

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 14-CR-20239-MIDDLEBROOKS/GARBER

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

UNITED STATES OF AMERICA

v.

YULIANELA MARTINEZ,
LUISA CLADERA,
LEYMA SOSA,
and MIGUEL DELGADO,

Defendants.

FILED BY RB

Apr 15, 2014

STEVEN M. LARIMORE
CLERK U.S. DISTRICT CT.
S.D. OF FLA. MIAMI

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).

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 persons who already qualified for Medicare and who additionally 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. 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”). 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 first contracted with TriCenturion, a Program Safeguard Contractor. Subsequently, on December 15, 2008, CMS contracted with SafeGuard Services, a Zone Program Integrity Contractor. Both TriCenturion and 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

5. 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 (“POC”); 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 POC.

Record Keeping Requirements

6. 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.

7. Among the written records required to document the appropriateness of home health care claims submitted under Part A of Medicare were: (i) a POC that included the physician

order, diagnoses, types of services/frequency of visits, prognosis/rehabilitation 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.

8. 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."

The Defendants and Related Entity

9. Defendants **YULIANELA MARTINEZ, LUISA CLADERA, LEYMA SOSA,** and **MIGUEL DELGADO** were residents of Miami-Dade County.

10. MCDS Home Health Group, Corp. ("MCDS") was incorporated on or about July 27, 2006, and did business in Miami-Dade County, purportedly providing skilled nursing services, physical therapy, occupational therapy, and home health aide services to Medicare beneficiaries. **MIGUEL DELGADO** was listed in the corporate records as the president of MCDS.

COUNT 1
Conspiracy to Pay Health Care Kickbacks
(18 U.S.C. § 371)

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

2. Beginning in or around September 2009, and continuing through in or around February 2012, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

YULIANELA MARTINEZ,
LUISA CLADERA,
LEYMA SOSA,
and
MIGUEL DELGADO,

did willfully, that is, with the intent to further the object of the conspiracy, and knowingly combine, conspire, confederate and agree with others known and unknown to the Grand Jury, to commit an offense against the United States, that is, to violate Title 42, United States Code, Section 1320a-7b(b)(2)(A), by knowingly and willfully offering and paying any remuneration, including any kickback and bribe, directly and indirectly, overtly and covertly, in cash and in kind, including by check, 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 and 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 and paying kickbacks and bribes to recruiters for the referral of Medicare beneficiaries to MCDS so that the beneficiaries' Medicare numbers would serve as the bases of claims filed with Medicare for home health care services; and (2) submitting

their co-conspirators purported to provide 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 object and purpose of the conspiracy included, among other things, the following:

4. **YULIANELA MARTINEZ, LUISA CLADERA, LEYMA SOSA, and MIGUEL DELGADO** offered and paid kickbacks to co-conspirator patient recruiters in cash and check in return for referring Medicare beneficiaries to MCDS for home health services.

5. **YULIANELA MARTINEZ, LUISA CLADERA, LEYMA SOSA, and MIGUEL DELGADO** and their co-conspirators gave checks from the accounts of MCDS to individuals who would cash the checks for a fee, and return the remaining cash to **MARTINEZ, CLADERA, SOSA, and DELGADO** and their co-conspirators to pay patient recruiters. The checks would often be made payable to a straw company established by the individual and used to cash checks.

6. **YULIANELA MARTINEZ, LUISA CLADERA, LEYMA SOSA, and MIGUEL DELGADO** and their co-conspirators caused MCDS to submit claims to Medicare for home health services purportedly provided to the recruited Medicare beneficiaries.

7. **YULIANELA MARTINEZ, LUISA CLADERA, LEYMA SOSA, and MIGUEL DELGADO** and their co-conspirators caused Medicare to pay MCDS based upon the home health services purportedly provided to Medicare beneficiaries.

OVERT ACTS

In furtherance of the conspiracy, and to accomplish its object and purpose, at least one co-conspirator 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 October 9, 2009, **YULIANELA MARTINEZ, LUISA CLADERA,**

LEYMA SOSA, and **MIGUEL DELGADO** paid and caused to be paid to a patient recruiter a kickback through MCDS check No. 2128 in the approximate amount of \$6,600.

2. On or about October 9, 2009, **MIGUEL DELGADO** signed MCDS check No. 2128.

3. On or about October 13, 2009, **YULIANELA MARTINEZ, LUISA CLADERA, LEYMA SOSA**, and **MIGUEL DELGADO** paid and caused to be paid to a patient recruiter a kickback through MCDS check No. 2130 in the approximate amount of \$3,300.

4. On or about November 2, 2009, **YULIANELA MARTINEZ, LUISA CLADERA, LEYMA SOSA**, and **MIGUEL DELGADO** paid and caused to be paid to a patient recruiter a kickback through MCDS check No. 2253 in the approximate amount of \$1,650.

5. On or about January 27, 2010, **YULIANELA MARTINEZ, LUISA CLADERA, LEYMA SOSA**, and **MIGUEL DELGADO** paid and caused to be paid to a patient recruiter a kickback through MCDS check No. 2746 in the approximate amount of \$1,500.

6. On or about January 27, 2010, **MIGUEL DELGADO** signed MCDS check No. 2746.

7. On or about March 24, 2010, **YULIANELA MARTINEZ, LUISA CLADERA, LEYMA SOSA**, and **MIGUEL DELGADO** paid and caused to be paid to a patient recruiter a kickback through MCDS check No. 3128 in the approximate amount of \$1,600.

8. On or about May 17, 2010, **YULIANELA MARTINEZ, LUISA CLADERA, LEYMA SOSA**, and **MIGUEL DELGADO** paid and caused to be paid to a patient recruiter a kickback through MCDS check No. 3471 in the approximate amount of \$1,450.

9. On or about February 12, 2011, **LUISA CLADERA** cashed MCDS check No. 10402 in the approximate amount of \$3,000.

10. On or about April 8, 2011, **LEYMA SOSA** incorporated and caused to be

incorporated DMD Management Services Inc., which received numerous checks from MCDS.

11. On or about April 8, 2011, **YULIANELA MARTINEZ** incorporated and caused to be incorporated CMA Healthcare Solutions, Corp., which received numerous checks from MCDS.

12. On or about August 12, 2011, **YULIANELA MARTINEZ, LUISA CLADERA, LEYMA SOSA, and MIGUEL DELGADO** paid and caused to be paid to a patient recruiter a kickback through MCDS check No. 10946 in the approximate amount of \$1,800.

13. On or about August 12, 2011, **MIGUEL DELGADO** signed MCDS check No. 10946.

14. On or about September 12, 2011, **YULIANELA MARTINEZ, LUISA CLADERA, LEYMA SOSA, and MIGUEL DELGADO** paid and caused to be paid to a patient recruiter a kickback through MCDS check No. 11019 in the approximate amount of \$1,800.

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

COUNTS 2-7

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

1. Paragraphs 1 through 10 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 defendants,

**YULIANELA MARTINEZ,
LUISA CLADERA,
LEYMA SOSA,
and
MIGUEL DELGADO,**

did knowingly and willfully offer and pay any remuneration, including any kickback and bribe, directly and indirectly, overtly and covertly, in cash and in kind, including by check, as set forth

below, 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 and in part under a federal health care program, that is, Medicare:

Count	Approximate Date	Approximate Kickback Amount
2	10/09/2009	\$6,600
3	10/13/2009	\$3,300
4	01/27/2010	\$1,500
5	05/17/2010	\$1,450
6	08/12/2011	\$1,800
7	09/12/2011	\$1,800

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(a)(7))

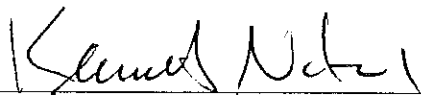
1. The allegations contained in this Indictment are re-alleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of America of certain property in which one or more of the defendants, **YULIANELA MARTINEZ, LUISA CLADERA, LEYMA SOSA, and MIGUEL DELGADO**, has an interest.

2. Upon conviction of any violation alleged in this Indictment, the defendant so convicted shall forfeit to the United States of America any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violation, pursuant to Title 18, United States Code, Section 982(a)(7).

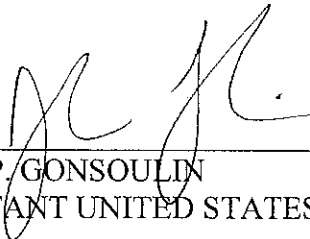
All pursuant to Title 18, United States Code, Section 982(a)(7); and the procedures set forth at Title 21, United States Code, Section 853, as made applicable through Title 18, United States Code, Section 982(b)(1).

A TRUE BILL

FOREPERSON



WIFREDO A. FERRER
UNITED STATES ATTORNEY



JOHN P. GONSOULIN
ASSISTANT UNITED STATES ATTORNEY