

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
**12-20759-CR-KING/MCALILEY**  
Case No. \_\_\_\_\_

18 U.S.C. § 371  
18 U.S.C. § 982

UNITED STATES OF AMERICA

v.

ESPERANZA NEVAILLES,

Defendant.

INFORMATION

The United States Attorney charges that:

CONSPIRACY TO PAY HEALTH CARE KICKBACKS  
(18 U.S.C. § 371)

GENERAL ALLEGATIONS

At all times relevant to this Information,

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, through its agency, the Centers for Medicare and Medicaid Services (CMS), oversaw and administered Medicare. Individuals who received benefits under Medicare were commonly referred to as Medicare “beneficiaries.”
2. Medicare programs covering different types of benefits were separated into different program “parts.” Part D of Medicare subsidized the costs of prescription drugs for Medicare

beneficiaries in the United States. It was enacted as part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and went into effect on January 1, 2006.

3. In order to receive Part D benefits, a beneficiary enrolled in a Medicare drug plan. Medicare drug plans were operated by private companies approved by Medicare. Those companies were often referred to as drug plan “sponsors.” A beneficiary in a Medicare drug plan could fill a prescription at a pharmacy and use his or her plan to pay for some or all of the prescription.

4. A pharmacy could participate in Part D by entering a retail network agreement with one or more Pharmacy Benefit Managers (“PBMs”). Each PBM acted on behalf of one or more Medicare drug plans. Through a plan’s PBM, a pharmacy could join the plan’s network. When a Part D beneficiary presented a prescription to a pharmacy, the pharmacy submitted a claim to the PBM that represented the beneficiary’s Medicare drug plan. The PBM determined whether the pharmacy was entitled to payment for each claim and periodically paid the pharmacy for outstanding claims. The drug plan’s sponsor reimbursed the PBM for its payments to the pharmacy.

5. A pharmacy could also submit claims to a Medicare drug plan to whose network the pharmacy did not belong. Submission of such out-of-network claims was not common and often resulted in smaller payments to the pharmacy by the drug plan sponsor.

6. Medicare, through CMS, compensated the Medicare drug plan sponsors. Medicare paid the sponsors a monthly fee for each Medicare beneficiary of the sponsors’ plans. Such payments were called capitation fees. The capitation fee was adjusted periodically based on various factors, including the beneficiary’s medical conditions. In addition, in some cases where a sponsor’s expenses for a beneficiary’s prescription drugs exceeded that beneficiary’s capitation fee, Medicare reimbursed the sponsor for a portion of those additional expenses.

7. Medicare and Medicare drug plan sponsors were “health care benefit program[s],” as defined by Title 18, United States Code, Section 24(b).

8. In Florida, Medicare Part D is administered by Palmetto Government Benefits Administrators, LLC, which pursuant to a contract with the United States Department of Health and Human Services, serves as a contract carrier to receive, adjudicate and pay Medicare Part D claims.

9. An “Assisted Living Facility” or “ALF” is a facility licensed by the Florida Agency for Health Care Administration, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.

#### **The Defendant and Related Companies**

10. Pharmacy A, a Florida corporation, was a retail pharmacy and durable medical equipment provider located throughout Miami-Dade County, including at the following addresses: 5855 S.W. 137th Avenue, Miami, Florida 33183, and 2416 West 60th Street, Miami, Florida 33016.

11. Pharmacy B, a Florida corporation, was located in Miami-Dade County, with a principal place of business at 7035 S.W. 87th Avenue, Miami, FL 33173.

12. Defendant **ESPERANZA NEVAILLES**, was a resident of Miami-Dade County.

#### **The Conspiracy**

13. From in or around February 2011, through on or about January 9, 2012, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

#### **ESPERANZA NEVAILLES,**

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

to violate Title 42, United States Code, Section 1320a-7b(b)(2), by knowingly and willfully offering and paying remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind to any person to induce such person: to refer an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole or in part under a Federal health care program, that is, Medicare; and to purchase, lease, order, and arrange for and recommend purchasing, leasing, and ordering any good, item, and service for which payment may be made in whole and in part under a Federal health care program, that is, Medicare.

**Purpose of the Conspiracy**

14. It was a purpose of the conspiracy for defendant **ESPERANZA NEVAILLES** and her co-conspirators to unlawfully enrich themselves by paying kickbacks and bribes to ALF owners and operators, in return for beneficiary information which Pharmacy A and Pharmacy B used to submit claims to Medicare.

**Manner and Means of the Conspiracy**

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

15. **ESPERANZA NEVAILLES** was a marketer who received kickbacks and, in turn, paid and caused the payment of kickbacks to ALF owners and operators in exchange for Medicare beneficiary referrals to Pharmacy A and Pharmacy B.

16. **ESPERANZA NEVAILLES**, on behalf of Pharmacy A and Pharmacy B, paid and offered to pay ALF owners and operators \$30 for each Medicare beneficiary they referred to Pharmacy A and Pharmacy B.

17. Pharmacy A and Pharmacy B submitted claims to Medicare Part D for items and services on behalf of Medicare beneficiaries referred by the ALF owners and operators.

**Overt Acts**

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

1. On or about August 26, 2011, **ESPERANZA NEVAILLES** paid a cash kickback in the approximate amount of \$200 to an ALF owner and operator in exchange for referring Medicare beneficiaries to Pharmacy A and Pharmacy B.

2. On or about October 7, 2011, **ESPERANZA NEVAILLES** paid a cash kickback in the approximate amount of \$200 to an ALF owner and operator in exchange for referring Medicare beneficiaries to Pharmacy A and Pharmacy B.

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

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

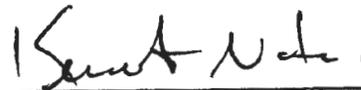
1. The allegations contained in this Information are realleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of America of certain property in which defendant **ESPERANZA NEVAILLES** has an interest.

2. Upon conviction of the offense charged in this Information, the 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. If any of the property described above, as a result of any act or omission of the defendant:

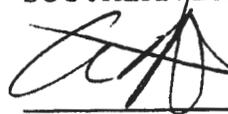
- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1). All pursuant to Title 18, United States Code, Section 982(a)(7) and the procedures outlined in Title 21, United States Code, Section 853.



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WIFREDO A. FERRER  
UNITED STATES ATTORNEY  
SOUTHERN DISTRICT OF FLORIDA



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ALLAN J. MEDINA  
TRIAL ATTORNEY  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE