

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA) No.
)
 v.) Violation: Title 18, United States
) Code, Sections 1347 and 1035(a)(2)
BARRY FISCHER)

COUNT ONE

The SPECIAL SEPTEMBER 2014 GRAND JURY charges:

1. At times material to this Indictment:

a. Medicare was a Federal health care benefit program, as defined in Title 18, United States Code, Section 24(b), that provided free and below-cost health care benefits, including, among other things, medically necessary physician visits to patients' homes and in-home health care services for persons who were confined to their homes. The Centers for Medicare and Medicaid Services, also known as CMS, was a federal agency within the United States Department of Health and Human Services, which administered the Medicare program through its contractors.

b. Enrolled providers of medical services to Medicare recipients were eligible for reimbursement for covered medical services. By becoming a participating provider in Medicare, enrolled providers agreed to abide by the rules, regulations, policies and procedures governing reimbursement.

c. Physicians used a uniform system of coding to report professional services. The American Medical Association published the Physicians' Current Procedural Terminology Manual which set forth numeric codes that defined the procedural and medical

requirements that needed to be met in order to bill for a particular service. Each claim form had to contain the code identifying the service provided to a patient on a particular date.

d. For a patient covered by Medicare to be eligible to receive home visits that would be paid for by Medicare, there must have been a medical necessity for the home visit to be made in lieu of an office or outpatient visit.

e. Home health agencies that are enrolled providers of medical services to Medicare recipients can bill Medicare for skilled nursing services that the agencies provided to patients if, among other things, the patients are confined to the home and if the services are medically necessary.

f. For a patient covered by Medicare to be eligible to receive home health care services that would be paid for by Medicare, a physician was required to approve the patient's plan of care, and to certify on a Home Health Certification and Plan of Treatment, sometimes referred to as a Form 485, that the patient was confined to his or her home, was under the physician's care, and needed the services authorized on the Form 485. In addition, the certifying physician was required to document that a qualifying face-to-face visit with the patient was completed.

g. Defendant BARRY FISCHER was a physician who was licensed in Illinois, was an enrolled provider of medical services to Medicare recipients, and was an independent contractor for Home Visiting Physician Company A, which was located in the Northern District of Illinois and which arranged for physicians to provide home visits to patients and to provide certifications that patients were confined to the home to various home health agencies. Defendant FISCHER received payment from Home Visiting Physician Company A

based on a percentage of the medical billings that he generated for Home Visiting Physician Company A.

h. Home Health Agency A, Home Health Agency B, Home Health Agency C, Home Health Agency D, and Home Health Agency E, each located in the Northern District of Illinois, referred patients to Home Visiting Physician Company A and sought authorization from Home Visiting Physician Company A for skilled nursing services that those agencies billed to Medicare.

2. Beginning no later than January 2011 and continuing through March 2014, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did participate in a scheme to defraud a health care benefit program affecting commerce, as defined by Title 18, United States Code, Section 24(b), namely Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money under the custody and control of that program in connection with the delivery of and payment for health care benefits and services, which scheme is further described below.

3. It was part of the scheme that defendant BARRY FISCHER participated in a scheme to bill claims for medically unnecessary services, namely, physician home visits with patients that FISCHER knew were not medically necessary in lieu of an office or outpatient visit because the patients were not confined to their homes.

4. It was further part of the scheme that, in order to increase and maintain his patient population and thus the number of home visits that could be billed to Medicare as well as his compensation, defendant FISCHER signed Form 485s in which he falsely certified patients as confined to their homes, under his care, and as requiring skilled nursing services, knowing that

patients were not confined to their homes, did not require skilled nursing services, and were not under his care.

5. It was further part of the scheme that defendant FISCHER provided false information in patient charts, including statements that patients were “homebound,” in order to make it appear that there was a medical necessity for his home visits and to support his false certifications of patients for home health services, even though he knew that the patients were not confined to the home or homebound.

6. It was further part of the scheme that by falsely certifying patients as confined to the home or homebound, defendant FISCHER caused claims to be submitted by home-health agencies, including Home Health Agency A, Home Health Agency B, Home Health Agency C, Home Health Agency D, and Home Health Agency E, to Medicare seeking payment for home health services that were not medically necessary and that were provided to patients who were not confined to the home or homebound.

7. As a result of the scheme, defendant FISCHER caused losses to Medicare in the form of payments to Home Visiting Physician Company A and payments to various home-health agencies, including more than \$28,000 in payments to Home Health Agency D regarding Patient LG, more than \$24,000 in payments to Home Health Agency F regarding Patient RM, more than \$13,000 in payments to Home Health Agency B regarding Patient EF, more than \$11,000 in payments to Home Health Agency A regarding Patient JR, more than \$4,000 in payments to Home Health Agency A regarding Patient JW, and more than \$3,000 in payments to Home Health Agency C regarding Patient DF, knowing that each of the patients was not confined to the home or homebound and that each did not need the services that were billed to Medicare as per FISCHER’s orders.

8. It was further part of the scheme that defendant FISCHER did misrepresent, conceal and hide, and cause to be misrepresented, concealed and hidden, the acts done and the purposes of acts done in furtherance of the scheme.

9. On or about May 16, 2012, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully execute the scheme by causing to be submitted to Medicare a claim by Home Visiting Physician Company A seeking payment for a home visit by FISCHER with Patient EF on or about May 10, 2012 that did not qualify for payment because, as defendant knew, there was no medical necessity for the visit and no medical necessity for the home visit in lieu of an office or outpatient visit;

In violation of Title 18, United States Code, Section 1347.

COUNT TWO

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraphs 1 through 8 of Count One of this Indictment are incorporated here.
2. On or about July 31, 2012, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully execute the scheme by causing to be submitted to Medicare a claim by Home Visiting Physician Company A seeking payment for a home visit by FISCHER with Patient DF on or about July 26, 2012 that did not qualify for payment because, as defendant knew, there was no medical necessity for the visit and no medical necessity for the home visit in lieu of an office or outpatient visit;

In violation of Title 18, United States Code, Section 1347.

COUNT THREE

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraphs 1 through 8 of Count One of this Indictment are incorporated here.

2. On or about November 16, 2012, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully execute the scheme by causing to be submitted to Medicare a claim by Home Visiting Physician Company A seeking payment for a home visit by FISCHER with Patient LG on or about November 14, 2012 that did not qualify for payment because, as defendant knew, there was no medical necessity for the visit and no medical necessity for the home visit in lieu of an office or outpatient visit;

In violation of Title 18, United States Code, Section 1347.

COUNT FOUR

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraphs 1 through 8 of Count One of this Indictment are incorporated here.
2. On or about July 29, 2013, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully execute the scheme by causing to be submitted to Medicare a claim by Home Visiting Physician Company A seeking payment for a home visit by FISCHER with Patient RM on or about July 24, 2013 that did not qualify for payment because, as defendant knew, there was no medical necessity for the visit and no medical necessity for the home visit in lieu of an office or outpatient visit;

In violation of Title 18, United States Code, Section 1347.

COUNT FIVE

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraphs 1 through 8 of Count One of this Indictment are incorporated here.
2. On or about March 15, 2012, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully execute the scheme by causing to be submitted to Medicare a claim seeking payment for skilled nursing services that were provided by Home Health Agency A to Patient JR from on or about December 19, 2011 through on or about February 16, 2012 that did not qualify for payment because, as defendant knew, the patient was not confined to the home and the services were not medically necessary;

In violation of Title 18, United States Code, Section 1347.

COUNT SIX

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraphs 1 through 8 of Count One of this Indictment are incorporated here.
2. On or about March 23, 2012, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully execute the scheme by causing to be submitted to Medicare a claim seeking payment for skilled nursing services that were provided by Home Health Agency A to Patient JW from on or about October 26, 2011 through on or about December 24, 2011 that did not qualify for payment because, as defendant knew, the patient was not confined to the home and the services were not medically necessary;

In violation of Title 18, United States Code, Section 1347.

COUNT SEVEN

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraphs 1 through 8 of Count One of this Indictment are incorporated here.
2. On or about July 9, 2011, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully execute the scheme by causing to be submitted to Medicare a claim seeking payment for skilled nursing services provided by Home Health Agency B to Patient EF from on or about May 2, 2011 through on or about June 30, 2011 that did not qualify for payment because, as defendant knew, the patient was not confined to the home and the services were not medically necessary;

In violation of Title 18, United States Code, Section 1347.

COUNT EIGHT

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraphs 1 through 8 of Count One of this Indictment are incorporated here.
2. On or about July 26, 2012, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully execute the scheme by causing to be submitted to Medicare a claim seeking payment for skilled nursing services provided by Home Health Agency B to Patient EF from on or about May 23, 2012 through on or about July 21, 2012 that did not qualify for payment because, as defendant knew, the patient was not confined to the home and the services were not medically necessary;

In violation of Title 18, United States Code, Section 1347.

COUNT NINE

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraphs 1 through 8 of Count One of this Indictment are incorporated here.
2. On or about August 24, 2012, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully execute the scheme by causing to be submitted to Medicare a claim seeking payment for skilled nursing services provided by Home Health Agency C to Patient DF from on or about May 27, 2012 through on or about July 25, 2012 that did not qualify for payment because, as defendant knew, the patient was not confined to the home and the services were not medically necessary;

In violation of Title 18, United States Code, Section 1347.

COUNT TEN

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraphs 1 through 8 of Count One of this Indictment are incorporated here.
2. On or about March 18, 2013, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully execute the scheme by causing to be submitted to Medicare a claim seeking payment for skilled nursing services provided by Home Health Agency D to Patient LG from on or about October 16, 2012 through on or about December 14, 2012 that did not qualify for payment because, as defendant knew, the patient was not confined to the home and the services were not medically necessary;

In violation of Title 18, United States Code, Section 1347.

COUNT ELEVEN

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraphs 1 through 8 of Count One of this Indictment are incorporated here.
2. On or about November 7, 2013, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully execute the scheme by causing to be submitted to Medicare a claim seeking payment for skilled nursing services provided by Home Health Agency E to Patient LG from on or about September 4, 2013 through on or about October 28, 2013 that did not qualify for payment because, as defendant knew, the patient was not confined to the home and the services were not medically necessary;

In violation of Title 18, United States Code, Section 1347.

COUNT TWELVE

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraphs 1 through 8 of Count One of this Indictment are incorporated here.

2. On or about November 14, 2013, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully execute the scheme by causing to be submitted to Medicare a claim seeking payment for skilled nursing services provided by Home Health Agency F to Patient RM from on or about September 12, 2013 through on or about November 10, 2013 that did not qualify for payment because, as defendant knew, the patient was not confined to the home and the services were not medically necessary;

In violation of Title 18, United States Code, Section 1347.

COUNT THIRTEEN

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraph 1 of Count One of this Indictment is incorporated here.
2. On or about June 2011, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully make and cause to be made a materially false, fictitious, and fraudulent statement and representation, and make and cause to be made a materially false writing and document, knowing the same to contain a materially false, fictitious, and fraudulent statement and representation, in a matter involving a health care benefit program in connection with the payment for health care benefits and services, namely, statements on a form entitled "MD Certification for Home Health Care Services" that Patient EF was homebound and needed skilled nursing services, when defendant knew these statements were false;

In violation of Title 18, United States Code, Section 1035(a)(2).

COUNT FOURTEEN

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraph 1 of Count One of this Indictment is incorporated here.
2. On or about December 30, 2011, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully make and cause to be made a materially false, fictitious, and fraudulent statement and representation, and make and cause to be made a materially false writing and document, knowing the same to contain a materially false, fictitious, and fraudulent statement and representation, in a matter involving a health care benefit program in connection with the payment for health care benefits and services, namely, statements that Patient JR was confined to her home and was under FISCHER's care on a Form 485 ordering services by Home Health Agency A for Patient JR from on or about December 19, 2011 through on or about February 16, 2012, when defendant knew these statements were false;

In violation of Title 18, United States Code, Section 1035(a)(2).

COUNT FIFTEEN

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraph 1 of Count One of this Indictment is incorporated here.
2. On or about November 7, 2011, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully make and cause to be made a materially false, fictitious, and fraudulent statement and representation, and make and cause to be made a materially false writing and document, knowing the same to contain a materially false, fictitious, and fraudulent statement and representation, in a matter involving a health care benefit program in connection with the payment for health care benefits and services, namely, a statement that Patient JW was confined to his home and was under FISCHER's care on a Form 485 ordering services by Home Health Agency A for Patient JW from on or about October 26, 2011 through on or about December 24, 2011, when defendant knew these statements were false;

In violation of Title 18, United States Code, Section 1035(a)(2).

COUNT SIXTEEN

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraph 1 of Count One of this Indictment is incorporated here.
2. On or about May 10, 2012, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully make and cause to be made a materially false, fictitious, and fraudulent statement and representation, and make and cause to be made a materially false writing and document, knowing the same to contain a materially false, fictitious, and fraudulent statement and representation, in a matter involving a health care benefit program in connection with the payment for health care benefits and services, namely, a statement on a form entitled “MD Certification for Home Health Care Services” that Patient EF was homebound because she had an “inability to carry out” activities of daily living “without assistance,” when defendant knew these statement was false;

In violation of Title 18, United States Code, Section 1035(a)(2).

COUNT SEVENTEEN

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraph 1 of Count One of this Indictment is incorporated here.
2. On or about May 30, 2012, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully make and cause to be made a materially false, fictitious, and fraudulent statement and representation, and make and cause to be made a materially false writing and document, knowing the same to contain a materially false, fictitious, and fraudulent statement and representation, in a matter involving a health care benefit program in connection with the payment for health care benefits and services, namely, a statement that Patient DF was confined to his home on a Form 485 ordering services by Home Health Agency C for Patient DF from on or about May 27, 2012 through on or about July 25, 2012, when defendant knew these statement was false;

In violation of Title 18, United States Code, Section 1035(a)(2).

COUNT EIGHTEEN

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraph 1 of Count One of this Indictment is incorporated here.
2. On or about October 15, 2012, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully make and cause to be made a materially false, fictitious, and fraudulent statement and representation, and make and cause to be made a materially false writing and document, knowing the same to contain a materially false, fictitious, and fraudulent statement and representation, in a matter involving a health care benefit program in connection with the payment for health care benefits and services, namely, a statement on a form entitled “MD Certification for Home Health Care Services” that Patient LG was homebound because he had “significant decreased endurance and severe knee pain that resulted to difficulty in ambulation” and that Patient LG required “considerable taxing effort” to leave the home, when defendant knew these statements were false;

In violation of Title 18, United States Code, Section 1035(a)(2).

COUNT NINETEEN

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraph 1 of Count One of this Indictment is incorporated here.
2. On or about September 13, 2013, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully make and cause to be made a materially false, fictitious, and fraudulent statement and representation, and make and cause to be made a materially false writing and document, knowing the same to contain a materially false, fictitious, and fraudulent statement and representation, in a matter involving a health care benefit program in connection with the payment for health care benefits and services, namely, a statement that Patient LG was confined to his home and under his care on a Form 485 ordering services by Home Health Agency E for Patient LG from on or about September 4, 2013 through on or about October 28, 2013, when defendant knew these statements were false;

In violation of Title 18, United States Code, Section 1035(a)(2).

COUNT TWENTY

The SPECIAL SEPTEMBER 2014 GRAND JURY further charges:

1. Paragraph 1 of Count One of this Indictment is incorporated here.
2. On or about November 27, 2013, in the Northern District of Illinois, Eastern Division, and elsewhere,

BARRY FISCHER,

defendant herein, did knowingly and willfully make and cause to be made a materially false, fictitious, and fraudulent statement and representation, and make and cause to be made a materially false writing and document, knowing the same to contain a materially false, fictitious, and fraudulent statement and representation, in a matter involving a health care benefit program in connection with the payment for health care benefits and services, namely, a statement that Patient RM was confined to his home on a Form 485 ordering services by Home Health Agency F for Patient RM from on or about November 11, 2013 through on or about January 9, 2014, when defendant knew these statement was false;

In violation of Title 18, United States Code, Section 1035(a)(2).

A TRUE BILL:

FOREPERSON

UNITED STATES ATTORNEY