

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. **18-20514 CR-MOORE**

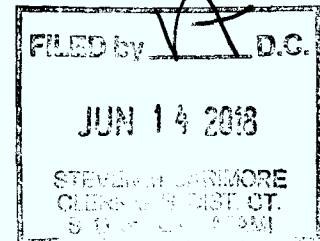
18 U.S.C. § 1349  
18 U.S.C. § 1347  
18 U.S.C. § 2  
18 U.S.C. § 982(a)(7)

UNITED STATES OF AMERICA

vs.

CARLOS J. GARCIA,  
GISELL ABERASTURIA, and  
HEIDY GARCIA,

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, 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).

**The Defendants and Related Companies**

8. Capital Drugs, Inc. (Capital Drugs) was a Florida corporation located at 1065 SW 27th Avenue, Miami, Florida, that did business in Miami-Dade County purportedly providing prescription drugs to Medicare beneficiaries.

9. Green Hope Pharmacy, Inc. (Green Hope) was a Florida corporation located at 5309 SW 8th Street, Miami, Florida, that did business in Miami-Dade County purportedly providing prescription drugs to Medicare beneficiaries.

10. American Drugs Pharmacy, Inc. (American Drugs) was a Florida corporation located at 2111 10th Avenue, Lake Worth, Florida, that did business in the Southern District of Florida purportedly providing prescription drugs to Medicare beneficiaries.

11. **CARLOS J. GARCIA**, a resident of Palm Beach County, was the president and registered agent of Capital Drugs, and a beneficial owner of Green Hope and American Drugs.

12. **GISELL ABERASTURIA**, a resident of Miami-Dade County and a licensed pharmacy technician, was employed at Capital and was the president and registered agent of Green Hope.

13. **HEIDY GARCIA**, a resident of Miami-Dade County, was a licensed pharmacy technician and employed at Capital Drug, Green Hope and American Drug.

**COUNT 1**  
**CONSPIRACY TO COMMIT HEALTH CARE FRAUD AND WIRE FRAUD**  
**(18 U.S.C. § 1349)**

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

2. From in or around April 2012, and through the date of this Indictment, in Miami-Dade and Palm Beach Counties, in the Southern District of Florida, and elsewhere, the defendants,

**CARLOS J. GARCIA,**  
**GISELL ABERASTURIA, and**  
**HEIDY GARCIA,**

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, to commit offenses against the United States, that is:

a. to knowingly and willfully 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 Medicare drug plan sponsors, 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 connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1347; and

b. to knowingly and with the intent to defraud, devise and intend to devise a scheme and artifice to defraud and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing the scheme and

artifice, did knowingly transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, certain writings, signs, signals, pictures and sounds, in violation of Title 18, United States Code, Section 1343.

**PURPOSE OF THE CONSPIRACY**

3. It was a purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by, among other things: (a) paying kickbacks for the referral of fraudulent Medicare beneficiary prescriptions to be used at Capital Drugs, Green Hope and American Drugs; (b) submitting and causing the submission of false and fraudulent claims to health care benefit programs; (c) concealing the submission of false and fraudulent claims to health care benefit programs, and the receipt and transfer of fraud proceeds; and (d) diverting fraud proceeds for the personal use and benefit of themselves and 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 objects and purpose of the conspiracy included, among other things, the following:

4. **CARLOS J. GARCIA, GISELL ABERASTURIA** and their co-conspirators paid kickbacks to recruiters for the referral of Medicare beneficiary prescriptions for use in false and fraudulent billing of the Medicare Part D Program through Capital Drugs, Green Hope and American Drugs.

5. **CARLOS J. GARCIA, GISELL ABERASTURIA, HEIDY GARCIA** and their co-conspirators submitted and caused the submission of claims to the Medicare Part D Program, via electronic wire communications, that falsely and fraudulently represented that various health

care benefits, primarily prescription drugs, were medically necessary and had been provided to the Medicare beneficiaries by Capital Drugs, Green Hope and American Drugs.

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 the corporate bank accounts of Capital Drugs, Green Hope and American Drugs in the amount of at least approximately \$2,500,000.

7. **CARLOS J. GARCIA, GISELL ABERASTURIA, HEIDY GARCIA** and their co-conspirators used the proceeds from the false and fraudulent Medicare Part D claims for their own use and the use of others, and to further the fraud.

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

**COUNTS 2-10**  
**HEALTH CARE FRAUD**  
**(18 U.S.C. § 1347)**

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

2. From in or around April 2012, and through the date of this Indictment, in Miami-Dade and Palm Beach Counties, in the Southern District of Florida, and elsewhere, the defendants,

**CARLOS J. GARCIA,**  
**GISELL ABERASTURIA, and**  
**HEIDY GARCIA,**

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 a health care benefit program affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare and Medicare drug plan sponsors, 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 a purpose of the scheme and artifice for the defendants and their accomplices to unlawfully enrich themselves by, among other things: (a) paying kickbacks for the referral of fraudulent Medicare beneficiary prescriptions to be used at Capital Drugs, Green Hope and American Drugs; (b) submitting and causing the submission of false and fraudulent claims to health care benefit programs; (c) concealing the submission of false and fraudulent claims to health care benefit programs, and the receipt and transfer of fraud proceeds; and (d) diverting fraud proceeds for the personal use and benefit of themselves and others, and to further the fraud.

**The Scheme and Artifice**

4. The Manner and Means section of Count 1 of this Indictment is realleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

**Acts in Execution or Attempted Execution of the Scheme and Artifice**

5. On or about the dates set forth as to each count below, in Miami-Dade and Palm Beach Counties, in the Southern District of Florida, and elsewhere, the defendants, 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 a health care benefit program affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare and Medicare drug plan sponsors, 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 defendants submitted

and caused the submission of false and fraudulent claims seeking the identified dollar amounts, and representing that the identified pharmacy provided drugs to Medicare beneficiaries pursuant to physicians' valid orders and prescriptions:

<b>Count</b>	<b>Defendants</b>	<b>Date; Pharmacy; Medicare Beneficiary</b>	<b>Medicare Claim Number</b>	<b>Item Claimed; Approx. Amount Claimed</b>
2	<b>CARLOS J. GARCIA, GISELL ABERASTURIA, and HEIDY GARCIA</b>	09/18/2014; Green Hope; T.D.	14261339778600 2999	Abilify Tab 20 MG; \$1099
3	<b>CARLOS J. GARCIA, GISELL ABERASTURIA, and HEIDY GARCIA</b>	11/19/2014; Green Hope; S.A.	59587444352383 10602929212351 352459404381	Seroquel XR; \$1288
4	<b>CARLOS J. GARCIA, GISELL ABERASTURIA, and HEIDY GARCIA</b>	12/18/2014; Green Hope; S.A.	93384425352383 10600719727225 382400504381	Advair Diskus; \$296
5	<b>CARLOS J. GARCIA, GISELL ABERASTURIA, and HEIDY GARCIA</b>	02/17/2015; Green Hope; T.D.	95538592089231 31506701710282 896901504072	Advair Diskus; \$303
6	<b>CARLOS J. GARCIA and HEIDY GARCIA</b>	03/30/2017; American Drugs; A.R.	17089513304317 79939110	Seroquel XR; \$1529
7	<b>CARLOS J. GARCIA and HEIDY GARCIA</b>	05/26/2017; American Drugs; M.B.	17146394443211 19988866	Namenda XR Cap 14 MG; \$395
8	<b>CARLOS J. GARCIA and HEIDY GARCIA</b>	08/16/2017; American Drugs; A.R.	17228400129610 89989110	Seroquel XR; \$1529



<b>Count</b>	<b>Defendants</b>	<b>Date; Pharmacy; Medicare Beneficiary</b>	<b>Medicare Claim Number</b>	<b>Item Claimed; Approx. Amount Claimed</b>
<b>9</b>	<b>CARLOS J. GARCIA and HEIDY GARCIA</b>	09/01/2017; American Drugs; M.B.	17244408474519 29999110	Januvia Tab 25 MG; \$811
<b>10</b>	<b>CARLOS J. GARCIA and HEIDY GARCIA</b>	02/01/2018; American Drugs; M.B.	18032483075505 29999110	Namenda XR Cap 14 MG; \$430

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 certain property in which defendants **CARLOS J. GARCIA, GISELL ABERASURIA, and HEIDY GARCIA** have an interest.

2. Upon conviction of any violation of Title 18, United States Code, Sections 1347 and 1349, as alleged in Counts 1 through 10 of the Indictment, the defendant so convicted shall forfeit to the United States all of his or her right, title and interest in any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violations, pursuant to Title 18, United States Code, Section 982(a)(7).

3. The property subject to forfeiture includes, but is not limited to, the sum of at least \$2,500,000 in United States currency, 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 defendants' sentence.

All pursuant to Title 18, United States Code, Sections 982(a)(1) and 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 T T O R N E Y

FOI

  
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