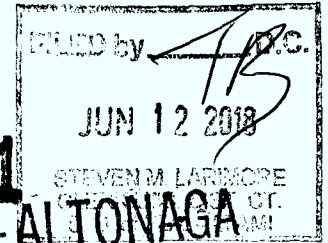


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

18-20501

CASE NO. _____

- 18 U.S.C. § 1349
- 18 U.S.C. § 371
- 42 U.S.C. § 1320a-7b(b)(2)(A)
- 18 U.S.C. § 2
- 18 U.S.C. § 982(a)(7)



CR-ALTONAGA
TGOODMAN

UNITED STATES OF AMERICA

vs.

**MARICELA P. CHAVEZ,
RENE GUERRA,
ESTHER AGUILERA ESCALONA,
RICARDO FAJARDO,
a/k/a "Evelyn Tiffany,"
YURISDAY HERNANDEZ, and
ARELYS PEREZ CUESTA,**

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 federal health care program providing benefits to persons who were 65 or older or disabled. Medicare was administered by the United States Department of Health and Human Services ("HHS"), through its agency, the Centers for Medicare and Medicaid Services ("CMS"). Individuals who received benefits under Medicare were referred to as Medicare "beneficiaries."

2. Medicare was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b).

3. "Part A" of the Medicare program covered certain eligible home health care costs for medical services provided by a home health agency ("HHA") to beneficiaries who required home health services because of an illness or disability that caused them to be homebound.

4. 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 identification number, the services that were performed for the beneficiary, the date 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.

5. CMS did not directly pay Medicare Part A claims submitted by Medicare-certified HHAs. CMS contracted with different 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 services. 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

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:

- (a) the patient was confined to the home, also referred to as homebound;
- (b) the patient 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; that 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 beneficiaries 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 the 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 was a (i) POC that included the physician

order for home health care, diagnoses, types of services/frequency of visits, prognosis/rehabilitation 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, or 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 HHA. The HHA would, in turn, bill Medicare for all services provided to beneficiaries by the subcontractor. The HHA's professional supervision over subcontracted-for services required the same quality controls and supervision as of its own salaried employees.

The Defendants, Relevant Entities, and Individuals

11. ACM Home Health Corp (“ACM”) was a Florida corporation, located at 10511 North Kendall Drive Suite C204, Miami, Florida, that purported to do business in Miami-Dade County as an HHA.

12. TC Home Health Care Inc. (“TC”) was a Florida corporation, located at 7600 West 20th Avenue Suite 102, Hialeah, Florida, that purported to do business in Miami-Dade County as an HHA.

13. Defendant **MARICELA P. CHAVEZ**, a resident of Miami-Dade County, operated and worked for ACM and TC.

14. Defendant **RENE GUERRA**, a resident of Miami-Dade County, was the registered owner of TC.

15. Defendant **ESTHER AGUILERA ESCALONA**, a resident of Miami-Dade County, was a patient recruiter.

16. Defendant **RICARDO FAJARDO, a/k/a “Evelyn Tiffany,”** a resident of Miami-Dade County, was a Medicare beneficiary and a patient recruiter.

17. Defendant **YURISDAY HERNANDEZ**, a resident of Miami-Dade County, was a patient recruiter.

18. Defendant **ARELYS PEREZ CUESTA**, a resident of Miami-Dade County, was a patient recruiter.

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

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

21. Individual 3 was a resident of Miami-Dade County.

22. Individual 4 was a resident of Miami-Dade County.

COUNT 1
Conspiracy to Commit Health Care Fraud
(18U.S.C. § 1349)

1. The General Allegations section of this Indictment is re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around June of 2016, through in or around December of 2017, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

MARICELA P. CHAVEZ,
RENE GUERRA,
ESTHER AGUILERA ESCALONA,
RICARDO FAJARDO,
a/k/a “Evelyn Tiffany,”
YURISDAY HERNANDEZ, and
ARELYS PEREZ CUESTA,

did willfully, that is, with the intent to further the object of the conspiracy, and knowingly combine, conspire, confederate and agree with each other, and with others known and unknown to the Grand Jury, to violate Title 18, United States Code, Section 1347, that is, to execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), specifically, Medicare, 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 program, in connection with the delivery of and payment for health care benefits, items, and services.

Purpose of the Conspiracy

3. It was a purpose of the conspiracy for the defendants their co-conspirators to unlawfully enrich themselves by, among other things: (1) submitting and causing the submission of false and fraudulent claims to Medicare for home health services that were never provided; (2)

concealing the submission of false and fraudulent claims to Medicare for home health services never provided; and (3) using fraud proceeds for their personal use and benefit, the use and benefit of others and to further the fraud.

Manner and Means of the Conspiracy

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

4. **MARICELA P. CHAVEZ, RENE GUERRA, ESTHER AGUILERA ESCALONA, RICARDO FAJARDO, YURISDAY HERNANDEZ, ARELYS PEREZ CUESTA**, and their co-conspirators, offered and paid kickbacks to Medicare beneficiaries in exchange for Medicare beneficiaries agreeing to enroll and receive home health services from ACM and TC, regardless of whether the beneficiaries needed the home health services.

5. **MARICELA P. CHAVEZ, RENE GUERRA, ESTHER AGUILERA ESCALONA, RICARDO FAJARDO, YURISDAY HERNANDEZ, ARELYS PEREZ CUESTA**, and their co-conspirators, induced beneficiaries to enroll and receive home health services from ACM and TC by falsifying paperwork indicating that the beneficiary received home health services.

6. ACM and TC submitted false and fraudulent claims to Medicare for home health services that were never provided to the recruited beneficiaries.

7. Medicare paid ACM and TC based upon the false and fraudulent claims submitted for home health services that were never provided to the recruited beneficiaries.

8. **MARICELA P. CHAVEZ, RENE GUERRA, ESTHER AGUILERA ESCALONA, RICARDO FAJARDO, YURISDAY HERNANDEZ, ARELYS PEREZ**

CUESTA, and their co-conspirators, used the fraud proceeds received from ACM and TC to benefit themselves and others and to further the fraud.

All in violation of Title 18, United States Code, Section 1349.

COUNT 2
Conspiracy to Pay and Receive Health Care Kickbacks
(18 U.S.C. § 371)

1. The General Allegations section of this Indictment is re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around June of 2016, through in or around December of 2017, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

MARICELA P. CHAVEZ,
RENE GUERRA,
ESTHER AGUILERA ESCALONA,
RICARDO FAJARDO,
a/k/a “Evelyn Tiffany,”
YURISDAY HERNANDEZ, and
ARELYS PEREZ CUESTA,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly, combine, conspire, confederate, and agree with each other and others, known and unknown to the Grand Jury,

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)(2)(A), by knowingly and willfully offering and paying 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 an item and service 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)(A), by knowingly and willfully soliciting and receiving 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 an item and service for which payment may be made in whole or in part under a federal health care program, that is, Medicare.

Purpose of the Conspiracy

3. It was a purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by: (a) offering, paying, soliciting and receiving kickbacks and bribes in return for referring beneficiaries to ACM and TC to serve as patients; (b) offering, paying, soliciting and receiving kickbacks and bribes in return for serving as patients of ACM and TC; and (c) using proceeds from the claims of the recruited beneficiaries for their personal use, the use and benefit of others, and to further the conspiracy.

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. **MARICELA P. CHAVEZ, RENE GUERRA, ESTHER AGUILERA ESCALONA, RICARDO FAJARDO, YURISDAY HERNANDEZ, ARELYS PEREZ CUESTA**, paid and caused the payments of kickbacks and bribes to beneficiaries in exchange for serving as patients at ACM and TC.

5. **MARICELA P. CHAVEZ, RENE GUERRA, ESTHER AGUILERA ESCALONA, RICARDO FAJARDO, YURISDAY HERNANDEZ, ARELYS PEREZ CUESTA**, and their co-conspirators, offered and paid kickbacks to patient recruiters in exchange for recruiting Medicare beneficiaries who agreed to serve as patients at ACM and TC.

6. **MARICELA P. CHAVEZ, RENE GUERRA, ESTHER AGUILERA ESCALONA, RICARDO FAJARDO, YURISDAY HERNANDEZ, ARELYS PEREZ CUESTA**, and their co-conspirators, caused Medicare to pay ACM and TC based upon the claims for home health services never provided to the recruited beneficiaries.

7. As a result of these claims, Medicare made payments to ACM and TC in the approximate amount of \$14 million.

Overt Acts

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

1. On or about April 20, 2015, **RENE GUERRA, MARICEL P. CHAVEZ** and Individual 2 agreed that **GUERRA** would be listed as the nominee owner for TC and **GUERRA** would sign checks for TC in exchange for **GUERRA** receiving monthly payments from **CHAVEZ**.

2. On or about October 4, 2016, **ESTHER AGUILERA ESCALONA** paid **RICARDO FAJARDO**, approximately \$1,250 cash as a kickback payment for enrolling into ACM.

3. On or about October 25, 2016, **ESTHER AGUILERA ESCALONA** paid and cause the payment of a kickback to Medicare beneficiary D.A. for serving as a patient at ACM.

4. On or about September 15, 2017, **ARELYS PEREZ CUESTA** paid Individual 3 approximately \$1,000 cash to pay and cause the payment of a kickback to Medicare beneficiary N.M. for serving as a patient at TC.

5. On or about October 20, 2017, **MARCIELA P. CHAVEZ** paid Individual 4 approximately \$5,100 cash to pay and cause the payment of a kickback to Medicare beneficiaries A.C, S.C. and A.S. for serving as patients at ACM.

6. On or about October 25, 2017, Individual 4 paid **YURISDAY HERNANDEZ** approximately \$1,500 cash to pay and cause the payment of a kickback to Medicare beneficiary A.C. for serving as a patient at ACM.

7. On or about December 7, 2017, Individual 4 paid **YURISDAY HERNANDEZ** approximately \$3,000 cash to pay and cause the payment of a kickback to Medicare beneficiaries S.C. and A.S. for serving as patients at ACM.

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

COUNTS 3-11

**Payment of Kickbacks in Connection with a Federal Health Care Program
(42 U.S.C. § 1320a-7b(b)(2)(A))**

1. Paragraphs 1-13 and 15-22 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 defendant, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**MARICELA P. CHAVEZ,
ESTHER AGUILERA ESCALONA,
RICARDO FAJARDO,
a/k/a "Evelyn Tiffany,"
YURISDAY HERNANDEZ, and
ARELYS PEREZ CUESTA,**

did knowingly and willfully offer and pay any 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 and arranging for the furnishing of any item and service for which payment may be made in whole and in part under a federal health care program, that is, Medicare:

Count	Defendant(s)	Approx. Date	Medicare Beneficiary	Approx. Kickback Amount	Home Health Agency
3	MARICEL P. CHAVEZ, ESTHER AGUILERA ESCALONA and RICARDO FAJARDO	October 4, 2016	R.M.	\$1,250	ACM
4	MARICEL P. CHAVEZ, ESTHER AGUILERA ESCALONA and RICARDO FAJARDO	October 4, 2016	R.F.	\$1,250	ACM
5	MARICEL P. CHAVEZ and ESTHER AGUILERA ESCALONA	October 25, 2016	D.A.	\$1,250	ACM
6	MARICEL P. CHAVEZ and ARELYS PEREZ CUESTA	September 15, 2017	N.M.	\$1,000	TC
7	MARICEL P. CHAVEZ and YURISDAY HERNANDEZ	October 20, 2017	A.C.	\$1,700	ACM
8	MARICEL P. CHAVEZ and YURISDAY HERNANDEZ	October 20, 2017	S.C.	\$1,700	ACM
9	MARICEL P. CHAVEZ and YURISDAY HERNANDEZ	October 20, 2017	A.S.	\$1,700	ACM
10	MARICEL P. CHAVEZ	December 6, 2017	R.R.	\$1,800	ACM

11	MARICEL P. CHAVEZ	December 6, 2017	R.T.	\$1,800	ACM
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In violation of Title 42, United States Code, Section 1320a-7(b)(2)(A), and Title 18, United States Code, Section 2.

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 certain property in which the defendants, **MARICELA P. CHAVEZ, RENE GUERRA, ESTHER AGUILERA ESCALONA, RICARDO FAJARDO, YURISDAY HERNANDEZ,** and **ARELYS PEREZ CUESTA**, have an interest.

2. Upon conviction of a violation of Title 18, United States Code, Section 1349, as alleged in Count 1 of this Indictment, or of Title 18, United States Code, Section 371, as alleged in Count 2 of this Indictment, or of Title 42, United States Code, Section 1320a-7b(b)(2)(A), as alleged in Counts 3 through 11 of this Indictment, the defendants shall forfeit to the United States, 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 to be forfeited includes, but is not limited to, the sum of money equal in value to the gross proceeds traceable to the commission of the offenses alleged in this Indictment, approximately \$14,047,661, which the United States will seek as a forfeiture money judgment as part of the defendants' respective sentences.

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 the property which cannot be divided without difficulty,

the United States shall be entitled to 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); 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


BENJAMIN G. GREENBERG
UNITED STATES ATTORNEY


MIESHA SHONTA DARROUGH
ASSISTANT UNITED STATES ATTORNEY