SMS/JSF/2017R00221

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon. Kevin McNulty
	:	
v.	:	Criminal No. 20-825
	:	
LUIS ROA, a/k/a "Louis Roa"	: :	18 U.S.C. § 371 18 U.S.C. § 1349

INFORMATION

The defendant having waived in open court prosecution by Indictment, the Attorney for the United States, acting under authority conferred by 28 U.S.C. § 515, for the District of New Jersey charges:

COUNT ONE
(Conspiracy to Violate the Anti-Kickback Statute)

1. Unless otherwise indicated, at all times relevant to this Information:

The Defendant and Other Individuals and Entities

a. Defendant LUIS ROA, a/k/a "Louis Roa," ("defendant ROA") was a resident of Santiago, Chile. Defendant ROA and other individuals owned and operated multiple call centers (the "ROA Supply Companies") through which defendant ROA and others obtained doctors' orders for orthotic braces and patient referrals for genetic cancer screening tests ("CGX Tests"). The ROA Supply Companies, in turn, provided these orders and referrals in exchange for bribes from certain companies that provided durable medical equipment ("DME") and performed CGX Tests.

b. Individual-1 and Individual -2 were each residents of New Jersey who owned, operated, and/or had a financial or controlling interest in several DME supply companies located in New Jersey and elsewhere (the "DME Companies"). The DME Companies primarily supplied orthotic braces, such as knee, ankle, back, wrist, and shoulder braces, to individuals who received benefits under the Medicare Program ("Medicare"), who were typically referred to as "beneficiaries." The DME Companies were approved Medicare providers that submitted claims to Medicare for reimbursement for orthotic braces they provided to beneficiaries.

c. Individual-3 was a resident of Utah. Individual-3 and others owned, operated, and/or had a financial or controlling interest in a clinical laboratory ("Laboratory-1") that conducted or arranged for various diagnostic tests, including CGX Tests for Medicare beneficiaries. Laboratory-1 was an approved Medicare provider that submitted claims to Medicare for reimbursement for CGX Tests.

Overview of the Kickback Scheme

d. As described more fully below, defendant ROA entered into arrangements with Individuals-1, -2, -3, and others, under which defendant ROA, through the ROA Supply Companies, solicited and received kickbacks and bribes from the DME Companies and Laboratory-1 in exchange for the ROA Supply Companies providing doctors' orders to the DME Companies and referrals for CGX Tests to Laboratory-1.

e. In the context of DME, the ROA Supply Companies provided "completed doctors' orders" ("DME Orders") to the DME Companies. DME Orders

consisted of a doctor's order or prescription for DME or other medical services for a particular patient along with the patient's identifiers and insurance information.

f. In the context of CGX Tests, the ROA Supply Companies provided referrals to Laboratory-1, among other parties ("CGX Referrals"). CGX Referrals consisted of information identifying individuals who: (1) were Medicare beneficiaries; (2) qualified for a CGX Test; and (3) for whom Laboratory-1 later performed a CGX Test and submitted a corresponding claim to Medicare.

Background on the Medicare Program and Genetic Testing

g. Medicare was a federal program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. Medicare was a "health care program" as defined in 18 U.S.C. § 24(b) and a "Federal health care program" as defined in 42 U.S.C. § 1320a-7b(f). The Medicare Part B program was a federally funded supplemental insurance program that provided Medicare insurance benefits for individuals aged 65 or older, and for certain individuals who were disabled. The Medicare Part B program paid for various medical services for beneficiaries, including DME and CGX Tests.

h. Genetic tests were laboratory tests designed to identify specific inherited mutations in a patient's genes. These genetic variations affected a patient's risk of developing certain diseases or how the patient responded to medications. CGX Tests were genetic tests related to a patient's hereditary predisposition for cancer.

i. To conduct a genetic test, a laboratory must obtain a DNA sample from the patient. Such samples were typically obtained from the patient's saliva by using a cheek (buccal) swab to collect sufficient cells to provide a genetic profile. The

DNA sample was then submitted to the laboratory for analysis, such as CGX Tests.

j. If the patient had insurance, the laboratory would typically submit a claim for reimbursement for the test to the patient's insurance carrier. Reimbursement rates for CGX Tests sometimes exceeded approximately $8,000 per test.

k. Medicare excluded from coverage diagnostic genetic tests "that are not reasonable and necessary . . . [f]or the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." 42 C.F.R. § 411.15(k)(1). To be considered "reasonable and necessary," Medicare rules required that genetic testing "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." 42 C.F.R. § 410.32(a). "Tests not ordered by the physician who is treating the beneficiary are not reasonable and necessary." *Id.*

l. Non-physician practitioners, such as clinical nurse specialists or physicians assistants, may also order genetic tests but were subject to the same requirement as physicians: they must consult or treat the beneficiary for a specific medical problem and use the test results to manage the beneficiary's specific medical problem. 42 C.F.R. § 410.32(a)(2). Medicare also did not cover preventative CGX Tests for beneficiaries who do not exhibit symptoms of cancer or are not being treated for cancer.

Telemedicine

m. Telemedicine allows health care providers, such as physicians, to evaluate, diagnose, and treat patients remotely—without the need for an in-person visit—by using telecommunications technology, such as the internet or telephone to interact with a patient.

n. Medicare deemed telemedicine an appropriate means to provide certain health care related services ("telehealth services") to beneficiaries, including, among other services, consultations and office visits, only when certain requirements were met. These requirements included, among others: (a) that the beneficiary was located in a rural area (outside a metropolitan area or in a rural health professional shortage area); (b) that the services were delivered via an interactive audio and video telecommunications system; and (c) that the beneficiary was at a licensed provider's office or a specified medical facility—not at a beneficiary's home—during the telehealth service furnished by a remote provider.

o. Telehealth services could be covered by and reimbursable under Medicare, but only if telemedicine was generally appropriate, as outlined above, and only if the services were both ordered by a licensed provider and were reasonable and medically necessary to diagnose and treat a covered illness or condition.

The Conspiracy

2. From in or about February 2017 through in or about January 2020, in the District of New Jersey, and elsewhere, defendant

LUIS ROA,
a/k/a "Louis Roa,"

did knowingly and intentionally conspire and agree with others to commit certain offenses against the United States, that is, to knowingly and willfully solicit and receive remuneration, directly and indirectly, overtly and covertly, in cash and in kind, that is, kickbacks and bribes, from any person 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 under a Federal health care program, namely Medicare, contrary to Title 42, United States Code, Section 1320a-7b(b)(1)(A).

Goal of the Conspiracy

3. The goal of the conspiracy was for defendant ROA and his co-conspirators to unlawfully enrich themselves by soliciting and receiving kickbacks and bribes.

Manner and Means of the Conspiracy

4. The manner and means by which defendant ROA and others sought to accomplish the goal of the conspiracy included, among other things, the following:

Defendant ROA Solicited and Received Kickbacks In Exchange For Fraudulent DME Orders

a. From at least as early as in or about February 2017 through in or about April 2019, defendant ROA—through the ROA Supply Companies—and others entered into kickback agreements with the DME Companies through which defendant ROA and others generated medically unnecessary DME Orders. The DME Companies paid defendant ROA and others kickbacks ranging from approximately $160 to $385 in exchange for each DME Order.

b. In general, defendant ROA and others obtained DME Orders for Medicare beneficiaries located in the United States and elsewhere through the use of marketing call centers and telemedicine companies with whom they had relationships. Defendant ROA and others knowingly utilized telemedicine companies to generate DME Orders which were medically unnecessary because they did not comply with Medicare's telemedicine requirements and were generated without any legitimate physician-patient relationship.

c. To conceal the receipt of kickbacks, defendant ROA and others entered into sham "Marketing, Business Process Outsourcing and Call Center" agreements with the DME Companies (the "Marketing Agreements") to disguise the illicit bribe payments for the DME Orders. According to the Marketing Agreements, defendant ROA and others were to provide "raw leads"—which consisted merely of a prospective patient's name, contact information, and an indication that that patient was interested in receiving DME. In reality, however, defendant ROA and others

provided DME Orders to Individuals-1, -2, and others affiliated with the DME Companies that consisted of completed doctors' orders, not merely "raw leads."

d. Once the DME Companies received the DME Orders from defendant ROA and others, the DME Companies submitted and/or caused the electronic submission of claims to Medicare for payment.

Defendant ROA Solicited and Received Kickbacks for CGX Referrals

e. From at least as early as in or about October 2018 through in or about January 2020, defendant ROA—through the ROA Supply Companies—and others agreed with Laboratory-1 to provide CGX Referrals in exchange for kickbacks from Laboratory-1.

f. In or about November 2018, Individual-1 and Individual-2 agreed with Individual-3, defendant ROA, and others that defendant ROA and others involved in providing DME Orders to the DME Companies would also provide CGX Referrals to Laboratory-1. In exchange, Individual-1 and Individual-2 received kickbacks from Laboratory-1 in the form of a percentage of the Medicare reimbursements that Laboratory-1 received for the CGX Tests. Individual-1 and Individual-2, in turn, paid kickbacks to defendant ROA and others.

g. Specifically, defendant ROA and others solicited and received kickbacks from Individual-1 and Individual-2 of approximately 20 percent of the amount Medicare paid Laboratory-1 for each CGX Test.

h. In order to conceal the kickback arrangement, from in or about November 2018 through in or about April 2019, Laboratory-1 wired the kickback

payments to a shell company located in New Zealand (the "New Zealand Company"). Defendant ROA and others entered into sham contracts with the New Zealand Company in order to make it appear that defendant ROA and others were engaged in and being paid for legitimate marketing and referral services for the New Zealand Company (the "NZ CGX Agreements"). The NZ CGX Agreements provided that the New Zealand Company would pay defendant ROA and others for marketing services based on the hours and expenses incurred. In reality, however, Laboratory-1, via the New Zealand Company, paid defendant ROA and others on a per-CGX Referral basis that resulted in payment from Medicare.

i. Defendant ROA and others generated false invoices for hourly referral services for the New Zealand Company and sent them to Laboratory-1 and/or the New Zealand Company in an attempt to conceal the true nature of the NZ CGX Agreement. The New Zealand Company, in turn, wired the kickback payments to defendant ROA and others.

j. In or about April 2019, Individual-3 and others stopped the arrangement with Individual-1 and Individual-2, ceased accepting CGX Referrals from defendant ROA and his co-conspirators, and suspended payments to them in connection with the amounts owed under the kickback scheme. At the time that Individual-3 and others ceased doing business with defendant ROA, Individual-3 and others owed the ROA Supply Companies bribe payments.

k. In or about August 2019, Individual-3 and others agreed with a co-conspirator of defendant ROA that Individual-3 and others would pay defendant

ROA and his co-conspirators—through the ROA Supply Companies—outstanding bribe payments and further agreed that defendant ROA and his co-conspirators would continue the kickback scheme going forward.

l. As a result of defendant ROA's participation in the kickback scheme, from in or about February 2017 through in or about January 2020, Medicare paid approximately $6,908,340.74 for DME and CGX Test claims that were the product of the illicit kickback scheme.

Overt Acts

5. In furtherance of the conspiracy, and in order to effect the goal thereof, defendant ROA and others committed or caused the commission of the following overt acts in the District of New Jersey and elsewhere:

a. On or about June 27, 2017, a co-conspirator caused one of the DME Companies located in New Jersey to wire a kickback payment of approximately $14,000 to defendant ROA through one of the ROA Supply Companies.

b. On or about January 30, 2019, a co-conspirator caused the New Zealand Company to wire kickback payments of approximately $91,163 to defendant ROA through two of the ROA Supply Companies.

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

COUNT TWO
(Conspiracy to Commit Health Care Fraud)

6. The allegations in Paragraphs 1 and 3 through 5 of Count One are realleged here.

7. From in or about February 2017 through in or about January 2020, in the District of New Jersey, and elsewhere, defendant

LUIS ROA,
a/k/a "Louis Roa,"

did knowingly and intentionally conspire and agree with others to knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program and to obtain, by means of false and fraudulent pretenses, representations, and promises, any of the money owned by, and under the custody and control of, a health care benefit program, as defined by Title 18, United States Code, Section § 24(b), in connection with the delivery of or payment for health care benefits, items and services, contrary to Title 18, United States Code, Section 1347.

Goal of the Conspiracy

8. The goal of the conspiracy was for defendant ROA and others to unlawfully enrich themselves by submitting or causing the submission of false and fraudulent claims to Medicare.

Manner and Means

9. The manner and means by which defendant ROA and others sought to accomplish the goal of the conspiracy included, among other things, the following:

a. In order to generate CGX Referrals and DME Orders, defendant ROA and others used a variety of methods, including making direct "cold" telephone calls to elderly beneficiaries; Internet advertising; and in-person solicitations to beneficiaries across the United States. Through defendant ROA and others, targeted beneficiaries were questioned to determine whether they met certain eligibility

requirements for DME and CGX Tests. Once an eligible beneficiary was identified, defendant ROA submitted a DME Order to the DME Companies or CGX Referral to Laboratory-1.

b. Defendant ROA and others knowingly provided the DME Companies with DME Orders for medically unnecessary DME that were procured without complying with the Medicare telemedicine regulations and without establishing a physician-patient relationship.

c. As a result of the DME Orders that defendant ROA generated, the DME Companies, and/or other billing companies, Individual-1, Individual-2, and others submitted and/or caused the submission of false or fraudulent claims to Medicare for orthotic braces that were: (1) not medically necessary; (2) never requested by a Medicare beneficiary; or (3) never received by a Medicare beneficiary.

d. After receiving the CGX Referrals, Laboratory-1 worked with a network of telemedicine health care providers who contacted the beneficiaries defendant ROA and others referred. In general, those health care providers did not treat the beneficiaries for any symptoms or conditions, but instead only sought to generate CGX Tests for the beneficiaries without regard to medical necessity. Nor did the health care providers comply with Medicare's telemedicine requirements when ordering the CGX Tests.

e. Once Laboratory-1 obtained orders for CGX Tests generated through the process described above, a company associated with Laboratory-1 mailed a testing kit to each beneficiary. Beneficiaries then completed the buccal swabs or

other testing mechanisms contained in the kits—without any involvement by a health care provider— and returned them to Laboratory-1. Laboratory-1 then submitted or caused to be submitted claims to Medicare for payment for each CGX Test.

f. Defendant ROA and others knowingly provided Laboratory-1 with CGX Referrals in furtherance of the fraudulent submissions to Medicare.

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

FORFEITURE ALLEGATIONS

10. Upon conviction of the offense alleged in Counts One and Two, defendant ROA shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(7), all property, real or personal, that constitutes or is derived, directly and indirectly, from gross proceeds traceable to the commission of the offense (as defined in 18 U.S.C. § 24) alleged in this Information.

SUBSTITUTE ASSETS PROVISION
(Applicable to All Forfeiture Allegations)

11. If any of the above-described forfeitable 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 be entitled to forfeiture of substitute property, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b).

Rachael A. Honig

RACHAEL A. HONIG
Attorney for the United States,
Acting Under Authority Conferred
By 28 U.S.C. § 515

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INFORMATION FOR

18 U.S.C. §§ 371, 1349

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