal health care program, that is, Medicare, as set forth below:

Count	Approximate Date	Approximate Kickback Amount
10	08/17/2011	\$100
11	02/29/2012	\$100

In violation of Title 42, United States Code, Section 1320a-7b(b)(2)(A) and Title 18, United States Code, Section 2.

FORFEITURE
(18 U.S.C. § 982)

1. The allegations contained in this Indictment are realleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendants, **YUDERKIS PENA, MAGGIE LEON,** and **EDUARDO VILAU,** have an interest.

2. Upon conviction of any violation of Title 18, United States Code, Sections 1347 or 1349, or Title 42, United States Code, Section 1320a-7(b), as alleged in Counts 1 through 11 of this Indictment, the defendants shall forfeit to the United States all of their respective right, title and

interest of any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violation(s), pursuant to Title 18, United States Code, Section 982(a)(7).

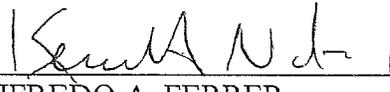
3. The property subject to forfeiture includes, but is not limited to, the sum of \$971,503.72 in United States currency, which amount is equal in value to the gross proceeds traceable to the commission of the violations alleged in this Indictment, which the United States will seek as a forfeiture money judgment as part of each defendant's sentence.

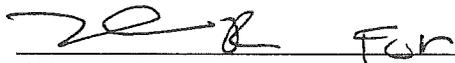
All pursuant to Title 18, United States Code, Section 982(a)(7); and the procedures set forth at Title 21, United States Code, Section 853, as made applicable through Title 18, United States Code, Section 982(b)(1).

A TRUE BILL



FOREPERSON



WIFREDO A. FERRER
UNITED STATES ATTORNEY

CHRISTOPHER CLARK
ASSISTANT UNITED STATES ATTORNEY