

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **08-20382** CR-SEITZ

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

MAGISTRATE JUDGE
O'SULLIVAN

UNITED STATES OF AMERICA

vs.

ARIEL DELGADO,

Defendant.

FILED by *Mc* D.C.
MAG. SEC.

APR 29 2008

CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. • MIAMI

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 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).

3. Part B of the Medicare Program was a medical insurance program that covered, among other things, certain physician and outpatient services, and other health care benefits, items, and services, including durable medical equipment (“DME”), and prescription drugs that were medically necessary and ordered by licensed medical doctors or other qualified health care providers. DME is equipment that is designed for a specific medical purpose and for repeated use, such as wound care supplies, knee braces, prosthetic limbs, back braces, wrist braces, and wheelchairs

Medicare Billing and Payment Procedures

4. A DME company that sought to participate in Medicare Part B and bill Medicare for the cost of DME and related benefits, items, and services was required to apply for and receive a Part B of the Medicare Program was a medical insurance program that covered, among other things, certain physician and outpatient services, certain prescription drugs, and other health care benefits, items, and services, including durable medical equipment (“DME”), that were medically necessary and ordered by licensed medical doctors or other qualified health care providers. DME is equipment that is designed for a specific medical purpose and for repeated use, such as wound care supplies, knee braces, prosthetic limbs, back braces, wrist braces, and wheelchairs.

5. For Florida Medicare beneficiaries, Palmetto Government Benefits Administrators (“Palmetto GBA”), had a contract with HHS to receive, process and pay claims “supplier number.” The supplier number allowed a DME company to submit bills, known as “claims,” to Medicare to obtain reimbursement for the cost of DME and related health care benefits, items, and services that a DME company had supplied or provided to beneficiaries.

6. To receive payment from Medicare, a DME company, using its supplier number, would submit a health insurance claim form, known as a CMS-1500. Medicare permitted DME companies to submit a CMS-1500 electronically or by way of a paper claim form. Each claim form required certain important information, including: (a) the Medicare beneficiary's name and identification number; (b) the identification number of the doctor or other qualified health care provider who ordered the health care benefit, item, or service that was the subject of the claim; (c) the health care benefit, item, or service that was provided or supplied to the beneficiary; (d) the billing codes for the benefit, item, or service; and (e) the date upon which the benefit, item, or service was provided or supplied to the beneficiary.

7. Medicare, through Palmetto GBA, generally would pay a substantial portion of the cost of the DME or related health care benefits, items, and services that were medically necessary and ordered by licensed doctors or other qualified health care providers.

8. Payments under Medicare Part B were often made directly to the DME company rather than to the patient/beneficiary. For this to occur, the beneficiary would assign the right of payment to the DME company or other health care providers. Once such an assignment took place, the DME company would assume the responsibility for submitting claims to, and receiving payments from, Medicare.

Caballero De Paris, Inc.

9. Caballero De Paris, Inc. (hereinafter "Caballero") was a Florida corporation incorporated on July 23, 2007, that purportedly did business in Miami-Dade County providing DME to Medicare beneficiaries. Caballero's place of business was located at 6722 West Flagler Street, Miami, Florida 33144.

10. On or about January 10, 2008, defendant **ARIEL DELGADO** became the president and registered agent of Caballero.

COUNT 1
Conspiracy to Commit Health Care Fraud
(18 U.S.C. § 1349)

1. Paragraphs 1 through 10 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. From on or about January 10, 2008, and continuing through on or about March 5, 2008, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

ARIEL DELGADO,

did knowingly and willfully combine, conspire, confederate and agree with 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 services.

PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for the defendant and his coconspirators to unlawfully enrich themselves by, among other things: (a) submitting or causing the submission of false and fraudulent claims to Medicare; (b) concealing the submission of false and fraudulent claims to Medicare and the receipt and transfer of fraud proceeds; and (c) diverting fraud proceeds for the personal use and benefit of themselves and others.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendant and his coconspirators sought to accomplish the object and purpose of the conspiracy included, among others, the following:

4. On or about January 10, 2008, **ARIEL DELGADO** was added as a signatory to Caballero's corporate bank account at HSBC Bank, account number xxxxx7207.

5. From on or about January 10, 2008, and continuing through on or about March 5, 2008, **ARIEL DELGADO** and his coconspirators submitted, and caused the submission of, numerous false and fraudulent claims to Medicare on behalf of Caballero, in an approximate amount of \$1,388,051 seeking reimbursement for the cost of prescription drug items that were not prescribed by doctors or provided as claimed.

6. As a result of the submission of these claims, Medicare made payments to Caballero in the approximate amount of \$645,318. These payments were deposited into Caballero's corporate bank account at HSBC.

7. From on or about January 10, 2008, and continuing through on or about March 5, 2008, **ARIEL DELGADO** and his coconspirators transferred and disbursed, and caused the transfer and disbursement of, monies from Caballero's corporate bank account to themselves and others.

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

COUNTS 2-6
Health Care Fraud
(18 U.S.C. §§ 1347 and 2)

1. Paragraphs 1 through 10 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. From on or about January 10, 2008, and continuing through on or about March 5, 2008, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

ARIEL DELGADO,

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 Medicare, a health care benefit program affecting commerce, as defined by Title 18, United States Code, Section 24(b), 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, that is, the defendant, through Caballero, submitted false and fraudulent claims to Medicare, seeking reimbursement for the cost of various prescription drugs and services.

Purpose of the Scheme and Artifice

3. It was the purpose of the scheme and artifice for the defendant and his accomplices to unlawfully enrich themselves by, among other things: (a) submitting or causing the submission of false and fraudulent claims to Medicare; (b) concealing the submission of false and fraudulent claims to Medicare and the receipt and transfer of fraud proceeds; and (c) diverting fraud proceeds for the personal use and benefit of themselves and others.

The Scheme and Artifice

4. The allegations in paragraphs 4 through 7 of the Manner and Means of the Conspiracy section 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 or Attempted Execution of the Scheme and Artifice

5. On or about the dates set forth as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, **ARIEL DELGADO**, 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	Approx. Date of Claim	Medicare Claim Number	Item Claimed; Product Code; Approx. Amount Claimed
2	R.B.	02/15/08	108046808344000	Budesonide Non-Comp Unit; J7626; \$1,833
3	A.B.	02/29/08	108060746681000	Albuterol Ipratrop Non-Comp; J7620; \$303
4	C.G.	02/29/08	108060746709000	Budesonide Non-Comp Unit; J7626; \$2,204
5	V.M.	02/29/08	108051726347000	Albuterol Ipratrop Non-Comp; J7620; \$325
6	L.F.	03/04/08	108064718513000	Budesonide Non-Comp Unit; J7626; \$1,833

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

FORFEITURE
(18 U.S.C. § 982)

1. The allegations contained in Counts 1 through 6 of 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 **ARIEL DELGADO** has an interest.

2. Upon conviction of any violation of Title 18, United States Code, Section 1347 or 1349, **ARIEL DELGADO**, 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 offense, pursuant to Title 18, United States Code, Section 982(a)(7).

3. Upon conviction of any violation of Title 18, United States Code, Sections 1347 or 1349, **ARIEL DELGADO**, shall forfeit to the United States any property, real or personal, involved in such offense or any property traceable to such property, pursuant to Title 18, United States Code, Section 982(a)(1).

4. The property which is subject to forfeiture, includes but is not limited to:

(a) \$474,609 obtained from **ARIEL DELGADO** on March 25, 2008; and

(b) a money judgment in the amount of approximately \$645,318 which represents the gross proceeds of the fraud.

5. If the property described above as being subject to forfeiture, as a result of any act or omission of **ARIEL DELGADO**,

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to or deposited with a third person;

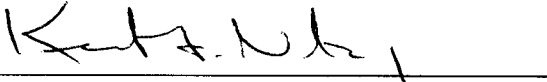
(c) has been placed beyond the jurisdiction of the Court;

(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), as made applicable through Title 18, United States Code, Section 982(b)(1), to seek forfeiture of any other property of **ARIEL DELGADO** up to the value of the above forfeitable property.

All pursuant to Title 18, United States Code, Sections 982(a)(1) and (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).



R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY



DANIEL BERNSTEIN
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES OF AMERICA

CASE NO. _____

vs.

CERTIFICATE OF TRIAL ATTORNEY*

ARIEL DELGADO,

Defendant.

Superseding Case Information:

Court Division: (Select One)

X Miami Key West
 FTL WPB FTP

New Defendant(s) Yes X No
Number of New Defendants
Total number of counts

I do hereby certify that:

- 1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
- 2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) Yes
List language and/or dialect Spanish

4. This case will take 3 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

(Check only one)	(Check only one)
I 0 to 5 days <u>X</u>	Petty <u> </u>
II 6 to 10 days <u> </u>	Minor <u> </u>
III 11 to 20 days <u> </u>	Misdem. <u> </u>
IV 21 to 60 days <u> </u>	Felony <u>X</u>
V 61 days and over <u> </u>	

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes:
Judge: _____ Case No. _____

(Attach copy of dispositive order)
Has a complaint been filed in this matter? (Yes or No)

If yes:
Magistrate Case No. _____
Related Miscellaneous numbers: _____
Defendant(s) in federal custody as of _____
Defendant(s) in state custody as of _____
Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) X

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? Yes X No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? Yes X No



Daniel Bernstein
ASSISTANT UNITED STATES ATTORNEY
Florida Bar No./Court No. 0017973

*Penalty Sheet(s) attached

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: ARIEL DELGADO

Case No:

Count #: 1

Conspiracy to Commit Health Care Fraud

Title 18, United States Code, Section 1349

* Max. Penalty: 10 years' imprisonment

Counts #: 2-6

Health Care Fraud

Title 18, United States Code, Section 1347

*Max. Penalty: 10 years' imprisonment per count

Counts #:

*Max. Penalty:

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**