

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

**16-20462**

Case No. \_\_\_\_\_

18 U.S.C. § 371  
42 U.S.C. § 1320a-7b(b)(1)(A)  
42 U.S.C. § 1320a-7b(b)(1)(B)  
18 U.S.C. § 2  
18 U.S.C. § 982(a)(7)

**CR-MORENO**

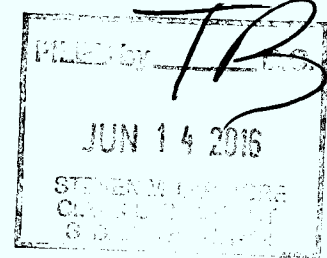
**/O'SULLIVAN**

**UNITED STATES OF AMERICA**

vs.

**CARLOS F. VALENCIA,  
REYNALDO CUBILLA,  
EVELIO LINARES,  
ZOILA MIRANDA,  
JACINTO MONTENEGRO,  
ROSA M. CABRERA,  
FRANCISCO ORAMAS,  
a/k/a "Pancho,"  
FRANCISCO HERNANDEZ,  
ELECTO PENA,  
EPIFANIA GONZALEZ, and  
JOSEFINA CARIDAD FORNELLS,**

**Defendants.**



**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), and a Federal health care program as defined by Title 42, United States Code, Section 1320a-7b(f).

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 ("P.O.C."); and
- (c) the determining physician signed a certification statement specifying that the beneficiary needed intermittent skilled nursing, physical therapy, speech therapy, or had 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 P.O.C.

#### **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 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 a: (i) P.O.C. that included the physician order, diagnoses, types of services/frequency of visits, prognosis/rehab 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."

9. Medicare regulations allowed Medicare certified HHAs to subcontract home health care services to nursing companies, therapy staffing services agencies, registries, or groups (nursing groups), which would bill the certified home health agency. The Medicare certified HHA would, in turn, bill Medicare for all services rendered to the patient. The HHA's

professional supervision over subcontracted-for services required the same quality controls and supervision as of its own salaried employees.

**The Defendants and a Related Company**

10. D'Val Home Health Agency, Inc. (hereinafter "D'Val") was incorporated on or about September 28, 2007, and did business in Miami-Dade County, purportedly providing skilled nursing services and home health aide services to Medicare beneficiaries that required home health services. In or around March of 2010, D'Val began providing services to Medicare beneficiaries. In or around March of 2010, D'Val became a Medicare-certified HHA and submitted claims directly to Medicare under Medicare provider number 109325.

11. Defendant **CARLOS F. VALENCIA**, a resident of Miami-Dade County, was the owner D'Val Home Health Agency.

12. Defendant **REYNALDO CUBILLA**, a resident of Miami-Dade County, was a Medicare beneficiary.

13. Defendant **EVELIO LINARES**, a resident of Miami-Dade County, was a Medicare beneficiary.

14. Defendant **ZOILA MIRANDA**, a resident of Miami-Dade County, was a Medicare beneficiary.

15. Defendant **JACINTO MONTENEGRO**, a resident of Miami-Dade County, was a Medicare beneficiary.

16. Defendant **ROSA M. CABRERA**, a resident of Miami-Dade County, was a Medicare beneficiary.

17. Defendant **FRANCISCO ORAMAS**, a/k/a "**Pancho**," a resident of Miami-Dade County, was a Medicare beneficiary.

18. Defendant **FRANCISCO HERNANDEZ**, a resident of Miami-Dade County, was a Medicare beneficiary.

19. Defendant **ELECTO PENA**, a resident of Miami-Dade County, was a Medicare beneficiary.

20. Defendant **EPIFANIA GONZALEZ**, a resident of Miami-Dade County, was a Medicare beneficiary.

21. Defendant **JOSEFINA CARIDAD FORNELLS**, a resident of Miami-Dade County, was a Medicare beneficiary.

22. Individual 1 was a resident of Miami-Dade County.

23. Individual 2 was a resident of Miami-Dade County.

**COUNT ONE**

**Conspiracy to Defraud the United States and Pay and Receive Healthcare Kickbacks  
(18 U.S.C. § 371)**

1. Paragraphs 1 through 23 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around February of 2015, and continuing through in or around March of 2016, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**CARLOS F. VALENCIA,  
REYNALDO CUBILLA,  
EVELIO LINARES,  
ZOILA MIRANDA,  
JACINTO MONTENEGRO,  
ROSA M. CABRERA,  
FRANCISCO ORAMAS,  
FRANCISCO HERNANDEZ,  
ELECTO PENA,  
EPIFANIA GONZALEZ, and  
JOSEFINA CARIDAD FORNELLS,**

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, and agree with each other, and others known and unknown to the Grand Jury, to commit certain offenses against the United States, that is:

a. to defraud the United States by impairing, impeding, obstructing, and defeating through deceitful and dishonest means, the lawful government functions of the United States Department of Health and Human Services in its administration and oversight of the Medicare program, in violation of Title 18, United States Code, Section 371; and to commit certain offenses against the United States, that is;

b. to violate Title 42, United States Code, Section 1320a-7b(b)(1)(A), by knowingly and willfully soliciting and receiving any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for referring 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 or in part by a Federal health care program, that is, Medicare;

c. to violate Title 42, United States Code, Section 1320a-7b(b)(1)(B), by knowingly and willfully soliciting and receiving any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for purchasing, ordering, and arranging for and recommending purchasing and ordering any good, facilitates service, and item for which payment may be made in whole or in part by a Federal health care program, that is, Medicare; and

d. to violate Title 42, United States Code, Section 1320a-7b(b)(2)(A), by knowingly and willfully offering and paying any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to a 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 by 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, paying, soliciting and receiving kickbacks and bribes in return for referring beneficiaries to D'Val to serve as patients; (2) submitting and causing the submission of claims to Medicare for home health services purportedly provided to the recruited beneficiaries.

**Manner and Means of the Conspiracy**

The manner and means by which the defendants and their co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among others, the following:

4. **CARLOS F. VALENCIA** offered and paid kickbacks and bribes to patient recruiters in return for referring beneficiaries to D'Val to serve as patients.

5. **FRANCISCO ORAMAS**, and others, solicited and accepted kickbacks and bribes for referring beneficiaries to D'Val to serve as patients.

6. **REYNALDO CUBILLA, EVELIO LINARES, ZOILA MIRANDA, JACINTO MONTENEGRO, ROSA M. CABRERA, FRANCISCO ORAMAS, FRANCISCO HERNANDEZ, ELECTO PENA, EPIFANIA GONZALEZ, JOSEFINA CARIDAD FORNELLS**, and others, solicited and received kickbacks and bribes in exchange for serving as patients at D'Val HHA.



7. **CARLOS F. VALENCIA**, and others, submitted and caused the submission of claims to Medicare for Home Health Services purportedly provided by D'Val.

8. **CARLOS F. VALENCIA**, and others caused Medicare to pay D'Val based upon the claims submitted for home health services provided to Medicare beneficiaries, purportedly using the beneficiaries' information.

**Overt Acts**

In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one of the co-conspirators 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 February 26, 2015, **REYNALDO CUBILLA** and **EVELIO LINARES** received a kickback in the approximate amount of \$200 for serving as patients.

2. On or about April 2, 2015, **FRANCISCO ORAMAS** received a kickback in the approximate amount of \$600 for referring **ZOILA MIRANDA**, **JACINTO MONTENEGRO**, and **ROSA M. CABRERA** to serve as patients.

3. On April 21, 2015, Individual 2 paid Individual 1 the approximate amount of \$3,450 as a kickback for referring **EVELIO LINARES**, **REYNALDO CUBILLA**, and **FRANCISCO ORAMAS** to serve as patients.

4. On or about April 21, 2015, **FRANCISCO HERNANDEZ** received a kickback in the approximate amount of \$1600 for serving as a patient.

5. On or about April 21, 2015, **REYNALDO CUBILLA** received a kickback in the approximate amount of \$1300 for serving as a patient.

6. On or about April 21, 2015, **EVELIO LINARES** received a kickback in the approximate amount of \$1300 for serving as a patient.

approximate amount of \$1300 for serving as a patient.

7. On or about June 22, 2015, **FRANCISCO ORAMAS** received a kickback in the approximate amount of \$930 for referring patients and for serving as a patient.

8. On or about June 22, 2015, **ZOILA MIRANDA** received a kickback in the approximate amount of \$760 for serving as a patient.

9. On or about June 22, 2015, **EPIFANIA GONZALEZ** received a kickback in the approximate amount of \$760 for serving as a patient.

10. On or about June 22, 2015, **ELECTO PENA** received a kickback in the approximate amount of \$760 for serving as a patient.

11. On or about June 22, 2015, **JACINTO MONTENEGRO** received a kickback in the approximate amount of \$760 for serving as a patient.

12. On or about June 22, 2015, **ROSA M. CABRERA** received a kickback in the approximate amount of \$760 for serving as a patient.

13. On or about June 22, 2015, **JOSEFINA CARIDAD FORNELLS** received a kickback in the approximate amount of \$760 for serving as a patient.

14. On or about June 23, 2015, **CARLOS F. VALENCIA** agreed with Individual 1 to pay a kickback in the approximate amount of \$1200 for each Medicare beneficiary to be referred as a patient for home health services.

15. On or about July 1, 2015, **ZOILA MIRANDA** received a kickback in the approximate amount of \$3000.

16. On or about July 10, 2015, **FRANCISCO HERNANDEZ** received a kickback in the approximate amount of \$200 for serving as a patient.

17. On or about August 5, 2015, **FRANCISCO HERNANDEZ** received a kickback in the approximate amount of \$1200 for serving as a patient.

18. On or about August 28, 2015, **CARLOS F. VALENCIA** paid Individual 1 a kickback in the approximate amount of \$1200 for referring Medicare beneficiaries, including **FRANCISCO HERNANDEZ**, to serve as patients.

19. On or about March 25, 2016, Individual 1 met with **FRANCISCO ORAMAS, JOSEFINA CARIDAD FORNELLS, EPIFANIA GONZALEZ, REYNALDO CUBILLA, JACINTO MONTENEGRO, EVELIO LINARES, and FRANCISCO HERNANDEZ**, and discussed receiving kickbacks for serving as patients for home health services.

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

**COUNTS 2-5**

**Receipt of Kickbacks in Connection with a Federal Health Care Program  
(42 U.S.C. § 1320a-7b(b)(1)(A))**

1. Paragraphs 1 through 23 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 defendant,

**FRANCISCO ORAMAS,**

did knowingly and willfully solicit and receive remuneration, including any kickback and bribe, directly and indirectly, overtly and covertly, in cash and in kind, in return for referring an individual to a person for the furnishing and arranging for the furnishing of any item and service, that is, home health services, for which payment may be made in whole and in part by a Federal health care program, that is, Medicare, as set forth below:

<b>Count</b>	<b>Approximate Date</b>	<b>Approximate Kickback Amount</b>
2	04/02/2015	\$1,800
3	04/21/2015	\$3,450
4	04/23/2015	\$900
5	06/22/2015	\$5,490

In violation of Title 42, United States Code, Section 1320a-7b(b)(1)(A), and Title 18, United States Code, Section 2.

**COUNTS 6-16**

**Receipt of Kickbacks in Connection with a Federal Health Care Program  
(42 U.S.C. § 1320a-7b(b)(1)(B))**

1. Paragraphs 1 through 23 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 set forth below as to each count, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant, as specified below, did knowingly and willfully solicit and receive remuneration, including any kickback and bribe, directly and indirectly, overtly and covertly, in cash and in kind, in return for purchasing, leasing, ordering, and arranging for and recommending purchasing, leasing and ordering of any good, facilitates service and item, for which payment may be made in whole and in part by a Federal health care program, that is, Medicare, as set forth below:

Count	Defendant	Approximate Date	Approximate Kickback Amount
6	REYNALDO CUBILLA	02/26/2015	\$200
7	EVELIO LINARES	02/26/2015	\$200
8	ELECTO PENA	04/23/2015	\$200
9	JOSEFINA CARIDAD FORNELLS	04/23/2015	\$200
10	EPIFANIA GONZALEZ	04/23/2015	\$200
11	ELECTO PENA	06/22/2015	\$760
12	JACINTO MONTENEGRO	06/22/2015	\$760
13	FRANCISCO ORAMAS	06/22/2015	\$930
14	ZOILA MIRANDA	06/22/2015	\$760
15	FRANCISCO HERNANDEZ	07/10/2015	\$200
16	FRANCISCO HERNANDEZ	08/05/2015	<del>\$1400</del> \$1200 <i>NSL</i>

In violation of Title 42, United States Code, Section 1320a-7b(b)(1)(B), and Title 18, United States Code, Section 2.

**FORFEITURE**  
**(18 U.S.C. § 982(a)(7))**

1. The allegations of 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 defendants, **CARLOS F. VALENCIA, REYNALDO CUBILLA, EVELIO LINARES, ZOILA MIRANDA, JACINTO MONTENEGRO, ROSA M.**

**CABRERA, FRANCISCO ORAMAS, a/k/a “Pancho,” FRANCISCO HERNANDEZ, ELECTO PENA, EPIFANIA GONZALEZ, and JOSEFINA CARIDAD FORNELLS,** have an interest.

2. Upon conviction of a conspiracy to commit any violation of Title 42, United States Code, Section 1320a-7b, alleged in this Indictment, each defendant so convicted shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(7), any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such offense.

3. The property which is subject to criminal forfeiture includes, but is not limited to, the following: approximately \$2,731,575 (US), which is a sum of money equal in value to the property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense alleged in this Indictment.

4. If any of the property described above, as a result of any act or omission of a 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 of America to seek forfeiture of substitute property, pursuant to Title 21, United States Code, Section 853(p).

All pursuant to Title 18, United States Code, Section 982(a)(7), Title 28, United States Code, Section 2461(c), 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

for   
\_\_\_\_\_  
MICHAEL B. NADLER  
ASSISTANT UNITED STATES ATTORNEY