

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.
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CAROL L. MICHEL
CLERK

FELONY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

**INDICTMENT FOR HEALTH CARE FRAUD,
AGGRAVATED IDENTITY THEFT, AND NOTICE OF FORFEITURE**

UNITED STATES OF AMERICA

v.

BRET BERRY

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CRIMINAL NO. **21-45**
SECTION: **SECT. G MAG. 2**
VIOLATIONS: 18 U.S.C. § 1347
18 U.S.C. § 1028A

The Grand Jury charges that:

COUNTS 1 - 7
(Health Care Fraud)

A. AT ALL TIMES MATERIAL HEREIN:

1. Cardiac Rehab Services was established on or around June 2013. Louisiana Cardiac Rehab, LLC was established in or around September 2016. CACR, LLC was established in or around October 2016. University Cardiopulmonary Rehab, LLC was established in or around July 2017. HeartLung Rehab, LLC was established in or around April 2018.

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2. Each of these five businesses were established in the Eastern District of Louisiana by Defendant **BRET BERRY** ("**BERRY**"), were owned and controlled by **BERRY**, and focused on providing cardiac rehabilitation services.

3. Common Procedural Terminology (CPT) codes are written by the American Medical Association (AMA) and are published yearly. The AMA codebook is a listing of descriptive items and identifying codes for reporting medical services and procedures performed by medical providers. The purpose of the terminology is to provide a uniform language that accurately describes medical, surgical, and diagnostic services. In 2000, the CPT code set was designated by the Department of Health and Human Services as the national coding standard for physician and other health care professional services and procedures under the Health Insurance Portability and Accountability Act (HIPAA).

4. **BERRY**'s LLCs routinely billed physician services with CPT Codes [REDACTED] and [REDACTED]

5. CPT Code [REDACTED] is only appropriate when an order for the test is triggered by an event. A rhythm strip is used to help diagnose the presence or absence of an arrhythmia (irregular heartbeat), and a report is generated. There must be a specific order for an electrocardiogram or rhythm strip followed by a separate, signed, written, and retrievable report. It is not appropriate to use these codes for reviewing the telemetry monitor strips taken from a monitoring system. The need for an electrocardiogram or rhythm strip should be supported by documentation in the patient medical record. According to Medicare guidelines, Code [REDACTED] is utilized under general supervision for a service ordered by a physician. The physician must be aware the service is happening. According to CMS section 410.32, "[a]ll diagnostic x-ray tests, diagnostic laboratory

tests, and other diagnostic tests must be ordered by the physician who is treating the beneficiary, that is, the physician who furnishes a consultation or treats a beneficiary for a specific medical problem and who uses the results in the management of the beneficiary's specific medical problem. Tests not ordered by the physician who is treating the beneficiary are not reasonable and necessary."

6. Electrocardiograms (EKGs) record the electrical signals in the heart. EKGs are used to help diagnose heart conditions such as arrhythmias and coronary artery disease. Running an EKG is a diagnostic test; therefore, the physician treating the patient must order the diagnostic test and use the results to better treat the patient. Every claim submitted to Medicare must be medically necessary.

7. Running an EKG excessively and without a doctor's order would not meet the medical necessity requirement.

8. CPT Code [REDACTED] is utilized appropriately when physicians or other qualified healthcare professionals bill for their services for outpatient cardiac rehabilitation with continuous EKG monitoring (per session).

9. Medicare Part B provides certain cardiac rehabilitation (CR) programs to eligible beneficiaries. The CR services must include a physician supervised program that furnishes physician prescribed exercise each day CR items and services are furnished, cardiac risk factor modification, including education, counseling, and behavioral intervention at least once during the program, tailored to the patients' individual needs; psychosocial assessment, outcomes assessment, and an individualized treatment plan detailing how these components are utilized for each patient.

10. Physician prescribed exercise is defined as physical activity that includes aerobic exercise combined with other types of exercise (i.e., strengthening, stretching) as determined to be appropriate for individual patients by a physician each day CR items/services are furnished. Cardiac risk factor modification includes education, counseling, and behavioral intervention, tailored to the patients' individual needs. Psychosocial assessment is defined as an evaluation of an individual's mental and emotional functioning as it relates to the individual's rehabilitation and should include: (1) an assessment of those aspects of the individual's family and home situation that affects the individual's rehabilitation treatment, and (2) a psychosocial evaluation of the individual's response to, and rate of progress under, the treatment plan.

11. Outcomes assessment should minimally include assessments from the commencement and conclusion of CR, based on patient-centered outcomes which must be measured by the physician immediately at the beginning and end of the program and objective clinical measures of the effectiveness of the CR program for the individual patient, including exercise performance and self-reported measures of exertion and behavior. The individualized treatment plan should be written and tailored to each individual patient and include: (1) a description of the individual's diagnosis; (2) the type, amount, frequency, and duration of the CR items/services furnished; and (3) the goals set for the individual under the plan. The individualized treatment plan must be established, reviewed, and signed by a physician every 30 days.

12. On September 29, 2016, **BERRY**, through Cardiac Rehab Services, LLC, was educated that direct physician supervision is required for Medicare coverage, to include that "direct supervision" means the physician must be present and immediately available to furnish assistance and direction through the performance of the procedure.

13. On October 6, 2016, **BERRY**, through Cardiac Rehab Services, LLC (“CRS”), was notified via letter that “the codes billed by CRS do not meet all of the necessary requirements” and CPT Code [REDACTED] requires a physician or other qualified health care professional must be present and supervise the cardiac rehabilitation.

14. On December 15, 2017, **BERRY**, through CACR, LLC, was notified that CPT Codes [REDACTED] requires a cardiac event and it is not appropriate to bill CPT Code [REDACTED] for simply reviewing telemetry monitor strips. **BERRY**, through CACR, LLC, was also notified that CPT Code [REDACTED] requires that a physician be immediately available at all times.

15. On January 19, 2018, **BERRY**, through Louisiana Cardiac Rehab, LLC, was notified that CPT Codes [REDACTED] requires a cardiac event and it is not appropriate to bill CPT Code [REDACTED] for simply reviewing telemetry monitor strips. **BERRY**, through Louisiana Cardiac Rehab, LLC, was also notified that CPT Code [REDACTED] requires that a physician be immediately available at all times.

B. THE SCHEME AND ARTIFICE TO DEFRAUD:

It was part of the scheme and artifice to defraud that **BERRY** to unlawfully enrich himself by submitting and causing the submission of false and fraudulent claims to health care benefit programs, to include Blue Cross and Blue Shield of Louisiana, Medicare, and Medicaid.

It was further part of the scheme and artifice to defraud that **BERRY** improperly billed CPT Codes [REDACTED] and [REDACTED] to maximize reimbursement from health care benefit programs, knowing that those services were not properly being rendered by a physician.

It was further part of the scheme and artifice to defraud that once health care benefit programs stopped reimbursing a particular LLC owned by **BERRY**, he would create a new one in order to continue to collect reimbursements relating to this fraudulent billing.

It was further part of the scheme and artifice to defraud that between 2016 to 2020, in reliance on those and other false representations, health care benefit programs reimbursed **BERRY**'s LLCs approximately \$859,000 for fraudulent services. **BERRY**'s LLCs billed approximately \$11,290,000.

C. THE OFFENSE:

Beginning in or around June 2013, and continuing through present, in the Eastern District of Louisiana and elsewhere, the Defendant did knowingly and willfully execute a scheme and artifice to defraud Blue Cross and Blue Shield of Louisiana, Medicare and Medicaid, each federal health care benefit programs affecting commerce, and other health care benefit programs, within the meaning of Title 18, United States Code, Section 24(b), in violation of Title 18, United States Code, Section 1347.

On or about the dates and in the approximate amounts set forth below, within the Eastern District of Louisiana and elsewhere, the defendant **BRET BERRY**, for the purpose of executing and attempting to execute the fraudulent scheme described above, knowingly and willfully submitted or caused to be submitted claims for CPT Codes [REDACTED] or [REDACTED] for payment for the following false and fraudulent claims:

Count	Beneficiary	Claimed Date of Service	Claimed Service	Amount
1	G.B.	12/9/2016	[REDACTED] Physician services for outpatient cardiac rehabilitation with continuous ECG monitoring	\$150
2	G.B.	2/26/2019	[REDACTED] Rhythm ECG	\$300

Count	Beneficiary	Claimed Date of Service	Claimed Service	Amount
3	L.R.	1/27/2017	<p>██████████</p> <p>Physician services for outpatient cardiac rehabilitation with continuous ECG monitoring</p>	\$150
4	L.W.	3/19/2019	<p>██████████</p> <p>Rhythm ECG</p>	\$300
5	K.C.	10/1/2018	<p>██████████</p> <p>Physician services for outpatient cardiac rehabilitation with continuous ECG monitoring</p>	\$150
6	L.L.	4/9/2018	<p>██████████</p> <p>Rhythm ECG</p>	\$300
7	L.L.	8/18/2017	<p>██████████</p> <p>Physician services for outpatient cardiac rehabilitation with continuous ECG monitoring</p>	\$150

All in violation of Title 18, United States Code, Section 1347.

COUNTS 8 - 9
(Aggravated Identity Theft)

A. AT ALL TIMES MATERIAL HEREIN:

The allegations contained in Parts A, B, and C of Counts 1 through 7 are incorporated by reference as if fully set forth herein.

B. THE OFFENSE:

On or about the dates and in the approximate amounts set forth below, in the Eastern District of Louisiana and elsewhere, **BRET BERRY**, during and in relation to a health care fraud offense in violation of Title 18, United States Code, Section 1347, as alleged in Counts 1 through 7 herein, knowingly used or caused to be used, without lawful authority, a means of identification of another person, that is, F.S.'s name and unique national provider identifier, to bill a health care benefit program for the following services to the beneficiaries listed below, which F.S. did not actually provide:

Count	Beneficiary	Claimed Date of Service	Claimed Service	Amount
8	L.W.	3/19/2019	██████████ Rhythm ECG	\$300
9	K.C.	5/8/2019	██████████ Rhythm ECG	\$300

All in violation of Title 18, United States Code, Section 1028A(a)(1).

NOTICE OF FORFEITURE

1. The allegations of Counts 1 through 9 of this Indictment are incorporated by reference as though set forth fully herein for the purpose of alleging forfeiture to the United States.

2. As a result of the offenses alleged in Counts 1 through 7, the defendant, **BRET BERRY**, shall forfeit to the United States pursuant to Title 18, United States Code, Section 982(a)(7), any property, real or personal, involved in said offenses, and any property traceable to such property.

3. As a result of the offense alleged in Counts 8 through 9, the defendant, **BRET BERRY**, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(2)(B), any property constituting, or derived from, proceeds obtained, directly or indirectly, as a result of such violation, and pursuant to Title 18, United States Code, Section 1028(b)(5), any personal property used or intended to be used to commit the offense.

4. If any of the above-described property, 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 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;

the United States shall seek a money judgment and, pursuant to Title 21, United States Code, Section 853(p), forfeiture of any other property of the defendant up to the value of said property.

~~A TRUE BILL:~~



DUANE A. EVANS
UNITED STATES ATTORNEY


KATHRYN MCHUGH
Assistant United States Attorney

New Orleans, Louisiana
April 9, 2021