

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **15-20440**

18 U.S.C. § 1347
18 U.S.C. § 2
18 U.S.C. § 982

CR-COHN

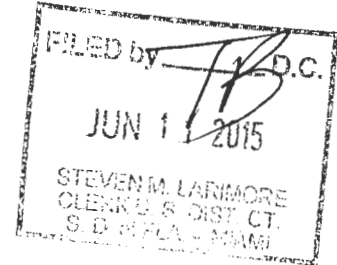
MAGISTRATE JUDGE
SELTZER

UNITED STATES OF AMERICA

vs.

EMILIO M. ALMUINA

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 (the "Medicare Part D Program") subsidized the costs of prescription drugs for Medicare beneficiaries in the United States. The Medicare Part D Program 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 directly with a plan or with one or more Pharmacy Benefit Managers (“PBMs”). A 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 either directly to the plan or to a 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. United Healthcare Insurance Company (“United”) and Medco Containment Life Insurance Company (“Medco”) were Medicare drug plan sponsors.

The Defendant and Related Company

9. Little Havana Drug Store, Inc. (“Little Havana”) was a Florida corporation that did business in Miami-Dade County, purportedly providing prescription drugs to Medicare beneficiaries.

10. **EMILIO M. ALMUINA**, a resident of Miami-Dade County, was the owner and president of Little Havana.

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

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 on or about September 20, 2013 and continuing through on or about October 3, 2014, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

EMILIO M. ALMUINA,

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, Medco and United 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 his 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 themselves and others.

The Scheme and Artifice

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

4. **EMILIO M. ALMUINA** paid Medicare beneficiaries to induce said beneficiaries to obtain prescriptions for pharmaceutical drugs to be used in connection with false and fraudulent billing of Medicare Part D through Little Havana.

5. **EMILIO M. ALMUINA** submitted and caused the submission of claims, that falsely and fraudulently represented various health care benefits, primarily prescription drugs, were medically necessary, prescribed by a doctor, and had been provided to Medicare beneficiaries at Little Havana.

6. As a result of such false and fraudulent claims, Medicare prescription drug plan sponsors, through their PBMs, made overpayments funded by the Medicare Part D Program to Little Havana, in the approximate amount \$1,161,446.

7. **EMILIO M. ALMUINA** used the proceeds from the false and fraudulent Medicare Part D claims for his own use, the use of others, and to further the fraud.

Acts in Execution or Attempted Execution of the Scheme and Artifice

8. On or about the dates set forth as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

EMILIO M. ALMUINA,

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, Medco and United, 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 Little Havana provided pharmaceutical items and services to Medicare beneficiaries pursuant to physicians' orders and prescriptions:

Count	Medicare Beneficiary	Approx. Date of Submission of Claim	Medicare Claim Number and	Medicare Drug Plan Sponsor	Item Claimed; Approx. Amount Claimed
1	D.J.	1/16/2014	1401645433200549 99	United	ADVAIR DISKU AER 250/50; \$292
2	D.J.	1/16/2014	1401645435550239 99	United	ABILIFY TAB 20MG; \$1073;
3	D.J.	1/16/2014	1401645458370619 99	United	SPIRIVA CAP HANDIHLR; \$289

Count	Medicare Beneficiary	Approx. Date of Submission of Claim	Medicare Claim Number and	Medicare Drug Plan Sponsor	Item Claimed; Approx. Amount Claimed
4	G.B.	7/3/2014	6784940408786317 4067849404087863 17404071	Medco	ADVAIR DISKUS 250/50; \$296
5	G.B.	7/3/2014	0600212946786317 4006002129467863 17404071	Medco	EXELON DIS 9.5 MG/24; \$356
6	G.B.	7/13/2014	5254733675786317 4052547336757863 1740407	Medco	ABILIFY TAB 10MG; \$759

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

FORFEITURE ALLEGATIONS
(18 U.S.C. § 982)

1. The allegations contained in this Indictment are realleged and incorporated by reference as though fully set forth herein for the purpose of alleging criminal forfeiture to the United States of America of certain property in which the defendant, **EMILIO ALMUINA**, 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, 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 violation.

3. The property subject to forfeiture includes, but is not limited to, the following:

No less than \$1,161,446 (US), which is a sum of money equal in value to the gross proceeds traceable to the commission of the violations alleged in this Indictment, which the United States will seek as a forfeiture money judgment as part of the defendant's sentence.

4. If the property described above as being subject to forfeiture, as a result of any act or omission of defendant, **EMILIO ALMUINA**,

- (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 subdivided without


difficulty; it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as made applicable through Title 18, United States Code, Section 982(a)(7) to seek forfeiture of any other property of defendants, up to the value of the above forfeitable property, including, but not limited to, the following:

- (a) The real property located at 3710 SW 136 Ct., Miami, Florida (Folio No. 30-4914-028-0030);
- (b) One (1) 2008 Mercedes-Benz vehicle (VIN: 4JGBB86EX8A357742);
- (c) One (1) 2014 Chevrolet vehicle (VIN: 3GCPCREC5EG147575);
- (d) One (1) 2005 Ford vehicle (VIN: 1FMPU17575LB03394);
- (e) One (1) 2001 Winnebago Motor Coach (VIN: 1FDWE35S41HA14411);
- (f) One (1) 2000 Vessel (Hull No. HSXC3291E000);
- (g) One (1) 2000 Loadmaster Trailer (VIN: 4YPAB23261T019871);
- (h) One (1) 2014 Jetski Vessel (VIN: YAMA1953F414); and
- (i) One (1) 2014 Rocket Trailer Ltd. (VIN: 4WMAAAC16EA011122)

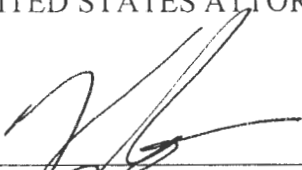
All pursuant to Title 18, United States Code, Section 982(a)(7), and the procedures set forth at Title 21, United States Code, Section 853, as made applicable through Title 18, United States Code, Section 982(b)(1).

A TRUE BILL

FOREPERSON



WIFREDO A. FERRER
UNITED STATES ATTORNEY



KEVIN J. LARSEN
ASSISTANT UNITED STATES ATTORNEY