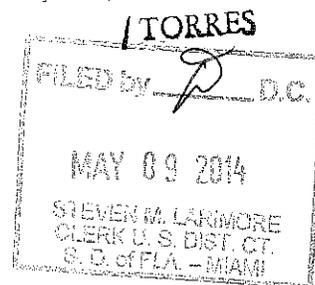


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.

14 - 20334 CR - COOKE

18 U.S.C. § 371
42 U.S.C. § 1320a-7b(b)(2)(A)
42 U.S.C. § 1320a-7b(b)(1)(A)
42 U.S.C. § 1320a-7b(b)(1)(B)
18 U.S.C. § 2
18 U.S.C. § 982



UNITED STATES OF AMERICA

vs.

ALEXANDER GONZALEZ, and
VIRGILIO ZAYAS,

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 and 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 1320a-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 beneficiaries who required home health services because of an illness or disability that caused them to be homebound. Payments for home health care medical services were typically made directly to a Medicare-certified HHA or provider based on claims submitted to the Medicare program for qualifying services that had been provided to eligible beneficiaries.

4. Home health care agencies, pharmacies, physicians, and other health care providers that provided services to beneficiaries were able to apply for and obtain a Medicare Identification Number or “provider number.” In the application, the provider acknowledged that to be able to participate in the Medicare program, the provider must comply with all Medicare related laws and regulations. A provider who was issued a Medicare Identification Number was able to file claims with Medicare to obtain reimbursement for services provided to beneficiaries. The Medicare Identification Number uniquely identified the provider on its submissions to Medicare. A Medicare claim was required to set forth, among other things, the beneficiary’s name and Medicare identification number, the services that were performed for the beneficiary, the date the services were provided, the cost of the services, and the name and identification number of the physician or other health care provider who ordered the services.

5. 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”), located in Columbia, South Carolina. 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 contracted with SafeGuard Services, a Zone Program Integrity Contractor. SafeGuard Services safeguarded the Medicare Trust Fund by reviewing HHA providers’ claims for potential fraud, waste, and/or abuse.

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 (“P.O.C.”); and
- (c) the determining physician signed a certification statement specifying that the beneficiary needed intermittent skilled nursing, 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 P.O.C.

7. Medicare paid certified HHAs a predetermined base payment for each 60 days that care was needed. This 60-day period was called an “episode of care.” The base payment was adjusted based on the health condition and care needs of the beneficiary. This adjustment was

done through the Outcome and Assessment Information Set (“OASIS”), which was a patient assessment tool for measuring and detailing the patient’s condition. If a beneficiary was still eligible for care after the end of the first episode of care, a second episode of care could commence. There were no limits to the number of episodes of home health benefits a beneficiary could receive as long as the beneficiary remained eligible.

8. In order to be reimbursed, the HHA would submit a Request for Anticipated Payment (“RAP”) and subsequently received a portion of their payment in advance at the beginning of the episode. At the end of a 60 day episode, the HHA submitted the final claim and received the remaining portion of the payment.

Record Keeping Requirements

9. 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 the patients to whom services were provided and for whom claims for reimbursement were submitted by the HHA. 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.

10. Among the written records required to document the appropriateness of home health care claims submitted under Part A of Medicare was a (i) POC that included the physician order, diagnoses, types of services/frequency of visits, prognosis/rehab 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.

11. Additionally, Medicare Part A regulations required HHAs to maintain medical records of every visit made by a nurse, therapist, or home health aide to a patient. 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 teaching and the understanding of the patient, and any changes in the patient's physical or emotional condition. The home health aide was 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 "skilled nursing progress notes" and "home health aide notes/observations."

12. Medicare regulations allowed Medicare certified HHAs to subcontract home health care services to nursing companies, 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 and Related Companies

13. Suncare Home Health Services, Inc. ("Suncare") was a corporation organized under the laws of the State of Florida and located at 7360 West 20th Avenue, Hialeah, Florida 33016. Suncare was purportedly an HHA engaged in the business of home health services to Medicare beneficiaries. Suncare had a Medicare provider number and was eligible to receive reimbursement from Medicare for home health services provided to beneficiaries.

14. Defendant **ALEXANDER GONZALEZ**, a resident of Miami-Dade County, managed and operated Suncare.

15. Defendant **VIRGILIO ZAYAS**, a resident of Miami-Dade County, was a Medicare beneficiary.

16. Individual 1 was a resident of Miami-Dade County.

COUNT 1
Conspiracy to Pay and Receive Kickbacks
(18 U.S.C. § 371)

1. Paragraphs 1 through 16 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From at least as early as in or around May of 2013, and continuing through in or around February of 2014, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

ALEXANDER GONZALEZ and
VIRGILIO ZAYAS,

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

a. to violate Title 42, United States Code, Section 1320a-7b(b)(1)(A), by knowingly and willfully soliciting and receiving any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for referring 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;

b. to violate Title 42, United States Code, Section 1320a-7b(b)(1)(B), by knowingly and willfully soliciting and receiving any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for purchasing, ordering, and arranging for and recommending purchasing and ordering any good, service, and item for which payment may be made in whole or in part under a federal health care program, that is, Medicare; and

c. to violate Title 42, United States Code, Section 1320a-7b(b)(2)(A), by knowingly and willfully offering and paying any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to a 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.

Purpose of the Conspiracy

3. It was the purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by: (1) offering, paying, soliciting and receiving kickbacks and bribes in return for referring beneficiaries to Suncare to serve as patients; (2) offering, paying, soliciting and receiving kickbacks and bribes in return for serving as patients of Suncare; and (3) using the beneficiary information to obtain payment from Medicare for home health services purportedly provided to those beneficiaries.

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 others, the following:

4. **ALEXANDER GONZALEZ** offered and paid kickbacks and bribes to patient

recruiters in return for referring beneficiaries to Suncare for home health services.

5. **VIRGILIO ZAYAS** and others solicited and accepted kickbacks and bribes for referring beneficiaries to Suncare for home health services.

6. **VIRGILIO ZAYAS** and others solicited and accepted kickbacks and bribes for serving as patients at Suncare.

7. **ALEXANDER GONZALEZ** and his co-conspirators caused Suncare to submit claims to Medicare for home health services purportedly provided to the recruited beneficiaries.

8. **ALEXANDER GONZALEZ** and his co-conspirators caused Medicare to pay Suncare based upon the claims submitted for home health services purportedly provided to the recruited beneficiaries.

Overt Acts

In furtherance of the conspiracy, and to accomplish its objects 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 June 27, 2013, **ALEXANDER GONZALEZ** paid Individual 1 approximately \$2,200 cash as a kickback for referring a Medicare beneficiary to serve as a patient at Suncare.

2. On or about July 5, 2013, **ALEXANDER GONZALEZ** paid Individual 1 approximately \$2,200 cash as a kickback for referring a Medicare beneficiary to serve as a patient at Suncare.

3. On or about July 11, 2013, **ALEXANDER GONZALEZ** paid Individual 1 approximately \$2,200 cash as a kickback for referring a Medicare beneficiary to serve as a patient at Suncare.

4. On or about July 19, 2013, **ALEXANDER GONZALEZ** paid Individual 1 approximately \$2,200 cash as a kickback for referring a Medicare beneficiary to serve as a patient at Suncare.

5. On or about July 19, 2013, **ALEXANDER GONZALEZ** paid a patient recruiter approximately \$2,200 cash as a kickback for referring a Medicare beneficiary to serve as a patient at Suncare.

6. On or about July 22, 2013, **ALEXANDER GONZALEZ** paid Individual 1 approximately \$2,200 cash as a kickback for referring a Medicare beneficiary to serve as a patient at Suncare.

7. On or about July 29, 2013, **ALEXANDER GONZALEZ** paid Individual 1 approximately \$4,400 cash as a kickback for referring Medicare beneficiaries to serve as patients at Suncare.

8. On or about November 8, 2013, **VIRGILIO ZAYAS** transported recruited Medicare beneficiaries to a clinic in order to obtain prescriptions for home health services.

9. On or about December 20, 2013, **ALEXANDER GONZALEZ** paid Individual 1 approximately \$2,200 cash as a kickback for referring a Medicare beneficiary to serve as a patient at Suncare.

10. On or about January 2, 2014, **ALEXANDER GONZALEZ** paid Individual 1 approximately \$2,200 cash as a kickback for referring a Medicare beneficiary to serve as a patient at Suncare.

11. On or about January 3, 2014, **VIRGILIO ZAYAS** received approximately \$1,300 cash as a kickback for referring a Medicare beneficiary to serve as a patient at Suncare.

12. On or about January 7, 2014, **ALEXANDER GONZALEZ** paid Individual 1

approximately \$2,200 cash as a kickback for referring a Medicare beneficiary to serve as a patient at Suncare.

13. On or about January 13, 2014, **ALEXANDER GONZALEZ** paid Individual 1 approximately \$2,200 cash as a kickback for referring a Medicare beneficiary to serve as a patient at Suncare.

14. On or about January 17, 2014, **VIRGILIO ZAYAS** received approximately \$1,500 cash as a kickback for serving as a patient at Suncare.

15. On or about January 21, 2014, **ALEXANDER GONZALEZ** paid Individual 1 approximately \$2,200 cash as a kickback for referring a Medicare beneficiary to serve as a patient at Suncare.

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

COUNTS 2-14

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

1. Paragraphs 1 through 14 and 16 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,

ALEXANDER GONZALEZ,

as specified below, did knowingly and willfully offer and pay remuneration, that is, kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to a person to induce such person 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 or in part under a Federal health care program,

that is, Medicare, as set forth below:

Count	Approx. Date	Approximate Kickback Amount
2	June 27, 2013	\$2,200
3	July 5, 2013	\$2,200
4	July 11, 2013	\$2,200
5	July 19, 2013	\$2,200
6	July 19, 2013	\$2,200
7	July 22, 2013	\$2,200
8	July 29, 2013	\$4,400
9	December 20, 2013	\$2,200
10	January 2, 2014	\$2,200
11	January 7, 2014	\$2,200
12	January 13, 2014	\$2,200
13	January 21, 2014	\$2,200
14	January 23, 2014	\$2,200

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

COUNT 15

**Receipt of Kickbacks in Connection with a Federal Health Care Program
(42 U.S.C. § 1320a-7b(b)(1)(A))**

1. Paragraphs 1 through 13 and 15 and 16 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,

VIRGILIO ZAYAS,

as specified below, did knowingly and willfully solicit and receive remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for referring 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, as set forth below:

Count	Approximate Date	Approximate Kickback Amount
15	01/03/2014	\$1,300

In violation of Title 42, United States Code, Section 1320a-7b(b)(1)(A) and Title 18, United States Code, Section 2.

COUNT 16

**Receipt of Kickbacks in Connection with a Federal Health Care Program
(42 U.S.C. § 1320a-7b(b)(1)(B))**

1. Paragraphs 1 through 13 and 15 and 16 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,

VIRGILIO ZAYAS,

as specified below, did knowingly and willfully solicit and receive remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for purchasing, ordering, and arranging for and recommending purchasing and ordering any good, service and item, for which payment may be made in whole or in part under a Federal health care

program, that is, Medicare, as set forth below:

Count	Approximate Date	Approximate Kickback Amount
16	01/17/2014	\$1,500

In violation of Title 42, United States Code, Section 1320a-7b(b)(1)(B) and Title 18, United States Code, Section 2.

FORFEITURE
(18 U.S.C. § 982 (a)(7))

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 America of certain property in which the defendants **ALEXANDER GONZALEZ** and **VIRGILIO ZAYAS** have an interest.

2. Upon conviction of any violation of Title 18, United States Code, Sections 1347, 1349 or Title 42, United States Code, Section 1320a-7b, or any conspiracy to commit such violations, as alleged in this Indictment, the defendants so convicted 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).

All pursuant to Title 18, United States Code, Section 982(a)(7), and the procedures set forth in Title 21, United States Code, Section 853, made applicable by Title 18, United States Code, Section 982(b).

A TRUE BILL
FOREPERSON



WIFREDO A. FERRER
UNITED STATES ATTORNEY



JAMES V. HAYES
ASSISTANT U.S. ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

CASE NO. 2014R00290

vs.

CERTIFICATE OF TRIAL ATTORNEY*

Alexander GONZALEZ et al.,

Defendants.

Superseding Case Information:

Court Division: (Select One)

x Miami _____ Key West _____
_____ FTL _____ WPB _____ FTP _____

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

I do hereby certify that:

- 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.
- 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.
- Interpreter: (Yes or No) Yes _____
List language and/or dialect Spanish
- This case will take 3 days for the parties to try.
- Please check appropriate category and type of offense listed below:

(Check only one)	(Check only one)
I 0 to 5 days <u>x</u>	Petty _____
II 6 to 10 days _____	Minor _____
III 11 to 20 days _____	Misdem. _____
IV 21 to 60 days _____	Felony <u>x</u>
V 61 days and over _____	

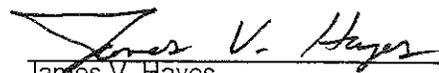
6. Has this case been previously filed in this District Court? (Yes or No) No

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
- 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 x No
 - 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 x No


James V. Hayes
ASSISTANT UNITED STATES ATTORNEY

*Penalty Sheet(s) attached

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: ALEXANDER GONZALEZ

Case No: _____

Count #:1

Conspiracy to Pay and Receive Health Care Kickbacks

Title 18, United States Code, Section 371

*Max. Penalty: Five (5) Years' Imprisonment

Counts #:2-14

Payment of Kickbacks in Connection With a Federal Health Care Program

Title 42, United States Code, Section 1320a-7b(b)(2)(A)

*Max. Penalty: Five (5) Years' Imprisonment as to each count

***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: VIRGILIO ZAYAS

Case No: _____

Count #:1

Conspiracy to Pay and Receive Health Care Kickbacks

Title 18, United States Code, Section 371

*Max. Penalty: Five (5) Years' Imprisonment

Count #15

Receipt of Kickbacks in Connection With a Federal Health Care Program

Title 42, United States Code, Section 1320a-7b(b)(1)(A)

*Max. Penalty: Five (5) Years' Imprisonment

Count #16

Receipt of Kickbacks in Connection With a Federal Health Care Program

Title 42, United States Code, Section 1320a-7b(b)(1)(B)

*Max. Penalty: Five (5) Years' Imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**