

Chief Approval CR

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:11-cr-115-30MAP

THADDEUS M.S. BEREDAY

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by W. Stephen Muldrow, Acting United States Attorney for the Middle District of Florida, and the defendant, Thaddeus M.S. Bereday, and the attorneys for the defendant, Morris (Sandy) Weinberg, Jr., Jack Fernandez and D. Lee Fugate, mutually agree as follows:

A. Particularized Terms

1. Count Pleading To

The defendant shall enter a plea of guilty to Count Five of the Indictment. Count Five charges the defendant with false statement relating to a health care matter, in violation of 18 U.S.C. § 1035(a)(2).

2. Maximum Penalties

Count Five carries a maximum sentence of 5 years imprisonment, a fine of \$250,000, or twice the gross gain caused by the offense, or twice the gross loss caused by the offense, whichever is greater, a

Defendant's Initials

TB

term of supervised release of 3 years, and a special assessment of \$100 per felony count for individuals. With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offense, and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offense, or to the community, as set forth below.

3. Elements of the Offense

The defendant acknowledges understanding the nature and elements of the offense with which defendant has been charged and to which defendant is pleading guilty. The elements of Count Five are:

- First: the defendant made the statement as charged;
- Second: the statement was false;
- Third: the falsity concerned a material matter;
- Fourth: the defendant acted willfully, knowing that the statement was false;
- Fifth: the false statement was made in connection with the delivery of and payment for health care benefits, items, and services; and
- Sixth: the false statement was made in a matter involving a health care benefit program.

Defendant's Initials 

4. Counts Dismissed

At the time of sentencing, the remaining counts against the defendant, Counts One through Four and Counts Six through Nine, will be dismissed pursuant to Fed. R. Crim. P. 11(c)(1)(A).

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement.

6. Mandatory Restitution to Victim of Offense of Conviction

Pursuant to 18 U.S.C. § 3663A(a) and (b), defendant agrees to make full restitution to any victim(s), including the State of Florida's Agency For Health Care Administration ("AHCA").

7. Guidelines Sentence

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States will recommend to the Court that the defendant be sentenced within the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines, as adjusted by any departure the United States has agreed to recommend in this plea agreement. The parties understand that such a recommendation is not binding on the Court and that,

if it is not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

8. Acceptance of Responsibility - Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG §3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant complies with the provisions of USSG §3E1.1(b) and all terms of this Plea Agreement, including but not limited to, the timely submission of the financial affidavit referenced in Paragraph B.5., the United States agrees to file a motion pursuant to USSG §3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the

Defendant's Initials

TV

Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. The defendant further understands that compliance with any restitution payment plan imposed by the Court in no way precludes the United States from simultaneously pursuing other statutory remedies for collecting restitution (28 U.S.C. § 3003(b)(2)), including, but not limited to, garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied.

Defendant's Initials  _____

On each count to which a plea of guilty is entered, the Court shall impose a special assessment pursuant to 18 U.S.C. § 3013. To ensure that this obligation is satisfied, the Defendant agrees to deliver a check or money order to the Clerk of the Court in the amount of \$100.00, payable to "Clerk, U.S. District Court" within ten days of the change of plea hearing.

The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense to which the defendant is pleading provides for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Immigration Consequences of Pleading Guilty

The defendant has been advised and understands that, upon conviction, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

Defendant's Initials



4. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

5. Intended Loss

In accordance with USSG Section 2B1.1(b)(1) and Application Note 3, the defendant will not dispute for sentencing purposes that the intended loss to the Florida Medicaid program resulting from the false HealthEase Worksheet submission (for calendar year 2006) was approximately \$4,489,303.

6. Financial Disclosures

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit to the United States Attorney's Office within 30 days of execution of this agreement an

Defendant's Initials 

affidavit reflecting the defendant's financial condition. The defendant promises that his financial statement and disclosures will be complete, accurate and truthful and will include all assets in which he has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, dependent, nominee or other third party. The defendant further agrees to execute any documents requested by the United States needed to obtain from any third parties any records of assets owned by the defendant, directly or through a nominee, and, by the execution of this Plea Agreement, consents to the release of the defendant's tax returns for the previous five years. The defendant similarly agrees and authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court. The defendant expressly authorizes the United States Attorney's Office to obtain current credit reports in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

Defendant's Initials B

7. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

8. Defendant's Waiver of Right to Appeal the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly

Defendant's Initials



waives the right to appeal defendant's sentence on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

9. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

10. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

11. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the

Defendant's Initials 

attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

12. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt.

Defendant's Initials _____



FACTS

At all times material to the Indictment filed in this case:

The Health Care Benefit Program

a. The Medicaid program, as established by Title XIX of the Social Security Act and Title 42 of the Code of Federal Regulations, authorized Federal grants to States for medical assistance to low-income persons age 65 and over, blind, disabled, or members of families with dependent children or qualified pregnant women or children (herein referred to as "Medicaid beneficiaries" or "Medicaid recipients"). The Centers for Medicare and Medicaid Services ("CMS"), previously known as the Health Care Finance Administration, or HCFA, was an agency of the United States Department of Health and Human Services ("HHS"), and was the federal government body responsible for the administration of the Medicaid program. CMS, in turn, authorized each state to establish a state agency to oversee the Medicaid program.

b. The Florida Medicaid Program was a "health care benefit program" as defined under 18 U.S.C. § 24(b), and was authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. Florida further established the Agency for Health Care Administration

("AHCA") as the single state agency authorized to administer the Florida Medicaid program.

c. It was necessary for the states electing to participate in the Medicaid program to comply with the requirements imposed by the Social Security Act and regulations of the Secretary of HHS. 42 C.F.R. § 430.1.

d. The federal government reimbursed the states for a portion of the states' Medicaid expenditures based on a formula tied to the per capita income in each state. The federal share of Medicaid expenditures (otherwise referred to as "federal financial participation" or "FFP"), varied from a minimum of approximately 50% to as much as approximately 83% of a state's total Medicaid expenditures. 42 U.S.C. § 139d(b); 42 C.F. R. § 433.10. In Florida, the FFP equaled approximately 59% of the state's total Medicaid expenditures.

e. Certain health care practitioners, health care facilities, or health care plans that met the conditions of participation and eligibility requirements and that were enrolled in Medicaid could provide, and be reimbursed for rendering, Medicaid-covered services to Medicaid beneficiaries.

f. There were several ways in which reimbursement was made to health care providers, of which capitation reimbursement was one. Capitation

reimbursement applied to health maintenance organizations (“HMOs”) and certain other providers. Said HMOs and providers were paid a fixed amount each month for each beneficiary or member (per capita) enrolled to receive services from that HMO or provider.

Relevant Background

g. Generally, through its subsidiaries, Wellcare Health Plans, Inc. (“WellCare”), a legal entity created under Delaware law, operated as a provider of managed health care services, targeted to government-sponsored health care programs, focusing on Medicaid and Medicare.

h. Among other business activities, WellCare provided Medicaid services in a number of states, including Florida. WellCare was paid independently by each state’s Medicaid program to provide managed care services to Medicaid beneficiaries residing in that state.

i. WellCare was one of the largest providers of managed care services in Florida, where it enrolled Medicaid patients into one of its two HMO plans, Wellcare of Florida, Inc. (formerly known as Well Care HMO, Inc., and doing business as StayWell Health Plan of Florida, referred to herein as “Staywell”) and HealthEase of Florida, Inc. (“HealthEase”). Both Staywell and HealthEase were wholly-owned subsidiaries of WellCare and legal entities created under Florida law.

j. To govern aspects of providing additional Florida Medicaid program services, that is, certain behavioral health care services, to Florida Medicaid beneficiaries, F.S. 409.912(4)(b) was enacted, effective June 7, 2002. That statute prescribed, in pertinent part, that contracts issued pursuant to F.S. 409.912(4)(b) would include a requirement that: (1) 80 percent of the related capitation paid to a particular managed care plan—including HMOs—be expended for the provision of behavioral health services; and (2) in the event the managed care plan expended less than 80 percent of the capitation paid for the provision of behavioral health services, the plan was required to return the difference to AHCA. The relevant AHCA contract provision is referred to herein as the “80/20 provision.”

k. To facilitate the reporting of expenditures relating to providing behavioral health care services, AHCA’s Bureau of Managed Care sent each participating Florida Medicaid HMO, including the WellCare HMO HealthEase, a worksheet titled Financial Worksheet For Behavioral Healthcare (the “Behavioral Healthcare Worksheet” or “Worksheet”). The Worksheet was organized in a manner to calculate and present to AHCA the amount of expenditures by an HMO for providing certain behavioral health care services, as well as the amount of any refund due AHCA under the relevant 80/20 provision.

False Statement Relating to a Health Care Matter

1. Defendant Bereday began working at WellCare in or around November 2002. During his employment with Wellcare, Bereday served in the following positions and/or designations, among others: (1) Senior Vice President, General Counsel, Secretary, and Chief Compliance Officer of WellCare; and (2) Secretary, Vice President, and Director of HealthEase and Staywell.

m. As WellCare's General Counsel and a Director of the WellCare HMOs HealthEase and Staywell, Bereday was familiar with and understood the AHCA-HMO contracts' 80/20 provision.

n. Pursuant to the 80/20 provision, AHCA's Bureau of Managed Care sent a Behavioral Healthcare Worksheet to HealthEase in February 2007, to facilitate both the HMO's reporting of certain behavioral health care services expenditures and the HMO's payment to the Florida Medicaid program of any refund due for calendar year 2006. The Behavioral Healthcare Worksheet arrived under a cover letter clarifying that, in completing the Worksheet, HealthEase was to report only expenditures for a specific list of behavioral health care services, delineated in the cover letter.

o. Defendant Bereday, in his role as a WellCare executive (along with others at WellCare), oversaw the completion and submission to the

Florida Medicaid program of the Behavioral Healthcare Worksheet for HealthEase for calendar year 2006. In that regard, defendant Bereday sent a March 16, 2007 email to certain WellCare executives directing that HealthEase was not to submit the final, completed Behavioral Healthcare Worksheet to the Florida Medicaid program until Bereday (and CFO Paul Behrens) signed off on the document.

p. HealthEase submitted its 2006 Behavioral Healthcare Worksheet to the Florida Medicaid program in April 2007. That Worksheet listed \$14,668,012.00 as the amount expended by HealthEase during 2006 for the delineated set of behavioral health care services.

q. However, the \$14,668,012 amount specified in HealthEase's 2006 Behavioral Healthcare Worksheet was a false material fact that defendant Bereday and others at WellCare knew to be false when the Worksheet was submitted to the Florida Medicaid program.

r. Thus, defendant Bereday, along with others, knowingly and willfully caused the submission of HealthEase's false 2006 Behavioral Healthcare Worksheet to the Florida Medicaid program as alleged in Count Five of the indictment.

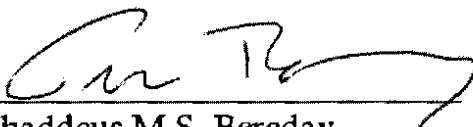
13. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

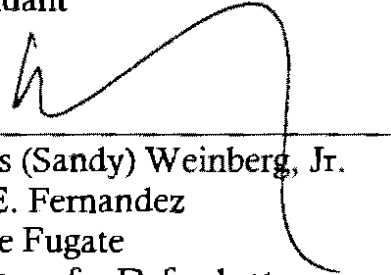
14. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

DATED this 21st day of June, 2017.



Thaddeus M.S. Bereday
Defendant

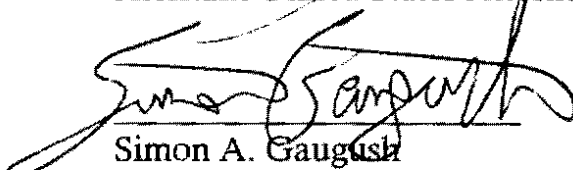


Morris (Sandy) Weinberg, Jr.
Jack E. Fernandez
D. Lee Fugate
Attorneys for Defendant

W. STEPHEN MULDROW
Acting United States Attorney



Jay G. Trezevant
Assistant United States Attorney



Simon A. Gaugush
Assistant United States Attorney
Chief, Economic Crimes Section