

WK:PEN
F. #2018R01192

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

YONG JUN KIM,

Defendant.

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THE GRAND JURY CHARGES:

At all times relevant to this Indictment, unless otherwise indicated:

I. Background

A. The Medicare Program

1. The Medicare program ("Medicare") was a federal health care program providing benefits to persons who were at least 65 years old or disabled. Medicare was administered by the Centers for Medicare and Medicaid Services ("CMS"), a federal agency under the United States Department of Health and Human Services ("HHS"). Individuals who received benefits under Medicare were referred to as Medicare "beneficiaries." Physicians who provided services to beneficiaries or ordered that services be provided to beneficiaries were referred to as "rendering physicians."

2. Medicare was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b).

INDICTMENT

Cr. No. **CR 18 320**
(T. 18, U.S.C., §§ 982(a)(7), 982(b), 1349,
2 and 3551 et seq.; T. 21, U.S.C., § 853(p);
T. 42, U.S.C., §1320a-7b(b)(2)(A)) **ROSS, J.**

BLOOM, M.J.

3. Medicare included coverage under two primary components, hospital insurance ("Medicare Part A") and medical insurance ("Medicare Part B"). Medicare Part B covered the costs of physicians' services and outpatient care, including physical therapy, occupational therapy, chiropractic services and diagnostic tests. Generally, Medicare Part B covered these costs only if, among other requirements, they were medically necessary and ordered by a physician.

4. In order to bill Medicare for the cost of treating Medicare beneficiaries and providing related benefits, items and services, medical providers were required to apply for and receive a provider identification number ("PIN") or provider transaction access number ("PTAN"). The PIN/PTAN allowed medical providers to submit bills, known as claims, to Medicare to obtain reimbursement for the cost of treatment and related health care benefits, items and services that they had supplied and provided to beneficiaries.

5. A medical provider was required to be enrolled in Medicare in order to submit claims. In order to enroll in the Medicare program, a medical provider was required to enter into an agreement with CMS in which the provider agreed to comply with all applicable statutory, regulatory and program requirements for reimbursement from Medicare. By signing the Medicare enrollment application, the provider certified that the provider understood that payment of a claim was conditioned on the claim and the underlying transaction complying with Medicare regulations, Medicare program instructions, and the law, and on the provider's compliance with all applicable conditions of participation in Medicare.

6. Medical providers were authorized to submit claims to Medicare only for services they actually rendered to the patient, and were required to maintain patient records verifying the provision of services.

7. To receive reimbursement from Medicare for covered services and items, medical providers were required to submit claims, either electronically or in writing, through Form CMS-1500 or Form UB-92. Both claim forms required certain information identifying the medical provider submitting the claim, the medical provider rendering the service, the referring physician, the patient and the services rendered. Both claim forms required the provider to certify, among other things, that the services were medically necessary, actually rendered to the beneficiary and not induced by payment of a kickback.

8. Providers submitted claims to Medicare using billing codes, also called current procedural terminology or "CPT" codes, which specifically identified the medical services provided to beneficiaries.

B. The Relevant Company and the Defendant

9. The defendant YONG JUN KIM was a licensed physician whose specialty was internal medicine. From approximately June 2012 through January 2015, KIM was a participant in the Medicare program.

10. My Health Wellness Center ("My Wellness") was a New York medical practice solely operated by the defendant YONG JUN KIM. My Wellness maintained an office at 33-27 Farrington Street, Suite One, Flushing, New York.

II. The Fraudulent Scheme

11. Between approximately June 2012 and January 2015, the defendant YONG JUN KIM, together with others, agreed to execute and executed a fraudulent scheme at My Wellness to enrich himself and others by submitting and causing to be submitted to Medicare claims for physical therapy even though physical therapy services were not medically necessary, often were not provided and otherwise did not qualify for reimbursement.

12. The defendant YONG JUN KIM, together with others, submitted and caused to be submitted false and fraudulent claims to Medicare reflecting that physical therapy had been provided to beneficiaries by licensed physical therapists. In fact, such services either had not been provided or had not been provided in the amount claimed; instead, Medicare beneficiaries were typically ushered to unlicensed persons for things such as massages and the application of heat packs, or to acupuncturists for acupuncture treatments, all of which were services not eligible for reimbursement by Medicare.

13. The defendant YONG JUN KIM, together with others, made and caused to be made kickback payments to beneficiaries in the form of supermarket coupons with a cash value. These payments were made to induce beneficiaries to continue to receive such things as massages, heat packs and acupuncture at My Wellness for which claims for reimbursement of physical therapy services were submitted to Medicare.

COUNT ONE

(Conspiracy to Commit Health Care Fraud)

14. The allegations contained in paragraphs one through 13 are realleged and incorporated as if fully set forth in this paragraph.

15. In or about and between June 2012 and January 2015, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant YONG JUN KIM, together with others, did knowingly and willfully conspire and attempt to execute a scheme and artifice to defraud a health care benefit program, as defined by Title 18, United States Code, Section 24(b), to wit: 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, in connection with the delivery of and payment for health care benefits, items and services, contrary to Title 18, United States Code, Section 1347.

(Title 18, United States Code, Sections 1349 and 3551 et seq.)

COUNT TWO
(Health Care Kickbacks)

16. The allegations contained in paragraphs one through 13 are realleged and incorporated as if fully set forth in this paragraph.

17. In or about and between June 2012 and January 2015, both dates being approximate and inclusive, within the Eastern District of New York, the defendant YONG JUN KIM, together with others, did knowingly and willfully offer and pay kickbacks, directly and indirectly, overtly and covertly, to one or more persons to induce such persons to refer one or more Medicare beneficiaries to My Wellness for the furnishing of and arranging for the furnishing of items and services for which payment may be made in whole and in part under Medicare.

(Title 42, United States Code, Section 1320a-7b(b)(2)(A); Title 18, United States Code, Sections 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION

18. The United States hereby gives notice to the defendant that, upon his conviction of either of the offenses charged herein, the government will seek forfeiture in accordance with Title 18, United States Code, Section 982(a)(7), which requires any person convicted of a federal health care offense to forfeit property, real or personal, that constitutes, or is derived directly or indirectly from, gross proceeds traceable to the commission of such offenses.

19. If any of the above-described forfeitable property, 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;


it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Sections 982(a)(7) and 982(b); Title 21, United States Code, Section 853(p))

A TRUE BILL


FOREPERSON

RICHARD P. DONOGHUE
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK


BY _____
ACTING UNITED STATES ATTORNEY
PURSUANT TO 28 C.F.R. O.136