

FILED

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Deputy Clerk, U.S. District Court  
Middle District of Louisiana  
Baton Rouge, La.

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

**INDICTMENT FOR CONSPIRACY TO COMMIT HEALTH CARE FRAUD,  
HEALTH CARE FRAUD, AND FORFEITURE ALLEGATION**

UNITED STATES OF AMERICA

*versus*

IMEH U. EBERE and  
SHEILA R. HIVES

:  
: CRIMINAL NO. 12-162-BAJ-SCR  
:  
: 18 U.S.C. § 1349  
: 18 U.S.C. § 1347  
: 18 U.S.C. § 982(a)(7)  
: 18 U.S.C. § 2

**THE GRAND JURY CHARGES:**

At all times relevant to this Indictment:

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. The benefits available under Medicare are prescribed by statute and by federal regulations under the financial support and guidance of the United States Department of Health and Human Services (“HHS”), through its agency, the Centers for Medicare and Medicaid Services (“CMS”). 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. Medicare included several “parts,” including “Part B,” which covered certain durable medical equipment (“DME”) and prosthetic devices including cardiac pacemakers, prosthetic lenses, as well as paraenteral and enteral nutrition.

4. Enteral nutrition is considered reasonable and necessary for a patient with a functioning gastrointestinal tract who, due to pathology to, or non-function of, the structures that normally permit food to reach the digestive tract, cannot maintain weight and strength commensurate with his or her general condition. Enteral nutrition can be administered via three types of feeding tube: nasogastric (nose), jejunostomy (abdomen) and/or gastrostomy (abdomen).

5. Because enteral nutrition is covered under Part B of Medicare as a prosthetic device benefit provision, it is not covered under Medicare when the patient’s condition is simply a temporary impairment. The impairment must be considered of a long and indefinite duration.

6. Claims for Part B coverage of enteral nutrition therapy must be approved on an individual, case-by-case basis. Each claim must contain a physician’s written order or prescription and sufficient medical documentation (e.g., hospital records, clinical findings from the attending physician) to permit an independent conclusion that the patient’s condition meets the requirements of the prosthetic device benefit and that enteral nutrition therapy is medically necessary. Allowed claims are to be reviewed at periodic intervals of no more than 3 months by the contractor’s medical consultant or specially trained staff, and additional medical documentation considered necessary is to be obtained as part of this review. Medicare pays for no more than one month’s supply of enteral nutrients at any one time.

7. Some patients require supplementation of their daily protein and caloric intake. Nutritional supplements are often given as a medicine between meals to boost protein-caloric intake or the mainstay of a daily nutritional plan. These nutritional supplements, which are consumed orally, are *not* covered under Part B of Medicare. Examples of oral nutritional supplements include Glucerna, Boost and Ensure.

8. For Louisiana beneficiaries, Medicare Part B insurance covering DME, prosthetic devices and related health care benefits, items, and services was administered by Palmetto Government Benefits Administrators (“Palmetto”) and, later, by Cigna Government Services (“Cigna”), pursuant to a contract that each entity had with HHS. Among other responsibilities, Palmetto and Cigna would receive, adjudicate, and pay the claims submitted to them by Medicare beneficiaries, physicians, or suppliers of health care items and services.

9. DME and prosthetic device companies, physicians, and other health care providers that sought to participate in Medicare Part B and bill Medicare for DME and prosthetic device related benefits, items, and services were required to apply for and receive a “supplier number.” The supplier number allowed the company to submit bills, known as “claims,” to Medicare to obtain reimbursement for the prosthetic devices and related health care benefits, items, and services that the company had supplied to beneficiaries. The supplier could submit claims either directly or through a billing company.

10. To receive payment from Medicare, a company providing a prosthetic device benefit in the form of enteral or paraenteral nutrition, using its supplier number, would submit a certification for the provision of these services for each beneficiary, known as a CMS-10126 or DME Information Form (“DIF”). Medicare permitted such companies to

submit a DIF electronically or by way of a paper claim form. The DIF required DME companies to provide certain information, including: (a) the Medicare beneficiary's name; (b) the Medicare beneficiary's identification number; (c) the name and identification number of the treating physician who attested to the necessity of enteral nutrition; (d) the diagnosis codes and corresponding billing codes for the enteral nutrition related benefits that were to be supplied to beneficiary.

11. The supplier would provide answers to certain questions on the DIF, depending on whether they were supplying enteral or paraenteral nutrition, in order for Medicare to gather clinical information regarding the item or service billed. For suppliers providing enteral nutrition related services, the questions included: (1) whether documentation existed in the medical record that supported the necessity of enteral nutrition (i.e. a permanent non-function of structures that permit normal food ingestion and absorption); (2) whether enteral nutrition was to be provided via tube; (3) calories per day of billed enteral services; (4) method of administration of enteral nutrition.

12. By submitting and signing the DIF, the provider certified that the contents of the form were true, correct, and complete, and that the form was prepared in compliance with the laws and regulations governing the Medicare program.

13. Medicare, through Palmetto or Cigna, would generally pay a substantial portion of the cost of the DME or related health care benefits, items, and services if they were medically necessary and ordered by licensed doctors or other licensed, qualified health care providers.

14. According to Medicare local coverage determination regulations, the supplier of enteral services must keep a detailed written order, signed and dated by the treating physician, for each item billed. In addition, the supplier must keep the DIF's for each beneficiary on record.

15. Defendant **IMEH U. EBERE (EBERE)**, a resident of Baton Rouge, Louisiana, owned, operated, and managed Golden Medical Supply and Equipment ("Golden"), a corporation organized and existing under the laws of Louisiana, doing business on Wooddale Boulevard in Baton Rouge. In documents that Golden submitted in connection with its application for a Medicare supplier number, **EBERE** is identified as Golden's "C.E.O."

16. Defendant **SHEILA R. HIVES (HIVES)**, a resident of Baton Rouge, was a sales representative, secretary and delivery employee for Golden.

17. Among other things, Golden was engaged in the business of providing power wheelchairs, diabetic supplies, and other DME to Medicare beneficiaries. Golden also provided nutritional supplements such as Boost, Ensure and Glucerna to individuals. Golden had a Medicare supplier number and was eligible to receive reimbursement from Medicare for services that Golden provided to beneficiaries, provided that such services were medically necessary and ordered by a physician.

**COUNT 1**  
**CONSPIRACY TO COMMIT HEALTH CARE FRAUD**

18. Paragraphs 1 through 17 of this Indictment are incorporated here by reference.

19. Beginning at least in or about September of 2003 and continuing through in or about November of 2011, within the Middle District of Louisiana and elsewhere, defendants **IMEH U. EBERE** and **SHEILA R. HIVES** conspired and agreed among themselves and with others known and unknown to the Grand Jury, to violate Title 18, United States Code, Section 1347, that is, in connection with the delivery of and payment for health care benefits, items, and services, 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, Medicare.

**OBJECT OF THE CONSPIRACY:**

20. It was the object of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by, among other things, (a) billing Medicare for medically unnecessary enteral nutrition services that were purportedly provided to patients who did not qualify for such services, (b) billing Medicare for enteral nutrition and related services that were never provided, (c) creating false documentation for the medically unnecessary services and for services that were never provided, in order to support the false and fraudulent claims billed to Medicare, and (d) causing the diversion of the proceeds of the fraud for the personal use and benefit of the defendants and their co-conspirators.

**MANNER AND MEANS:**

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

- a. **EBERE** would cause Golden to apply for and receive a Medicare supplier identification number.
- b. **EBERE** would maintain Golden's provider number in order to submit Medicare claims for enteral nutrition and related services that were medically unnecessary and that had not in fact been provided.
- c. **EBERE** would maintain signature authority over Golden's corporate account, Capitol One account number XXXXX1648, which **EBERE** had previously opened on Golden's behalf.
- d. **EBERE**, on Golden's behalf, would communicate and enter into agreements and contracts with various third parties, such as a company located in Texas that sold DME and related equipment and items to DME providers and another company, also located in Texas, that operates as a Medicare claim billing company.
- e. **EBERE**, on Golden's behalf, would communicate with Palmetto and Cigna regarding Golden's application for a supplier number and other issues relating to Golden's ability to submit claims to Medicare.
- f. **HIVES** would recruit Medicare beneficiaries and obtain beneficiaries' names and personal information for the purpose of facilitating Golden's filing of Medicare claims for medically unnecessary enteral nutrition.
- g. **HIVES** would communicate and correspond with treating physician's offices regarding obtaining prescriptions for nutritional supplements, which were not reimbursable by Medicare, to use as the basis for fraudulent enteral nutrition claims.

- h. **HIVES** and **EBERE** would falsify paperwork received from physicians' offices in order to fraudulently bill Medicare for enteral nutrition when no such services were prescribed by the treating physicians.
- i. **EBERE** falsified Medicare Form CMS-10126, a Form required to be submitted and kept by a supplier of enteral nutrition, attesting to the necessity of enteral nutrition for beneficiaries who, in fact, did not qualify for and did not need enteral nutrition or related services.
- j. **EBERE** would review claims to be submitted and billed to Medicare prior to their submission for completeness and accuracy. Such claims included the fraudulent billings to Medicare for enteral nutrition and related services.
- k. **HIVES** and **EBERE** would deliver cases of nutritional supplements such as Ensure to beneficiaries for whom they had billed enteral nutrition to Medicare.
- l. **EBERE** and **HIVES** would cause Golden to submit claims to Medicare for enteral nutrition and related services purportedly provided to Medicare beneficiaries, which claims falsely and fraudulently represented that (1) the services was medically necessary and had been ordered for the beneficiaries by their physicians, and (2) that the equipment reflected in the claims was in fact provided to the beneficiaries.

**OVERT ACTS:**

22. In furtherance of the conspiracy, **IMEH EBERE** and **SHEILA HIVES** and others known and unknown to the Grand Jury committed the following overt acts within the Middle District of Louisiana and elsewhere:

a. On various dates during the conspiracy, **IMEH U. EBERE AND SHEILA R. HIVES** falsified and caused to be falsified records for Medicare beneficiaries to support medically unnecessary claims for enteral nutrients, supplies and equipment. From in or about September 2003 until in or about November 2011, **EBERE** and **HIVES** submitted or caused to be submitted approximately \$807,000 in claims to Medicare for enteral nutrition.

b. On or about March 19, 2008, **IMEH U. EBERE AND SHEILA R. HIVES** falsified and caused to be falsified records for Medicare beneficiary A.D., to support a medically unnecessary claim for enteral nutrients, supplies and equipment.

c. On or about June 16, 2008, **IMEH U. EBERE AND SHEILA R. HIVES** falsified and caused to be falsified records for Medicare beneficiary Z.S., to support a medically unnecessary claim for enteral nutrients, supplies and equipment.

d. On or about July 21, 2008, **IMEH U. EBERE AND SHEILA R. HIVES** falsified and caused to be falsified records for Medicare beneficiary J.H., to support a medically unnecessary claim for enteral nutrients, supplies and equipment.

e. On or about September 22, 2008, **IMEH U. EBERE AND SHEILA R. HIVES** falsified and caused to be falsified records for Medicare beneficiary L.D.J., to support a medically unnecessary claim for enteral nutrients, supplies and equipment.

All in violation of Title 18, United States Code, Sections 1349 and 2.

**COUNTS 2 THROUGH 10**  
**HEALTH CARE FRAUD**

23. Paragraphs 1 through 22 of this Indictment are incorporated here by reference as factual allegations.

24. On or about the dates identified below, within the Middle District of Louisiana and elsewhere, the below listed defendants, and others known and unknown to the Grand Jury, aided and abetted by each other, in connection with the delivery of and payment for health care benefits, items, and services, knowingly and willfully did execute and attempt to execute a scheme and artifice to defraud 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, that is, on or about the dates identified below, the below listed defendants caused false and fraudulent claims to be submitted to Medicare:

Count	Defendants	Claim No.	Approx. Date Submitted	Beneficiary	Amount Submitted	Item(s) Claimed
2	IMEH EBERE SHEILA HIVES	07270716692000	09/27/07	R.G.	\$990	B4034 (enteral feeding supply kit, syringe fed) B4154 (enteral formula)
3	IMEH EBERE SHEILA HIVES	08030783364000	01/30/08	R.V.	\$1119	B4034 (enteral feeding supply kit, syringe fed) B4154 (enteral formula)
4	IMEH EBERE SHEILA HIVES	08057784951000	02/26/08	M.E.B.	\$734.25	B4034 (enteral feeding supply kit, syringe fed) B4154 (enteral formula)
5	IMEH EBERE SHEILA HIVES	08085796794000	03/25/08	A.D.	\$1052.50	B4034 (enteral feeding supply kit, syringe fed) B4154 (enteral formula)
6	IMEH EBERE	08171752997000	06/19/08	Z.S.	\$635.50	B4034 (enteral feeding supply kit, syringe fed) B4150 (enteral formula)

Count	Defendants	Claim No.	Approx. Date Submitted	Beneficiary	Amount Submitted	Item(s) Claimed
7	IMEH EBERE	08177788589000	06/25/08	M.B.	\$880.70	B4034 (enteral feeding supply kit, syringe fed) B4154 (enteral formula)
8	IMEH EBERE SHEILA HIVES	08210818070000	07/28/08	J.H.	\$1346	B4034 (enteral feeding supply kit, syringe fed) B4154 (enteral formula)
9	IMEH EBERE	08316741242000	11/11/08	L.D.J.	\$830	B4034 (enteral feeding supply kit, syringe fed) B4154 (enteral formula)
10	IMEH EBERE	09335704948000	12/01/09	L.J.	\$692.50	B4154 (enteral formula)

Each of the above is a violation of Title 18, United States Code, Sections 1347 and 2.

**FORFEITURE ALLEGATION**

25. Upon conviction of any of the health care offenses set forth in Counts 1 through 10 of this Indictment, the defendants, **IMEH U. EBERE** and **SHEILA R. HIVES**, shall forfeit to the United States pursuant to 18 U.S.C. § 982(a)(7), all property, real and personal, that constitutes or is derived, directly or indirectly, from gross proceeds of the violation, including but not limited to a sum of money equal to the amount of the gross proceeds of the offense.

26. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

- 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;

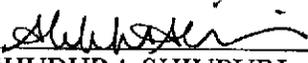
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek forfeiture of any other property of the defendants up to the value of the forfeitable property described above.

UNITED STATES OF AMERICA, by

**A TRUE BILL**

  
DONALD J. CAZAYOUX  
UNITED STATES ATTORNEY  
MIDDLE DISTRICT OF LOUISIANA

  
SHUBHRA SHIVPURI  
ASSISTANT U.S. ATTORNEY