

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA	:	FACTUAL BASIS
	:	
V.	:	
	:	
TRACIE YVETTE CLAY	:	1:14CR261-1

NOW COMES the United States of America, by and through Ripley Rand, United States Attorney for the Middle District of North Carolina, and as a factual basis under Rule 11, Federal Rules of Criminal Procedure, states the following:

The United States would present the following evidence at trial:

I. BACKGROUND

A. NC BEHAVIORAL HEALTH AND COUNSELING SERVICES, INC.

From approximately November 2010 through March 2011, TRACIE YVETTE CLAY worked at a company in Raleigh, North Carolina, which was a Medicaid provider of behavioral health services. While employed at this company, TRACIE YVETTE CLAY's duties included submitting electronic claims for reimbursement for services provided to Medicaid recipients. While submitting claims to Medicaid for this company, TRACIE YVETTE CLAY had access to E.N.G.'s unique individual Medicaid provider number, xxx70. E.N.G. was a psychologist.

On February 23, 2011, NC Behavioral Health and Counseling Services, Inc., (hereinafter "NC Behavioral") was incorporated with

the North Carolina Secretary of State. TRACIE YVETTE CLAY was listed as the initial registered agent and the sole incorporator. TRACIE YVETTE CLAY's signature and title "Pres-CEO" appeared in the Articles. A signed handwritten statement was also filed with the Articles of Incorporation. The statement read "This entity will not offer professional services. All professional services will be contracted to the appropriate professionals. This entity is for administrative purposes only." TRACIE YVETTE CLAY's signature appeared under this statement.

NC Behavioral had offices at 1921 North Pointe Drive, Suite 150, Durham, North Carolina, in the Middle District of North Carolina and 2915 Raeford Rd, Fayetteville, North Carolina. NC Behavioral submitted an application to become a Medicaid provider to the Division of Medical Assistance (DMA) of the North Carolina Department of Health and Human Services, in which NC Behavioral sought approval to deliver outpatient behavioral health services. As part of that application, TRACIE YVETTE CLAY submitted a Provider Enrollment Form and a Provider Administrative Participation Agreement.

In the Provider Enrollment Form dated February 21, 2011, TRACIE YVETTE CLAY was listed as owning 100% of NC Behavioral. In the Provider Administrative Participation Agreement dated February 28, 2011, TRACIE YVETTE CLAY listed the physical address of NC Behavioral as 1921 North Pointe Drive, Suite 150, Durham, North

Carolina, 27705. TRACIE YVETTE CLAY signed the agreement and listed her title as "Pres-CEO." The provider agreement required NC Behavioral to maintain records for a minimum of six years from the date of service and to make available complete and accurate records that fully justified and disclosed the extent of services furnished and claims submitted.

On February 28, 2011, NC Behavioral also submitted an Electronic Claims Submission (ECS) Agreement. When approved by DMA, this agreement would allow NC Behavioral to submit paperless claims via the internet to DMA for reimbursement. TRACIE YVETTE CLAY signed the application and listed her title as "Pres-CEO."

An organization provider, such as NC Behavioral, is not permitted to submit claims to the Medicaid program without a qualified professional's individual provider number. An organization provider was required to list on its ESC Agreement each of the individual providers for whom it would submit claims. NC Behavioral's ECS Agreement listed only one individual provider, E.N.G. The ECS Agreement also listed E.N.G.'s unique individual Medicaid provider number and what appeared to be E.N.G.'s signature.

Under the ECS Agreement, NC Behavioral was required to maintain all original source documents related to each claim submitted electronically for five years after the date of submission and furnish such documentation upon request by DMA, the

State Auditor, or the North Carolina Attorney General's Office.

On April 7, 2011, TRACIE YVETTE CLAY opened a joint bank account, account number xxx4098, at Branch Banking and Trust with another individual. The depositors' address was listed as 1921 North Pointe Drive, Durham, North Carolina 27705.

On April 7, 2011, NC Behavioral also opened a corporate bank account, account number xxx4241, at Branch Banking and Trust. TRACIE YVETTE CLAY was listed as "Pres-CEO."

NC Behavioral was approved to electronically submit claims for reimbursement via the North Carolina Electronic Claims Submission Website. TRACIE YVETTE CLAY was issued a unique username and password that allowed her to access the system and electronically submit claims.

On May 26, 2011, TRACIE YVETTE CLAY submitted to DMA's fiscal agent a signed "North Carolina Medicaid Electronic Funds Transfer (EFT) Authorization Agreement for Automatic Deposits," directing DMA's fiscal agent to directly deposit NC Behavioral's reimbursement payments into Branch Banking and Trust joint account xxx4098.

On June 8, 2011, a new signature card was completed for NC Behavioral's corporate bank account, account number xxx4241 in which TRACIE YVETTE CLAY was listed as "PRES-CEO."

On June 8, 2011, NC Behavioral opened a second corporate bank account, account number xxx2834, at Branch Banking and Trust. Two

signature cards were submitted on that day. On both signature cards TRACIE YVETTE CLAY was listed as "PRES CEO."

On June 20, 2011, TRACIE YVETTE CLAY submitted to DMA's fiscal agent a signed "North Carolina Medicaid Electronic Funds Transfer (EFT) Authorization Agreement for Automatic Deposits," directing DMA's fiscal agent to directly deposit NC Behavioral's reimbursement payments into Branch Banking and Trust Account xxx4241 from that point forward.

#### B. MEDICAID PROGRAM

The Medicaid Program was enacted by Congress on July 30, 1965, under Title XIX of the Social Security Act. The Medicaid Act, Title 42, United States Code, Section 1396 et seq., established the Medicaid program, which provided medical assistance to low-income Americans, particularly children. The Medicaid program covered, among other things, the cost of outpatient doctor visits, lab tests, other diagnostic tests and mental health services. The Medicaid program in the State of North Carolina was administered by the Division of Medical Assistance. A substantial portion of the DMA budget was funded by the United States Department of Health and Human Services. The Medicaid program is a health care benefit program as defined by 18 U.S.C. 24 which affected interstate commerce.

In connection with receipt of services reimbursable under the Medicaid program, all Medicaid recipients were assigned a unique

alphanumeric identifier, known as a Medicaid Identification Number.

An organization Medicaid provider was allowed to submit claims for services provided by individual Medicaid providers that were formally affiliated with the organization provider. An organization Medicaid provider declared on its ECS Agreement which individual Medicaid providers were affiliated with it by listing the names and unique individual Medicaid provider numbers of all affiliated individual Medicaid providers.

Once approved to submit claims electronically, a Medicaid provider was provided a unique username and password. With the username and password, a provider was able to submit claims through a website that could be accessed via the internet.

On each claim, an organization Medicaid provider was required to list its organization Medicaid provider number for the site where services were provided, the individual Medicaid provider number of the professional responsible for delivering services, and the unique personal Medicaid identification number of the recipient who received the services.

Each claim submitted to the Medicaid program was also required to identify a diagnosis code and a billing code. A billing code was a unique code used by the medical profession to describe a specific service performed by the Medicaid provider. Providers were required to use standardized Current Procedural Terminology (CPT) or Healthcare Common Procedure Coding System (HCPCS) codes.

CPT codes were developed and maintained by the American Medical Association.

CPT Code 96101 described psychological testing, per hour of the psychologist's or physician's time, including both face-to-face time administering tests to the patient and the time involved in interpreting these tests and preparing the report. HCPCS Code H0004 described fifteen minutes of behavioral health counseling or therapy. HCPCS Code H0031 described fifteen minutes of mental health assessment.

#### C. SCHEME

The defendant submitted or caused to be submitted claims for mental health treatment to the Medicaid program for "clients" who never received services. In many cases, the Medicaid clients were not familiar with the defendant or NC Behavioral and did not know their Medicaid identification numbers were being used. Case agents conducted twenty-three interviews in the Durham area. Many of those interviewed were parents or guardians who had multiple children for whom NC Behavioral had submitted claims. Therefore, the twenty-three interviews covered sixty of NC Behavioral's alleged Medicaid clients. Twenty-two of the interviewees, covering fifty-six clients, did not know their family members' Medicaid identification numbers were used by the defendant and her company. Those twenty-two interviewees were unfamiliar with the defendant and NC Behavioral and were unaware as to how the defendant obtained

their families' Medicaid identification numbers. Many of the interviewees' family members had never received any mental health counseling from any provider. Many of the interviewees' family members had never received a mental health diagnosis from any health care provider. One of the twenty-three interviewed was familiar with NC Behavioral and indicated that four of her family members did receive services from NC Behavioral. Investigation revealed this interviewee was related to a close friend and occasional employee of NC Behavioral.

The defendant also used the provider Medicaid identification number of Dr. E.N.G. who stated she had never worked for NC Behavioral. Dr. E.N.G. was not aware how the defendant obtained Dr. E.N.G.'s Medicaid provider number. The defendant, during the time period of January 2011 to March 28, 2012, received payment of approximately one million dollars on claims using Dr. E.N.G.'s Medicaid provider number. Investigators reviewed the bank accounts of NC Behavioral and found no checks or wire payments to Dr. E.N.G.

On April 25, 2012, auditors from the North Carolina Division of Medicaid Assistance visited NC Behavioral but the defendant failed to produce documentation to support Medicaid billings. On May 29, 2012, financial investigators for the North Carolina Attorney General's Medicaid Investigation Division visited the Durham office of NC Behavioral and requested records pursuant to a "Request for Records." The defendant failed to provide the

requested documentation even though her provider agreement with the Medicaid program required retention of records for at least five years as well as allowing access to records by Medicaid auditors.

#### D. PAYROLL

A review of bank and payroll records showed very little "payroll" for NC Behavioral except for payments to TRACIE YVETTE CLAY, her son, and a close personal friend. NC Behavioral received approximately \$1.1 million in payments from the Medicaid program. However, a review of payroll records provided by NC Behavioral's payroll company, ADP, shows only \$2,177 in wages or payments to licensed clinical personnel. TRACIE CLAY, her son, and the close personal friend do not hold any clinical licenses. TRACIE CLAY received \$114,000 in checks made payable to her. Additionally, the bank records show cash withdrawals of \$159,917. Medicaid health care providers typically are not "cash" businesses.

#### E. PERSONAL EXPENSES

Additionally, \$50,030 from the NC Behavioral business account was spent on home furnishings and residential rent or mortgage payments. Bank and business records show \$218,761 was spent on cars and jewelry. A financial analysis of the bank account revealed that approximately \$907,992 of the account funds were used for personal and not business purposes. Bank account records also reveal that \$55,106 from the business account was spent on clothing, shoes and accessories.

F. COUNT ONE

On or about June 2, 2011, the defendant submitted claims for allegedly providing mental health services to Medicaid client D.Q. for the period January 3, 2011, until February 23, 2011. The claims were submitted using the individual provider number of Dr. E.N.G. thereby indicating that Dr. E.N.G. had supervised the delivery of these services causing a loss of approximately \$1,251.60. In fact, Dr. E.N.G. did not provide or supervise these services to D.Q.

G. COUNT THREE

During the period March 10, 2011, until on or about March 7, 2012, the defendant submitted claims to the Medicaid program for allegedly providing mental health assessments and therapy to client J.B. Client J.B. was interviewed and did not even know the defendant or NC Behavioral. In fact, J.B. had never received a mental health diagnosis. The defendant was paid approximately \$3,222.14 by the Medicaid program in connection with these false claims.

H. COUNT FIFTEEN

On or about April 6, 2012, the defendant wrote a check for \$70,595 payable to "Hendrick Durham Auto Mall" for the purpose of purchasing a 2011 Cadillac Escalade. The check was drawn on the Branch Banking and Trust account number XXX4241 of NC Behavioral

Health and Counseling Services. Account XXX4241 received approximately \$1,090,918.98 in electronic payments from the Medicaid program from July 2011 until July 2012. In fact, this account received an electronic deposit from Medicaid on March 30, 2012, of \$71,041.73, which is only a week before the check was written. The defendant was listed on the signature card for this account as "Pres/CEO." Branch Banking and Trust is a financial institution, as defined by 18 U.S.C. 20, which affected commerce because it has branches in many states and receives currency from the Federal Reserve System. The funds used to purchase the vehicle were the proceeds of the health care fraud wired into account number XXX4241.

This, the 28th day of August, 2014.

Respectfully submitted,

RIPLEY RAND  
United States Attorney

/s/ ROBERT M. HAMILTON  
Assistant United States Attorney  
LASB #1400  
P.O. Box 1858  
Greensboro, NC 27402

336/333-5351

