

FILED by *[Signature]* D.C.
MAY 01 2012
STEVEN M. LARIMORE
CLERK U. S. DIST. CT
S. D. of FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **12-20316**

CR-UNGARO

18 U.S.C. § 1347
42 U.S.C. § 1320a-7b(b)(2)(A)
18 U.S.C. § 982

/TORRES

UNITED STATES OF AMERICA

Vs.

RICARDO MARTINEZ,

Defendant.

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times relevant to this Indictment:

The Medicare Program

1. The Medicare Program ("Medicare") was a federal program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. Medicare was administered by the Centers for Medicare and Medicaid Services ("CMS"), a federal agency under the United States Department of Health and Human Services ("HHS"). 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).

Certified to be a true and correct copy of the document on file
Steven M. Larimore, Clerk,
U. S. District Court
Southern District of Florida
By *[Signature]* Deputy Clerk
Date 5/1/12

3. The Medicare program was divided into different "parts." "Part A" of the Medicare program covered health services provided by hospitals, skilled nursing facilities, hospices, and home health agencies. "Part B" of the Medicare program covered, among other things, medical services provided by physicians, medical clinics, and other qualified health care providers, as well as medications rendered "incident to" such services. The Medicare Advantage Program, formerly known as "Part C" or "Medicare+Choice," is described in further detail below.

4. Medicare Part B was administered in Florida by First Coast Service Options, a company that contracted with CMS to receive, adjudicate, process, and pay certain Part B claims.

5. Payments under the Medicare Program were often made directly to the physician, medical clinic, or other qualified provider of the medical goods or services, rather than to the beneficiary. This occurred when the provider accepted assignment of the right to payment from the beneficiary. In that case, the provider submitted the claim to Medicare for payment, either directly or through a billing company.

6. Physicians, medical clinics, and other health care providers that provided services to Medicare beneficiaries were able to apply for and obtain a "provider number." A health care provider who was issued a Medicare provider number was able to file bills, known as "claims," with Medicare to obtain reimbursement for services provided to beneficiaries. The claim form was required to contain certain important information, including: (a) the Medicare beneficiary's name and Health Insurance Claim Number ("HICN"); (b) a description of the health care benefit, item, or service that was provided or supplied to the beneficiary; (c) the billing codes for the benefit, item, or service; (d) the date upon which the benefit, item, or service was provided or supplied to the beneficiary; and (e) the name of the referring physician or other health care provider, as well as a

unique identifying number, known either as the Unique Physician Identification Number (“UPIN”) or National Provider Identifier (“NPI”). The claim form could be submitted in hard copy or electronically.

7. When a claim was submitted to Medicare, the provider certified that the contents of the form were true, correct, complete, and that the form was prepared in compliance with the laws and regulations governing the Medicare program. The provider further certified that the services being billed were medically necessary and were in fact provided as billed.

8. Pursuant to federal statutes and regulations, Medicare only paid for health care benefits, items or other services that were medically necessary and ordered by a licensed doctor or other licensed, qualified health care provider.

The Medicare Advantage Program

9. The Medicare Advantage Program, formerly known as “Part C” or “Medicare+Choice,” provided Medicare beneficiaries with the option to receive their Medicare benefits through a wide variety of private managed care plans, including health maintenance organizations (“HMOs”), provider sponsored organizations (“PSOs”), preferred provider organizations (“PPOs”), and private fee-for-service plans (“PFFS”), rather than through the original Medicare program (Parts A and B).

10. Private health insurance companies offering Medicare Advantage plans were required to provide Medicare beneficiaries with the same services and supplies offered under Parts A and B of Medicare. To be eligible to enroll in a Medicare Advantage plan, a person must be entitled to benefits under Part A and Part B of the Medicare Program.

11. A number of companies including Blue Cross and Blue Shield of Florida (“BCBS”)

and their related subsidiaries and affiliates contracted with CMS to provide managed care to Medicare Advantage beneficiaries through various plans.

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

13. These entities, including BCBS, through their respective Medicare Advantage programs, often made payments directly to physicians, medical clinics, or other health care providers, rather than to the Medicare Advantage beneficiary that received the health care benefits, items, and services. This occurred when the provider accepted assignment of the right to payment from the beneficiary.

14. To obtain payment for treatment or services provided to a beneficiary enrolled in a Medicare Advantage plan, physicians, medical clinics, and other health care providers had to submit itemized claim forms to the beneficiary's Medicare Advantage plan. The claim forms were typically submitted electronically via the internet. The claim form required certain important information, including: (a) the Medicare Advantage beneficiary's name and HICN or other identification number; (b) a description of the health care benefit, item, or service that was provided or supplied to the beneficiary; (c) the billing codes for the benefit, item, or service; (d) the date upon which the benefit, item, or service was provided or supplied to the beneficiary; and (e) the name of the referring physician or other health care provider, as well as a unique identifying number, known either as the Unique Physician Identification Number ("UPIN") or National Provider Identifier ("NPI").

15. When a provider submitted a claim form to a Medicare Advantage program, the provider party certified that the contents of the form were true, correct, complete, and that the form was prepared in compliance with the laws and regulations governing the Medicare program. The

submitting party also certified that the services being billed were medically necessary and were in fact provided as billed.

16. The private health insurance companies offering Medicare Advantage plans were paid a fixed rate per beneficiary per month by the Medicare program, regardless of the actual number or type of services the beneficiary receives. These payments by Medicare to the insurance companies were known as “capitation” payments. Thus, every month, CMS paid the health insurance companies a pre-determined amount for each beneficiary who was enrolled in a Medicare Advantage plan, regardless of whether or not the beneficiary utilized the plan's services that month. CMS determined the per-patient capitation amount using actuarial tables, based on a variety of factors, including the beneficiary’s age, sex, severity of illness, and county of residence. CMS adjusted the capitation rates annually, taking into account each patient's previous illness diagnoses and treatments. Beneficiaries with more illnesses or more serious conditions would rate a higher capitation payment than healthier beneficiaries.

Rima Medical Center, Inc.

17. Rima Medical Center, Inc. (“Rima Medical”) was a Florida corporation with a place of business in Miami-Dade County. Rima Medical was a medical clinic that purportedly provided Medicare Advantage beneficiaries with various medical items and services.

The Defendant

18. Defendant **RICARDO MARTINEZ** was a resident of Miami-Dade County. **MARTINEZ** incorporated Rima Medical and served as Rima Medical’s president and registered agent.

COUNTS 1-5
Health Care Fraud
(18 U.S.C. § 1347)

1. Paragraphs 1 through 18 of the General Allegations section of this Indictment are realleged and incorporated by reference as if fully set forth herein.

2. From on or about January 26, 2011, and continuing through on or about August 31, 2011, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

RICARDO MARTINEZ,

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 in Title 18, United States Code, Section 24(b), that is, Medicare and BCBS, 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.

Purpose of the Scheme and Artifice

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

The Scheme and Artifice

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

4. On or about January 27, 2011, **RICARDO MARTINEZ** opened a bank account for Rima Medical with J.P. Morgan Chase (account number ending 9449), listing himself as signatory on the account.

5. On or about April 25, 2011, **RICARDO MARTINEZ** applied for and obtained a BCBS provider number authorizing Rima Medical to submit reimbursement claims to BCBS for medical items and services that were provided to Medicare Advantage beneficiaries pursuant to physicians' orders and prescriptions.

6. **RICARDO MARTINEZ** recruited and paid, and caused to be recruited and paid, Medicare Advantage beneficiaries to come to Rima Medical for the purpose of allegedly receiving medical benefits, items, and services for which Rima Medical could file reimbursement claims with BCBS.

7. **RICARDO MARTINEZ** submitted and caused Rima Medical to submit approximately \$1,706,707 to BCBS in Medicare Advantage claims for reimbursement, such claims falsely and fraudulently representing that medical items and services were prescribed by a doctor and provided to Medicare Advantage beneficiaries by Rima Medical.

8. As a result of such false and fraudulent claims, **RICARDO MARTINEZ** caused BCBS to deposit approximately \$730,558 into Rima Medical's corporate bank account.

9. **RICARDO MARTINEZ** used the proceeds of the health care fraud for his personal use and benefit, and to further the fraud.

Acts in Execution or Attempted Execution of the Scheme and Artifice

On or about the dates specified as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant, 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, that is, Medicare and BCBS, 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 that the defendant submitted and caused the submission of false and fraudulent claims to BCBS seeking the identified dollar amounts, and representing that Rima Medical provided medical items and services to Medicare Advantage beneficiaries pursuant to physicians' orders and prescriptions:

Count	Medicare Beneficiary	Approx. Date of Submission of Claim	BCBS Claim Number	Services Claimed; Approx. Amount Claimed
1	L.B.J.	07/08/2011	Q100000252198799	Injection, Octreotide, Depot Form for Intramuscular Injection, 1 mg (J2353); \$6,228
2	E.S.	07/08/2011	Q100000252198769	Injection, Octreotide, Depot Form for Intramuscular Injection, 1 mg (J2353); \$6,574
3	L.J.	07/25/2011	Q100000254421960	Injection, Octreotide, Depot Form for Intramuscular Injection, 1 mg (J2353); \$6,228
4	L.B.J.	08/12/2011	Q100000257247896	Injection, Octreotide, Depot Form for Intramuscular Injection, 1 mg (J2353); \$6,228

Count	Medicare Beneficiary	Approx. Date of Submission of Claim	BCBS Claim Number	Services Claimed; Approx. Amount Claimed
5	E.S.	08/12/2011	Q100000257245523	Injection, Octreotide, Depot Form for Intramuscular Injection, 1 mg (J2353); \$6,574

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

COUNTS 6-8

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

1. Paragraphs 1 through 18 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. In or around the dates enumerated below as to each count, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

RICARDO MARTINEZ

did knowingly and willfully offer and pay any remuneration, that is, kickbacks and bribes, in cash and in kind, that is, in the form of cash, directly and indirectly, overtly and covertly, to a person, to induce such person to refer an individual for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part by a Federal health care program, that is, Medicare, as set forth below:

Count	Beneficiary	Approximate Date	Approximate Kickback Amount
6	L.B.J	04/2011	\$100
7	L.J.	08/2011	\$120
8	E.S.	08/2011	\$120

In violation of Title 42, United States Code, Section 1320a-7b(b)(2)(A) and Title 18, United States Code, Section 2.

FORFEITURE
(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 forfeiture to the United States of America of certain property in which the defendant, **RICARDO MARTINEZ**, has an interest.

2. Upon conviction of any violation of Title 18, United States Code, Section 1347 or Title 42, United States Code, Section 1320a-7(b), as alleged in Counts 1 through 8 of this Indictment, the defendant shall forfeit to the United States all of his respective rights, title, and interest of any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violation(s), 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 \$730,557 in United States currency, which amount is 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 each defendant's sentence.

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

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with a third person;


- (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), to seek forfeiture of any other property of the defendant's up to the value of the above forfeitable property and, in addition, to seek a court order requiring the defendants to return any such property to the jurisdiction of the court for seizure and forfeiture.

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

—
F


for WIFREDO A. FERRER
UNITED STATES ATTORNEY


for CHRISTOPHER J. CLARK
ASSISTANT UNITED STATES ATTORNEY