

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff

Case:5:17-cr-20467
Judge: O'Meara, John Corbett
MJ: Stafford, Elizabeth A.
Filed: 07-06-2017 At 04:45 PM
SEALED MATTER (dat)

v.

ZAHIR SHAH

Defendant.

VIO: 18 U.S.C. § 1349
18 U.S.C. § 371
42 U.S.C. § 1320a-7b
18 U.S.C. § 982

INDICTMENT

THE GRAND JURY CHARGES:

General Allegations

At all times relevant to this Indictment:

The Medicare Program

1. The Medicare program (Medicare) was a federal health care program providing benefits to persons who were over the age of 65 or 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. 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. Medicare included coverage under two primary components, hospital insurance (“Part A”) and medical insurance (“Part B”). Part A covered physical therapy, occupational therapy, and skilled nursing services if a facility was certified by CMS as meeting certain requirements. Part B covered the cost of physicians’ services and other ancillary services not covered by Part A.

4. National Government Services was the CMS intermediary for Medicare Part A in the state of Michigan. Wisconsin Physicians Service was the CMS contracted carrier for Medicare Part B, which included home visits, in the state of Michigan. TrustSolutions LLC was the Program Safeguard Contractor for Medicare Part A and Part B in the state of Michigan until April 24, 2012, when it was replaced by Cahaba Safeguard Administrators LLC as the Zone Program Integrity Contractor (ZPIC). The ZPIC is the contractor charged with investigating fraud, waste, and abuse. Cahaba was replaced by AdvanceMed in May 2015.

5. By becoming a participating provider in Medicare, enrolled providers agreed to abide by the policies and procedures, rules, and regulations governing reimbursement. In order to receive Medicare funds, enrolled providers, together with their authorized agents, employees, and contractors, were required to abide by all the provisions of the Social Security Act, the regulations promulgated under the

Act, and applicable policies, procedures, rules, and regulations issued by CMS and its authorized agents and contractors.

6. Upon certification, the medical provider, whether a clinic or an individual, was assigned a provider identification number (PIN) for billing purposes. When the medical provider rendered a service, the provider submitted a claim for reimbursement to the Medicare contractor/carrier that included the PIN assigned to that medical provider. When an individual medical provider was associated with a clinic, Medicare Part B required that the individual provider's PIN be placed on the claim submitted to the Medicare contractor.

7. Health care providers were given and/or provided with online access to Medicare manuals and services bulletins describing proper billing procedures and billing rules and regulations. Providers could submit claims to Medicare only for services they rendered, and providers were required to maintain patient records to verify that the services were provided as described on the claim form.

8. In order to receive reimbursement for a covered service from Medicare, a provider was required to submit a claim, either electronically or using a form (*e.g.*, a CMS-1500 form or UB-92), containing the required information appropriately identifying the provider, patient, and services rendered.

9. Medicare only covered services that were both medically necessary and rendered.

10. Medicare only covered home health services if:
 - a. the Medicare beneficiary was under the care of a doctor and receiving services under a plan of care established and reviewed regularly by a doctor;
 - b. the Medicare beneficiary needed, and a doctor certified that the beneficiary needed, one or more of the following: (i) intermittent skilled nursing care; (ii) physical therapy; (iii) speech-language pathology services; or (iv) continued occupational therapy;
 - c. the home health agency was approved by Medicare (Medicare-certified); and
 - d. the Medicare beneficiary was homebound, and a doctor certified that the Medicare beneficiary was homebound.

Relevant Entities and People

11. Exceptional Home Health Care Inc. (Exceptional) was a Michigan corporation doing business at 15565 Northland Drive Suite 306W, Southfield, MI 48075, and 20755 Greenfield Road Suite 202, Southfield, MI 48075. Exceptional was a home health agency that purportedly provided in-home physical therapy, occupational therapy, speech pathology, and/or skilled nursing services to patients. Exceptional was a Medicare provider and submitted claims directly to Medicare.

12. A.R. Therapy Services Inc. (A.R. Therapy) was a Michigan corporation doing business at 20755 Greenfield Road Suite 200, Southfield, MI 48075.

13. Motion Transportation Inc. (Motion Transportation) was a Michigan corporation doing business at 20755 Greenfield Road Suite 202, Southfield, MI 48075.

14. Sana Kassab, a resident of Oakland County, Michigan, was a Medicare beneficiary recruiter for Exceptional.

15. Johnny Younan, a resident of Macomb County, Michigan, was a Medicare beneficiary recruiter for Exceptional.

16. Rizwan Qadir, M.D., a resident of Oakland County, Michigan, was a physician who referred Medicare beneficiaries to Exceptional.

The Defendant

17. ZAHIR SHAH, a resident of Oakland County, Michigan, was a licensed physical therapist and the owner, operator, and registered agent of Exceptional, A.R. Therapy, and Motion Transportation.

Count 1

18 U.S.C. § 1349

Conspiracy To Commit Health Care Fraud

18. Beginning in or around January 2005 and continuing through in or around September 2015, the exact dates being unknown to the Grand Jury, in Wayne County, in the Eastern District of Michigan, and elsewhere, the defendant, ZAHIR

SHAH, did willfully and knowingly combine, conspire, confederate, and agree with Sana Kassab, Johnny Younan, Rizwan Qadir, and others known and unknown to the Grand Jury, to commit an offense against the United States, namely, 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), that is, 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, in violation of Title 18, United States Code, Section 1347.

Purpose of the Conspiracy

19. It was a purpose of the conspiracy for ZAHIR SHAH, Sana Kasab, Johnny Younan, Rizwan Qadir, and other co-conspirators to unlawfully enrich themselves by, among other things: (a) submitting false and fraudulent claims to Medicare for home health services that were medically unnecessary, not eligible for reimbursement, and never provided; (b) concealing the submission of false and fraudulent claims to Medicare, the receipt and transfer of the proceeds from the fraud, and the payment of kickbacks and bribes to Medicare beneficiary recruiters; and (c) diverting proceeds of the fraud for the personal use and benefit of the defendant and his co-conspirators.

Manner and Means

20. The manner and means by which the defendant and his co-conspirators sought to accomplish the purpose of the conspiracy included, among other things, the following:

21. On or about January 27, 2005, ZAHIR SHAH falsely certified to Medicare, on behalf of Exceptional, that he would comply with all Medicare rules and regulations, including that he would not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare and would refrain from violating the federal anti-kickback statute.

22. Thereafter, ZAHIR SHAH, Sana Kassab, Johnny Younan, Rizwan Qadir, and others devised and participated in a scheme to certify and cause to be certified Medicare beneficiaries for home health services without regard for medical necessity.

23. ZAHIR SHAH, Sana Kassab, Johnny Younan, Rizwan Qadir, and others devised and participated in a scheme to pay and receive kickbacks and bribes in order to submit and cause the submission of false and fraudulent claims to Medicare on behalf of recruited beneficiaries.

24. ZAHIR SHAH paid kickbacks and bribes to Medicare beneficiary recruiters in the form of cash and checks.

25. ZAHIR SHAH submitted and caused the submission of false and fraudulent claims to Medicare for home health services purportedly provided by Exceptional in an amount exceeding \$9.1 million.

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

Count 2
18 U.S.C. § 371
Conspiracy To Pay and Receive Healthcare Kickbacks

26. Paragraphs 1 through 17 and 20 through 25 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

27. Beginning in or around January 2005 and continuing through in or around September 2015, the exact dates being unknown to the Grand Jury, in the Eastern District of Michigan, and elsewhere, defendant ZAHIR SHAH did willfully and knowingly combine, conspire, confederate, and agree with Sana Kassab, Johnny Younan, Rizwan Qadir, 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 Department of Health and Human Services in its administration and oversight of Medicare; and

b. to violate Title 42, United States Code, Section 1320a-7b(b)(1)(A) by knowingly and willfully soliciting or receiving any

remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicare, a Federal health care program as defined in Title 18, United States Code, Section 24(b), and

c. to violate Title 42, United States Code, Section 1320a-7b(b)(2)(A) by knowingly and willfully offering or paying any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash, in check, or in kind in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicare, a Federal health care program as defined in Title 18, United States Code, Section 24(b).

Purpose of the Conspiracy

28. It was a purpose of the conspiracy for defendant ZAHIR SHAH and his co-conspirators to unlawfully enrich themselves by: (1) offering, paying, soliciting, and receiving kickbacks and bribes in return for Medicare beneficiary referrals to Exceptional to serve as patients; and (2) submitting and causing the submission of claims to Medicare for purported home health services provided to those recruited beneficiaries.

Manner and Means

29. The manner and means by which the defendant and his co-conspirators sought to accomplish the purpose of the conspiracy included, among other things, the following:

30. ZAHIR SHAH and others paid and caused the payment of kickbacks and bribes to Sana Kassab, Johnny Younan, and others in exchange for Medicare beneficiary referrals to Exceptional.

31. ZAHIR SHAH and others disguised the kickbacks and bribes to Sana Kassab, Johnny Younan, and others as fees for translation services, among other things.

32. ZAHIR SHAH and others submitted and caused the submission of claims to Medicare through Exceptional for home health care services that were purportedly provided to the recruited Medicare beneficiaries.

33. Medicare paid Exceptional based upon claims for home health services purportedly provided to Medicare beneficiaries.

Overt Acts

34. In furtherance of the conspiracy, and to accomplish its purposes and objects, at least one of the conspirators committed, or caused to be committed, in the Eastern District of Michigan, the following overt acts, among others:

35. On or about January 3, 2014, ZAHIR SHAH delivered and caused the delivery of a kickback via a Motion Transportation check to Sana Kassab.

36. On or about January 22, 2014, ZAHIR SHAH delivered and caused the delivery of a kickback via an A.R. Therapy check in the approximate amount of \$700 to Sana Kassab.

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

Counts 3-4

42 U.S.C. § 1320a-7b(b)(2)(A)

**Payment of Kickbacks in Connection with a
Federal Health Care Program**

37. Paragraphs 1 through 17 and 29 through 33 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

38. On or about January 3, 2014, and on or about January 22, 2014, in the Eastern District of Michigan and elsewhere, defendant ZAHIR SHAH did knowingly and willfully solicit, offer, pay, and receive remuneration, that is kickbacks and bribes, directly and indirectly, overtly and covertly, in the form of a check, to or from a person in order to induce them to refer an individual to a person for the furnishing and arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program as defined in Title 18 United States Code, Section 24(b), that is, Medicare, as detailed below.

Count	Approximate Date of Payment	Description
3	January 3, 2014	Check from Motion Transportation, signed by ZAHIR SHAH, and delivered to Sana Kassab
4	January 22, 2014	Check from A.R. Therapy, in the approximate amount of \$700, signed by ZAHIR SHAH, and delivered to Sana Kassab

All in violation of Title 42, United States Code, Section 1320a-7b(b)(2)(A).

Forfeiture Allegations

18 U.S.C. § 982(a)(7) and/or 18 U.S.C. § 981 with 28 U.S.C. § 2461

39. The above allegations contained in this Indictment are incorporated by reference as if set forth fully herein for the purpose of alleging forfeiture pursuant to the provisions of 18 U.S.C. § 982(a)(7) and/or 18 U.S.C. § 981 with 28 U.S.C. § 2461.

40. As a result of the violations of 18 U.S.C. §§ 371, 1347, and/or 42 U.S.C. § 1320a-7b, as set forth in this Indictment, defendant ZAHIR SHAH 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 violations, pursuant to 18 U.S.C. § 982(a)(7).

41. As a result of the violations of 18 U.S.C. §1349, as set forth in this Indictment, defendant ZAHIR SHAH shall forfeit to the United States any property, real or personal, that constitutes or is derived from proceeds traceable to the commission of such violations, pursuant to 18 U.S.C. § 981 with 28 U.S.C. § 2461.

42. Money Judgment: Such property includes, but is not limited to, forfeiture money judgments in an amount to be proved in this matter, representing the total amount of proceeds and/or gross proceeds obtained as a result of defendant ZAHIR SHAH's violations, as alleged in this Indictment.

43. Substitute Assets: If the property described above as being subject to forfeiture, as a result of any act or omission of the 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 other property that cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek to forfeit any other property of the defendant up to the value of the forfeitable property described above.

THIS IS A TRUE BILL.

s/Grand Jury Foreperson
Grand Jury Foreperson

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Date: July 6, 2017

ORIGINAL

United States District Court Eastern District of Michigan	Criminal Case Co
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NOTE: It is the responsibility of the Assistant U.S. Attorney signing this form to co

Companion Case Information	Companion Case Number:
This may be a companion case based upon LCrR 57.10 (b)(4) ¹ :	Judge Assigned:
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	AUSA's Initials: R.S.

Case Title: USA v. Zahir Shah

County where offense occurred : Oakland County, Wayne County

Check One: Felony Misdemeanor Petty

Indictment/ ___ Information --- no prior complaint.
 ___ Indictment/ ___ Information --- based upon prior complaint [Case number:]
 ___ Indictment/ ___ Information --- based upon LCrR 57.10 (d) [Complete Superseding section below].

Superseding Case Information

Superseding to Case No: _____ Judge: _____

- Corrects errors; no additional charges or defendants.
- Involves, for plea purposes, different charges or adds counts.
- Embraces same subject matter but adds the additional defendants or charges below:

<u>Defendant name</u>	<u>Charges</u>	<u>Prior Complaint (if applicable)</u>
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Please take notice that the below listed Assistant United States Attorney is the attorney of record for the above captioned case.

July 6, 2017
Date

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¹ Companion cases are matters in which it appears that (1) substantially similar evidence will be offered at trial, or (2) the same or related parties are present, and the cases arise out of the same transaction or occurrence. Cases may be companion cases even though one of them may have already been terminated.