

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **15-20439** CR-COHN

18 U.S.C. § 1347
18 U.S.C. § 2
18 U.S.C. § 982(a)(7)

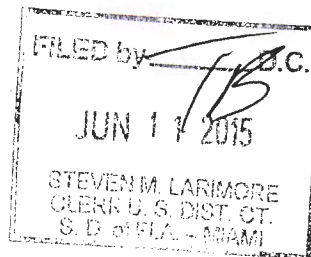
MAGISTRATE JUDGE
SELTZER

UNITED STATES OF AMERICA

vs.

TAMARA ESPONDA,

Defendant.



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, 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 programs covering different types of benefits were separated into different program “parts.” Part D of Medicare subsidized the costs of prescription drugs for Medicare

beneficiaries in the United States. It was enacted as part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and went into effect on January 1, 2006.

3. In order to receive Part D benefits, a beneficiary enrolled in a Medicare drug plan. Medicare drug plans were operated by private companies approved by Medicare. Those companies were often referred to as drug plan “sponsors.” A beneficiary in a Medicare drug plan could fill a prescription at a pharmacy and use his or her plan to pay for some or all of the prescription.

4. A pharmacy could participate in Part D by entering a retail network agreement with one or more Pharmacy Benefit Managers (“PBMs”). Each PBM acted on behalf of one or more Medicare drug plans. Through a plan’s PBM, a pharmacy could join the plan’s network. When a Part D beneficiary presented a prescription to a pharmacy, the pharmacy submitted a claim to the PBM that represented the beneficiary’s Medicare drug plan. The plan or PBM determined whether the pharmacy was entitled to payment for each claim and periodically paid the pharmacy for outstanding claims. The drug plan’s sponsor reimbursed the PBM for its payments to the pharmacy.

5. A pharmacy could also submit claims to a Medicare drug plan to whose network the pharmacy did not belong. Submission of such out-of-network claims was not common and often resulted in smaller payments to the pharmacy by the drug plan sponsor.

6. Medicare, through CMS, compensated the Medicare drug plan sponsors. Medicare paid the sponsors a monthly fee for each Medicare beneficiary of the sponsors’ plans. Such payments were called capitation fees. The capitation fee was adjusted periodically based on various factors, including the beneficiary’s medical conditions. In addition, in some cases where a

sponsor's expenses for a beneficiary's prescription drugs exceeded that beneficiary's capitation fee, Medicare reimbursed the sponsor for a portion of those additional expenses.

7. Medicare and Medicare drug plan sponsors were "health care benefit program[s]," as defined by Title 18, United States Code, Section 24(b).

Medicare Drug Plan Sponsors

8. CIGNA, Humana and Envision Insurance Company ("Envision") were, among others, Medicare drug plan sponsors.

Biomax Pharmacy, LLC

9. Biomax Pharmacy, LLC ("Biomax Pharmacy") was a Florida corporation, incorporated on or about September 5, 2011, that did business in Miami-Dade County purportedly providing prescription drugs to Medicare beneficiaries.

The Defendant

10. **TAMARA ESPONDA** was a resident of Miami-Dade County. From on or about October 29, 2012 through in or around September 2013, **ESPONDA** was the sole manager, member and registered agent of Biomax Pharmacy.

COUNTS 1-6 **Health Care Fraud** **(18 U.S.C. § 1347 and § 2)**

1. Paragraphs 1 through 10 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. From in or around October 2012, and continuing through in or around September 2013, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

TAMARA ESPONDA,

in connection with the delivery of and payment for health care benefits, items, and services, did

knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud health care benefit programs affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare, CIGNA, Humana and Envision, 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, said health care benefit programs.

Purpose of the Scheme and Artifice

3. It was the purpose of the scheme and artifice for the defendant and her accomplices to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to health care benefit programs; (b) concealing the submission of false and fraudulent claims to health care benefit programs, and the receipt and transfer of fraud proceeds; and (c) diverting fraud proceeds for the personal use and benefit of herself and others, and to further the fraud.

The Manner and Means of the Scheme and Artifice

The manner and means by which the defendant sought to accomplish the object and purpose of the scheme and artifice, included, among others, the following:

4. **TAMARA ESPONDA** submitted, and caused the submission of, claims that falsely and fraudulently represented that various health care benefits, primarily prescription drugs, were medically necessary, prescribed by a doctor, and had been provided by Biomax Pharmacy to Medicare beneficiaries.

5. As a result of such false and fraudulent claims, Medicare prescription drug plan sponsors made over-payments funded by Medicare to Biomax Pharmacy's corporate bank accounts, in the amount of at least approximately \$1,583,976.

6. **TAMRA ESPONDA** used the proceeds from the false and fraudulent Medicare Part D claims for her own use and the use of others, and to further the fraud.

Acts in Execution or Attempted Execution of the Scheme and Artifice

7. On or about the dates set forth as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, **TAMARA ESPONDA**, in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, the above-described scheme and artifice to defraud health care benefit programs affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare, CIGNA, Humana and Envision, 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, said health care benefit programs, in that the defendant submitted and caused the submission of false and fraudulent claims seeking the identified dollar amounts, and representing that Biomax Pharmacy provided pharmaceutical items and services to Medicare beneficiaries pursuant to physicians' orders and prescriptions as set forth below:

Count	Medicare Beneficiary	Approx. Claim Submission Date	Medicare Claim Number	Item Claimed; Approx. Amount Claimed	Medicare Drug Plan Sponsor
1	Individual B	11/21/2012	6665939211070B	Solaraze; \$639	Envision
2	Individual A	12/06/2012	2171535211270B	Abilify; \$836	Envision
3	Individual A	2/04/2013	134280502631	Abilify; \$901	CIGNA
4	Individual A	3/04/2013	134578513071	Abilify; \$901	CIGNA

Count	Medicare Beneficiary	Approx. Claim Submission Date	Medicare Claim Number	Item Claimed; Approx. Amount Claimed	Medicare Drug Plan Sponsor
5	Individual B	5/16/2013	135145559381	Abilify; \$761	Humana
6	Individual B	9/18/2013	136488835461	Solaraze; \$784	CIGNA

In violation of Title 18, United States Code, Sections 1347 and 2.

FORFEITURE
(18 U.S.C. § 982(a)(7))

1. The allegations contained in this Indictment are realleged 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, **TAMARA ESPONDA**, has an interest.

2. Upon conviction of a violation of Title 18, United States Code, Section 1347, as alleged in this Indictment, the defendant shall forfeit to the United States of America any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violation, pursuant to Title 18, United States Code, Section 982(a)(7).

3. The property subject to forfeiture includes, but is not limited to, a forfeiture money judgment in the sum of approximately \$1,583,976 in United States currency, the sum of money equal in value to the gross proceeds traceable to the commission of the violations alleged in this Indictment.

4. If any of the property described above, 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;

