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STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
17-20401-CR-SCOLA/TORRES
CASE NO. _____

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

UNITED STATES OF AMERICA

v.

DUNIESKY CRUZ and
CARLOS GOMEZ BRAVO,

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 (“HHS”), 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 was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b) and a Federal healthcare program, as defined by 42 United States Code, Section 1320a – 7b(f).

3. Medicare programs covering different types of benefits were separated into different program “parts.” “Part A” of the Medicare program covered certain eligible home health care costs for medical services provided by a home health agency (“HHA”), also referred to as a “provider,” to persons who already qualified for Medicare and who additionally required home health services because of an illness or disability that caused them to be homebound. Payments for home health care medical services were typically made directly to a Medicare-certified HHA or provider based on claims submitted to the Medicare program for qualifying services that had been provided to eligible beneficiaries.

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

5. 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 the patient:

- (a) was confined to the home, also referred to as homebound;
- (b) was under the care of a physician who specifically determined there was a need for home health care and established the Plan of Care (“POC”); and
- (c) the determining physician signed a certification statement specifying that the beneficiary needed intermittent skilled nursing, physical therapy, speech therapy, or had a continued need for occupational therapy; 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 POC.

Record Keeping Requirements

6. Medicare Part A regulations required HHAs providing services to Medicare patients 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.

7. Among the written records required to document the appropriateness of home health care claims submitted under Part A of Medicare were: (i) a POC that included the

physician's order, 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.

8. Additionally, Medicare Part A regulations required HHAs to maintain medical records of every visit made by a nurse, therapist, or home health aide to a patient. 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 teaching and the understanding of the patient, and any changes in the patient's physical or emotional condition. The home health aide was 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 "skilled nursing progress notes" and "home health aide notes/observations."

The Defendants and Related Entities

9. Life & Hope Healthcare, Inc. ("Life & Hope"), located at 12595 SW 137 Avenue, Miami, FL, was incorporated on or about October 5, 2008 and did business in Miami-Dade County. It purportedly provided skilled nursing services, physical therapy, occupational therapy, and home health aide services to Medicare beneficiaries.

10. Defendant **DUNIESKY CRUZ**, a resident of Miami-Dade County, was an operator of Life & Hope.

11. Defendant **CARLOS GOMEZ BRAVO**, a resident of Miami-Dade County, was an employee at Life & Hope.

12. Co-Conspirator 1, a resident of Miami-Dade County, was an occupational therapist who owned a staffing company which performed physical and occupational therapy services for Medicare beneficiaries through Life & Hope.

13. City Center Rehab Corp. (“City Center”), located at 7821 Coral Way, Suite 100, Miami, FL, was a medical clinic incorporated on or about November 16, 2009, with its principal place of business in Miami-Dade County, in the Southern District of Florida.

14. Steven Lee Bolanos, a resident of Miami-Dade County, was an operator of City Center beginning in or around at least June 2012.

COUNT 1

**Conspiracy to Defraud the United States and Pay 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 February 2014, through in or around December 2014, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**DUNIESKY CRUZ
and
CARLOS GOMEZ BRAVO,**

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate, and agree with each other, Steven Lee Bolanos, Co-Conspirator 1, and others known and unknown to the Grand Jury, to commit certain offenses against the United States, that is:

- 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;
- b. to violate Title 42, United States Code, Section 1320a-7b(b)(2)(A), by knowingly and willfully offering and paying any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to a person to induce such person to refer 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.
- c. to violate Title 42, United States Code, Section 1320a-7b(b)(1)(B), by knowingly and willfully offering and paying any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for purchasing, leasing, ordering, and arranging for and recommending purchasing, leasing, and ordering any good, facility, service, and item for which payment may be made in whole and in part under a federal health care program, that is, Medicare.

PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by: (1) offering and paying kickbacks and bribes in return for referring beneficiaries and prescriptions for home health services to Life & Hope; and (2) submitting and causing the submission of claims to Medicare for home health services that Life & Hope purported to provide to those beneficiaries.

MANNER AND MEANS

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. **DUNIESKY CRUZ** and his co-conspirators offered and paid kickbacks to Co-Conspirator 1, and other patient recruiters, in cash, in return for referring Medicare beneficiaries to Life & Hope for home health services.

5. **DUNIESKY CRUZ** and **CARLOS GOMEZ BRAVO** offered and paid kickbacks to Steven Bolanos, and other clinic owners, in cash, in return for writing prescriptions for home health services for Medicare beneficiaries, purportedly provided by Life & Hope.

6. **DUNIESKY CRUZ** and his co-conspirators gave checks drawn from Life & Hope bank accounts to **CARLOS GOMEZ BRAVO**, and other co-conspirators, who cashed them and provided the cash to **CRUZ**, so that **CRUZ** and **GOMEZ BRAVO** could pay the patient recruiters and clinic owners who referred Medicare beneficiaries to Life & Hope.

7. **DUNIESKY CRUZ** and his co-conspirators caused Life & Hope to submit claims to Medicare for home health services purportedly provided to the recruited Medicare beneficiaries.

8. **DUNIESKY CRUZ** and his co-conspirators caused Medicare to pay Life & Hope based upon the home health services purportedly provided to the recruited Medicare beneficiaries.

OVERT ACTS

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

1. On or about June 4, 2014, **DUNIESKY CRUZ** paid Co-Conspirator 1 a kickback, in cash, in the approximate amount of \$1,500, in exchange for the referral of Medicare beneficiary

J.V. to Life & Hope.

2. On or about June 5, 2014, **DUNIESKY CRUZ** paid Co-Conspirator 1 a kickback, in cash, in the approximate amount of \$1,500, in exchange for the referral of Medicare beneficiary M.S. to Life & Hope.

3. On or about June 18, 2014, **CARLOS GOMEZ BRAVO** cashed Life & Hope check number 6996, in the approximate amount of \$22,000, for the purpose of paying kickbacks to patient recruiters and clinic owners, in cash.

4. On or about July 23, 2014, **DUNIESKY CRUZ** paid Steven Lee Bolanos a kickback, in cash, in the approximate amount of \$150, in exchange for a prescription for home health services for recruited Medicare beneficiary J.V.

5. On or about September 12, 2014, **DUNIESKY CRUZ** paid Co-Conspirator 1 a kickback, in cash, in the approximate amount of \$1,500, in exchange for the referral of Medicare beneficiary Y.L. to Life & Hope.

6. On or about September 19, 2014, **DUNIESKY CRUZ** paid Steven Lee Bolanos a kickback, in cash, in the approximate amount of \$150, in exchange for a prescription for home health services for recruited Medicare beneficiary Y.L.

7. On or about September 30, 2014, **CARLOS GOMEZ BRAVO** cashed Life & Hope check number 1024, in the approximate amount of \$21,000, for the purpose of paying kickbacks to patient recruiters and clinic owners.

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

COUNTS 2-4

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

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

DUNIESKY CRUZ,

did knowingly and willfully offer and pay any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to a person to induce such person to refer 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, as set forth below:

Count	Approximate Date of Kickback	Approximate Kickback Amount
2	June 4, 2014	\$1,500
3	June 5, 2014	\$1,500
4	September 12, 2014	\$1,500

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

COUNTS 5-6

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

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

DUNIESKY CRUZ,

did knowingly and willfully offer and pay any remuneration, including kickbacks and bribes,

directly and indirectly, overtly and covertly, in cash and in kind, in return for purchasing, leasing, ordering, and arranging for and recommending purchasing, leasing, and ordering any good, facility, service, and item for which payment may be made in whole and in part under a Federal health care program, that is, Medicare, as set forth below:

Count	Approximate Date of Kickback	Approximate Kickback Amount
5	July 23, 2014	\$150
6	September 19, 2014	\$150

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

FORFEITURE
(18 U.S.C. § 982(a)(7))

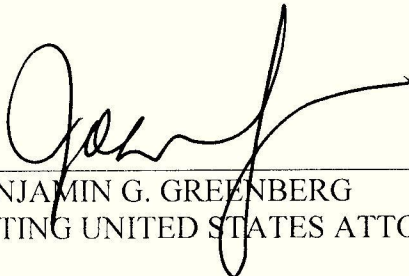
1. The allegations contained in this Indictment are re-alleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of certain property in which the defendants, **DUNIESKY CRUZ** and **CARLOS GOMEZ BRAVO**, have an interest.

2. Upon conviction of a violation alleged in this Indictment, the defendant shall forfeit to the United States 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).

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
ACTING UNITED STATES ATTORNEY



AMANDA PERWIN
ASSISTANT UNITED STATES ATTORNEY