

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No.

**16-20413 CR-MORENO**

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)

/O'SULLIVAN

UNITED STATES OF AMERICA

vs.

NOEMI RODRIGUEZ,

Defendant.

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**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.

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.

5. Physicians, clinics and other health care providers, including HHAs, that provided services to Medicare beneficiaries were able to apply for and obtain a “provider number.” A health care provider that received a Medicare provider number was able to file claims with Medicare to obtain reimbursement for services provided to beneficiaries. A Medicare claim was

required to set forth, among other things, the beneficiary's name and Medicare information number, the services that were performed for the beneficiary, the date that the services were provided, the cost of the services, and the name and provider number of the physician or other health care provider who ordered the services.

### **Part A Coverage and Regulations**

#### **Reimbursements**

6. 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 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**

7. 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.

8. 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.

9. Medicare Part A regulations required provider HHAs to maintain medical records of every visit made by a nurse, therapist, and home health aide to a beneficiary. 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 instruction provided to the patient and the understanding of the patient, and any changes in the patient's physical or emotional condition. The home health nurse, therapist, and aide were 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 "clinical notes" and "home health aide notes/observations."

10. 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.

11. The basic requirement that the beneficiary be confined to the home or be homebound was a continuing requirement for a Medicare beneficiary to receive home health benefits. For example, Medicare paid for insulin injections by an HHA when a beneficiary was determined to be unable to inject his/her own insulin and the beneficiary had no available caregiver able or willing to inject the beneficiary.

#### **The Defendant, Related Companies and Individuals**

12. U.S. Care Network, Inc. ("U.S. Care") was incorporated on or about September 7, 2005, with its principal place of business in Miami-Dade County, in the Southern District of Florida.

13. Defendant **NOEMI RODRIGUEZ**, a resident of Miami-Dade County, was the President and Vice President of U.S. Care beginning on or about September 7, 2005.

14. Heartbeat Home Health Agency, Inc. ("Heartbeat HH") was incorporated on or about August 23, 2006, with its principal place of business in Miami-Dade County, in the Southern District of Florida.

15. Miller Home Care, Inc. ("Miller HH") was incorporated on or about February 1, 2008, with its principal place of business in Miami-Dade County, in the Southern District of Florida.

16. Maya Home Health Care, Inc. ("Maya HH") was incorporated on or about September 28, 2004, with its principal place of business in Miami-Dade County, in the Southern District of Florida.

17. Floridian Home Health Care Corp. (“Floridian HH”) was incorporated on or about November 21, 2007 with its principal place of business in Miami-Dade County, in the Southern District of Florida.

18. Cira Fonseca, a resident of Miami-Dade County, was an owner or operator of Heartbeat HH.

19. Marlen Trujillo, a resident of Miami-Dade County, was an owner or operator of Miller HH, Maya HH, and Floridian HH.

20. Antonio Suarez, a resident of Miami-Dade County, was an owner or operator of Miller HH, Maya HH, and Floridian HH.

**COUNT 1**  
**Conspiracy to Defraud the United States and Receive Health Care Kickbacks**  
**(18 U.S.C. § 371)**

1. Paragraphs 1 through 20 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 September of 2010, and continuing through in or around March of 2013, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

**NOEMI RODRIGUEZ,**

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with Cira Fonseca, Marlen Trujillo, Antonio Suarez 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 or arranging for the furnishing of items and services for which payment may be made in whole or in part under a Federal health care program, that is, Medicare; and
- 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, leasing, ordering, and arranging for and recommending purchasing, leasing, and ordering any good, facility, service, and item for which payment may be made in whole and in part under a Federal health care program, that is, Medicare.

### **PURPOSE OF THE CONSPIRACY**

3. It was the purpose of the conspiracy for the defendant and her co-conspirators to unlawfully enrich themselves by: (1) soliciting and receiving kickbacks and bribes from co-conspirator home health clinic owners in return for referring Medicare beneficiaries to serve as patients at Miami-Dade County home health agencies, including Maya HH, Miller HH, Floridian HH, and Heartbeat HH; (2) soliciting and receiving kickbacks and bribes from co-conspirator home health clinic owners in return for providing prescriptions for home health care services; and (3) submitting and causing the submission of claims to Medicare for home health services Miami-

Dade County home health agencies, including Heartbeat HH, Maya HH, Miller HH, and Floridian HH purported to provide to those beneficiaries.

**MANNER AND MEANS OF THE CONSPIRACY**

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

4. **NOEMI RODRIGUEZ** solicited and received kickbacks and bribes from co-conspirator patient recruiters and home health agencies owners, including Cira Fonseca, Marlen Trujillo and Antonio Suarez in return for providing prescriptions for home health care services for Medicare beneficiaries.

5. **NOEMI RODRIGUEZ** solicited and received kickbacks and bribes from co-conspirators, including Cira Fonseca, Marlen Trujillo and Antonio Suarez in return for referring Medicare beneficiaries to serve as patients at Heartbeat HH, Miller HH, Maya HH, and Floridian HH.

6. **NOEMI RODRIGUEZ** and her co-conspirators caused Miami-Dade home health agencies, including Heartbeat HH, Maya HH, Miller HH and Floridian HH to submit claims to Medicare for home health services purportedly provided to Medicare beneficiaries.

7. **NOEMI RODRIGUEZ** and her co-conspirators, including Cira Fonseca, Antonio Suarez and Marlen Trujillo caused Medicare to pay Miami-Dade home health care agencies, including Heartbeat HH, Maya HH, Miller HH, and Floridian HH based upon claims for home health services purportedly provided to Medicare beneficiaries.



### OVERT ACTS

In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one co-conspirator committed and caused to be committed, in the Southern District of Florida, at least one of the following overt acts, among others:

1. In or around August of 2011, **NOEMI RODRIGUEZ** accepted a kickback from Antonio Suarez in return for providing a prescription for home health services for a Medicare beneficiary.

2. In or around January of 2013, **NOEMI RODRIGUEZ** accepted a kickback from Cira Fonseca in return for recruiting a Medicare beneficiary or beneficiaries to Heartbeat HH.

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

### COUNT 2

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

1. Paragraphs 1 through 20 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,

**NOEMI RODRIGUEZ,**

did knowingly and willfully solicit and receive remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, as set forth below, in return for referring an individual to a person for the furnishing or arranging the furnishing of any item or service for which payment may be made in whole and in part under 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	January 12, 2013	\$2,000

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

**COUNTS 3-5**

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

1. Paragraphs 1 through 20 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,

**NOEMI RODRIGUEZ,**

did knowingly and willfully solicit and receive remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, as set forth below, in return for purchasing, leasing, ordering, and arranging for and recommending purchasing, leasing, and ordering any good, facility, service, and item for which payment may be made in whole and in part under a Federal health care program, that is, Medicare, as set forth below:

<b>Count</b>	<b>Approximate Date</b>	<b>Approximate Kickback Amount</b>
3	August 2, 2011	\$200
4	October 4, 2011	\$200
5	October 25, 2012	\$100

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

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

1. The allegations contained in 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 the defendant, **NOEMI RODRIGUEZ**, has an interest.

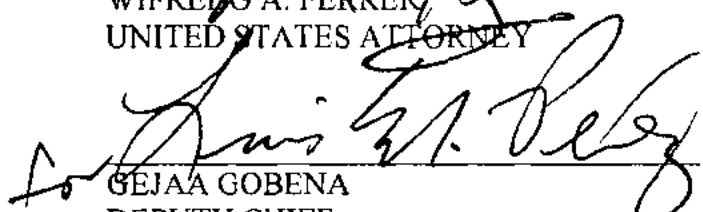
2. Upon conviction of a violation of Title 18, United States Code, Section 371, or Title 42, United States Code, Section 1320a-7b(b), as alleged in this Indictment, the defendant shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense pursuant to Title 18, United States Code, Section 982(a)(7).

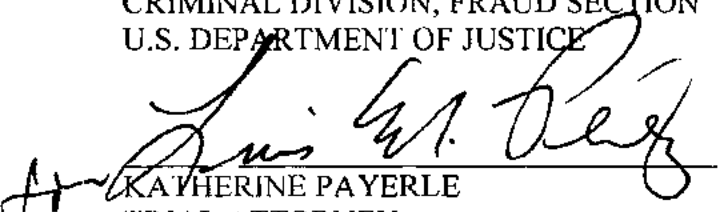
All pursuant to Title 18, United States Code, Sections 982(a)(7) and the procedures set forth in Title 21, United States Code, Section 853.

A TRUE BILL

  
FOREPERSON

  
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WIFREDO A. FERRER  
UNITED STATES ATTORNEY

  
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GEJAA GOBENA  
DEPUTY CHIEF  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE

  
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KATHERINE PAYERLE  
TRIAL ATTORNEY  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE