

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

v.

Case:2:09-cr-20579
Judge: Duggan, Patrick J
MJ: Komives, Paul J
Filed: 12-03-2009 At 03:42 PM
USA VS SEALED MATTER

D-1 EMILIO HABER,
D-2 ALEJANDRO HABER,
D-3 HANS LOBATO,
D-4 MARIA HABER,
D-5 EMMA KING,
D-6 MELVIN YOUNG

VIO: 18 U.S.C. § 1349
18 U.S.C. § 1347
18 U.S.C. § 2
18 U.S.C. § 982

Defendants.

INDICTMENT

THE GRAND JURY CHARGES:

General Allegations

At all times relevant to this Indictment:

1. The Medicare program 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 State 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. The Medicare Program included coverage under two primary components, hospital insurance (Part A) and medical insurance (Part B). Part B of the Medicare Program

covered the costs of physicians' services and other ancillary services (including testing) not covered by Part A. The claims at issue in this indictment were submitted under Part B of the Medicare Program.

4. Wisconsin Physicians Service was the CMS contracted carrier for Medicare Part B in the state of Michigan. TrustSolutions, LLC was the Program Safeguard Contractor for Medicare Part B in the state of Michigan.

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 and 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 for billing purposes (referred to as a PIN). When the medical provider rendered a service, the provider would submit a claim for reimbursement to the Medicare contractor/carrier that includes 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 number associated with the clinic be placed on the claim submitted to the Medicare contractor.

7. Health care providers were given and provided with online access to Medicare manuals and services bulletins describing proper billing procedures and billing rules and regulations. Providers could only submit claims to Medicare for services they rendered and

providers are required to maintain patient records to verify that the services were provided as described on the claim.

8. In order to receive reimbursement for a covered service from Medicare, a provider must 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, beneficiary, and services rendered, among other things.

9. Ritecare, LLC (Ritecare) was a Michigan limited liability company that originally purported to do business at 32464 Schoolcraft Road, Livonia, Michigan. Ritecare later moved and purported to do business to two separate, different locations: 17940 Farmington Road, Livonia, Michigan and 16904 W. Warren, Detroit, Michigan. The articles of organization for Ritecare were filed on July 10, 2007.

10. CompleteHealth, LLC (CompleteHealth) was a Michigan limited liability company that originally purported to do business at 38858 West 5 Mile Road, Livonia, Michigan. The articles for organization for CompleteHealth were filed on September 20, 2007.

11. On June 17, 2008, a certificate of merger was filed with the Michigan Department of Labor and Economic Growth for a merger of Ritecare and CompleteHealth, with the surviving entity being Ritecare.

12. Defendant EMILIO HABER, a resident of Wayne County, Michigan, controlled and directed the operations at Ritecare.

13. Defendant ALEJANDRO HABER, a resident of Dade County, Florida, owned Ritecare and also directed its operations.

14. Defendant MARIA HABER, a resident of Wayne County, Michigan, owned and helped direct the operations of CompleteHealth.

15. Defendant HANS LOBATO, a resident of Wayne County, Michigan, was an administrator at Ritecare.

16. Defendant EMMA KING, a resident of Wayne County, Michigan, was an employee and beneficiary recruiter for Ritecare.

17. Defendant MELVIN YOUNG, a resident of Wayne County, Michigan, was an employee and beneficiary recruiter for Ritecare.

COUNT 1
(18 U.S.C. § 1349 – Conspiracy to Commit Healthcare Fraud)

D-1 EMILIO HABER
D-2 ALEJANDRO HABER
D-3 HANS LOBATO
D-4 MARIA HABER
D-5 EMMA KING
D-6 MELVIN YOUNG

18. Paragraphs 1 through 17 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

19. From in or around August 2007, and continuing through in or around October 2009, the exact dates being unknown to the Grand Jury, in Wayne County, in the Eastern District of Michigan, and elsewhere, the defendants, EMILIO HABER, ALEJANDRO HABER, HANS LOBATO, MARIA HABER, EMMA KING and MELVIN YOUNG, did willfully and knowingly combine, conspire, confederate and agree with each other and others, known and unknown to the Grand Jury, to violate Title 18, United States Code, Section 1347, that is, 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 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 service.

Purpose of the Conspiracy

20. It was a purpose of the conspiracy for defendants EMILIO HABER, ALEJANDRO HABER, HANS LOBATO, MARIA HABER, EMMA KING, MELVIN YOUNG and others to unlawfully enrich themselves by, among other things, (a) submitting false and fraudulent claims to Medicare; (b) offering and paying kickbacks and bribes to Medicare beneficiaries for the purpose of such beneficiaries arranging for the use of their Medicare beneficiary numbers by the conspirators as the bases of false and fraudulent claims filed for office visits and medical testing; (c) 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 (d) diverting proceeds of the fraud for the personal use and benefit of the defendants and their co-conspirators.

Manner and Means

21. The manner and means by which the defendants and their co-conspirators sought to accomplish the purpose of the conspiracy included, among others, the following:

22. Defendant ALEJANDRO HABER would incorporate Ritecare in July 2007. MARIA HABER would incorporate CompleteHealth in September 2007. ALEJANDRO HABER, HANS LOBATO, EMILIO HABER, MARIA HABER would execute merger documents in June 2008 merging the operations of CompleteHealth and Ritecare. The owners of the Ritecare entities would maintain a valid Medicare provider number to submit Medicare claims for office visits and tests. Both ALEJANDRO HABER and MARIA HABER partly owned and controlled the bank accounts for Ritecare and CompleteHealth respectively and received disbursements from those accounts.

23. Defendants EMILIO HABER, ALEJANDRO HABER, and HANS LOBATO would control the day-to-day operations of Ritecare. MARIA HABER was EMILIO HABER's wife and was also involved in the activities at CompleteHealth and Ritecare.

24. Defendants EMILIO HABER, ALEJANDRO HABER, MARIA HABER and HANS LOBATO would pay Ritecare beneficiaries and beneficiary recruiters, providing cash and other incentives to beneficiary recruiters for the purpose of paying kickbacks to Medicare beneficiaries.

25. Defendants EMILIO HABER, ALEJANDRO HABER, and HANS LOBATO would instruct beneficiary recruiters to inform Medicare beneficiaries about the symptoms typically needed to support the ordering of false tests billed by Ritecare and CompleteHealth to Medicare. Defendants EMILIO HABER, ALEJANDRO HABER, and HANS LOBATO would submit or cause the submission of false and fraudulent Medicare claims to Medicare for medical visits and tests that were medically unnecessary.

26. Defendants EMMA KING and MELVIN YOUNG were beneficiary recruiters who would offer and pay kickbacks to Medicare beneficiaries on behalf of Ritecare's owners and administrators, including EMILIO HABER, ALEJANDRO HABER, and HANS LOBATO. Defendants EMMA KING and MELVIN YOUNG would inform Medicare beneficiaries of the symptoms typically needed to justify medically unnecessary claims for fraudulent tests.

27. The Medicare beneficiaries would receive cash from beneficiary recruiters in exchange for subjecting themselves to medically unnecessary examination and testing at Ritecare. Defendants EMILIO HABER, ALEJANDRO HABER, and HANS LOBATO would direct the beneficiary recruiters to instruct the beneficiaries to claim they suffered from false symptoms. The beneficiary recruiters would comply with those instructions, and the Medicare beneficiaries would claim the false symptoms. This practice allowed Ritecare to submit claims to Medicare for tests that were not medically necessary.

28. A physician would conduct office visits and order tests at Ritecare that were medically unnecessary.

29. Defendants EMILIO HABER, ALEJANDRO HABER, HANS LOBATO, MARIA HABER, EMMA KING and MELVIN YOUNG would cause Ritecare, CompleteHealth and the combined Ritecare entity to submit claims to Medicare for office visits and medical tests. Of the approximately \$11.1 million in claims submitted by these entities to Medicare, approximately \$5 million of the submitted amount related to nerve conduction studies.

30. The defendants would transfer and disburse, and cause the transfer and disbursement of, monies from the various corporate accounts of Ritecare, CompleteHealth and the combined Ritecare entity to themselves and others.

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

COUNTS 2-3
(18 U.S.C. §§ 1347 and 2 – Health Care Fraud)

D-1 EMILIO HABER
D-2 ALEJANDRO HABER

31. Paragraphs 1 through 17 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

32. On or about the dates enumerated below, in Wayne County, in the Eastern District of Michigan, and elsewhere, the defendants EMILIO HABER and ALEJANDRO HABER, 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 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 Medicare, in connection with the delivery of and payment for health care benefits, items and services.

Purpose of the Scheme and Artifice

33. It was the purpose of the scheme and artifice for the defendants and their co-conspirators to unlawfully enrich themselves through the submission of false and fraudulent Medicare claims for medically unnecessary nerve conduction tests.

The Scheme and Artifice

34. Paragraphs 21 through 30 of Count 1 of this Indictment are realleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

Acts in Execution of the Scheme and Artifice

35. On or about the dates specified as to each count below, in Wayne County, in the Eastern District of Michigan, and elsewhere, the defendants, EMILIO HABER and ALEJANDRO HABER, 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 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.

Count	Medicare Beneficiary	On or about Claim Date	Description of Item Billed	Approximate Amount Billed to Medicare
2	V.M.	09/17/2008	nerve conduction studies	\$3,251
3	N.K.	12/5/08	nerve conduction studies	\$1,531

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

CRIMINAL FORFEITURE
(18 U.S.C. § 982)

D-1 EMILIO HABER
D-2 ALEJANDRO HABER
D-3 HANS LOBATO
D-4 MARIA HABER
D-5 EMMA KING
D-6 MELVIN YOUNG

37. The allegations contained in Count 1 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 defendants, that is, EMILIO HABER, ALEJANDRO HABER, HANS LOBATO, MARIA HABER, EMMA KING and MELVIN YOUNG have an interest in pursuant to the provisions of Title 18, United States Code, Sections 982(a)(1) and 982(a)(7).

38. Pursuant to Title 18, United States Code, Section 982(a)(7), upon conviction of EMILIO HABER, ALEJANDRO HABER, HANS LOBATO, MARIA HABER, EMMA KING and MELVIN YOUNG for any of the offenses charged in Counts of this Indictment, the

defendants 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 the health care fraud offense. If more than one defendant is convicted of an offense, the defendants so convicted are jointly and severally liable for the amount derived from such offense.

39. Property subject to forfeiture to the United States pursuant to conviction for any offense charged in this Indictment, or the money laundering offenses charged in this indictment, includes but is not limited to, cash, all bank accounts and brokerage accounts; all interests in real estate, partnerships or corporations of any kind, and their assets; all personal property; and other assets, acquired during the time of the offenses, with the proceeds of health care fraud, and/or was property involved in any of the violations.

THIS IS A TRUE BILL.

s/Grand Jury Foreperson
Grand Jury Foreperson

s/GEJAA T. GOBENA

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Dated: December 3, 2009

United States District Court Eastern District of Michigan	Criminal Case Cover Sheet	Case Number
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NOTE: It is the responsibility of the Assistant U.S. Attorney signing this form to complete it accurately in all respects.

Reassignment/Recusal Information This matter was opened in the USAO prior to August 15, 2008 []

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:

Case Title: USA v. D-1EMILIO HABER, et al.

County where offense occurred : Wayne

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].

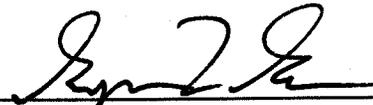
Superseding Case Information

Superseding to Case No: _____ Judge: _____

- Original case was terminated; no additional charges or defendants.
 - 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> |
|-----------------------|----------------|--|

Please take notice that the below listed Attorney is the attorney of record for the above captioned case.

December 3, 2009
Date



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¹ Companion cases are matters in which it appears that (1) substantially similar evidence will be offered at trial, (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.