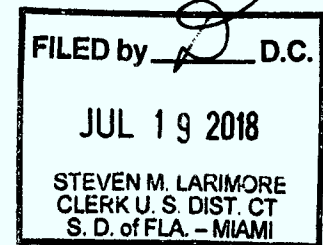


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 16-CR-20549-SCOLA(s)(s)(s)

18 U.S.C. § 1349  
18 U.S.C. § 1347  
18 U.S.C. § 1035  
18 U.S.C. § 371  
42 U.S.C. § 1320a-7b(b)(1)(A)  
42 U.S.C. § 1320a-7b(b)(2)(A)  
18 U.S.C. § 1956(h)  
18 U.S.C. § 1956(a)(1)(B)(i)  
18 U.S.C. § 666  
18 U.S.C. § 1343  
18 U.S.C. § 1346  
18 U.S.C. § 1503  
18 U.S.C. § 2  
18 U.S.C. § 981  
18 U.S.C. § 982



UNITED STATES OF AMERICA

vs.

PHILIP ESFORMES,  
ODETTE BARCHA, and  
ARNALDO CARMOUZE,

Defendants.

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**THIRD SUPERSEDING INDICTMENT**

The Grand Jury charges that:

**GENERAL ALLEGATIONS**

At all times relevant to this Third Superseding Indictment,

**The Health Insurance Programs**

1. The Medicare Program ("Medicare") was a federal health care program providing benefits to persons who were 65 or older or disabled. Medicare was administered by the United States Department of Health and Human Services ("HHS") through its agency, the Centers for

Medicare & Medicaid Services (“CMS”). Individuals who received benefits under Medicare were referred to as Medicare “beneficiaries.”

2. The Florida Medicaid Program (“Medicaid”) provided benefits to certain low-income individuals and families in Florida. Medicaid was administered by CMS and the Agency for Health Care Administration (“AHCA”). Medicare and Medicaid were each a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b), and a “federal health care program,” as defined by Title 42, United States Code, Section 1320(a)-7(b)-f.

3. The Medicare program was divided into four “parts” that cover different services. Medicare Part A generally covers inpatient hospital services, home health and hospice care, and skilled nursing and rehabilitation care.

4. Subject to certain conditions, Medicare Part A covered up to 100 days of skilled nursing and rehabilitation care for a benefit period (*i.e.*, spell of illness) following a qualifying hospital stay of at least three consecutive days. 42 U.S.C. § 1395d(a)(2)(A); 42 C.F.R. § 409.61(b), (c).

5. The conditions that Medicare imposed on its Part A skilled nursing facility (“SNF”) benefit included: (1) that the patient required skilled nursing care or skilled rehabilitation services (or both) on a daily basis, (2) that the daily skilled services must be services that, as a practical matter, could only be provided in a skilled nursing facility on an inpatient basis, and (3) that the services were provided to address a condition for which the patient received treatment during a qualifying hospital stay or that arose while the patient was receiving care in a skilled nursing facility (for a condition treated during the hospital stay). 42 U.S.C. § 1395f(a)(2)(B); 42 C.F.R. § 409.31(b).

6. Medicare required that a physician or certain other practitioners certify that these conditions were met at the time of a patient's admission to the nursing facility and to re-certify to the patient's continued need for skilled rehabilitation therapy services at regular intervals thereafter. *See* 42 U.S.C. § 1395f(a)(2)(B); Medicare General Information, Eligibility, and Entitlement Manual, Ch. 4, § 40.3.

7. To assist in the administration of Medicare Part A, CMS contracted with "fiscal intermediaries." 42 U.S.C. § 1395h. Fiscal intermediaries, typically insurance companies, were responsible for processing and paying claims and cost reports.

8. Beginning in or around November 2006, Medicare Administrative Contractors began replacing both the carriers and fiscal intermediaries. *See* Fed. Reg. 67960, 68181 (Nov. 2006). The MACs generally acted on behalf of CMS to process and pay Part A (as well as Medicare Part B) claims and perform administrative functions on a regional level. *See* 42 § C.F.R. 421.5(b).

9. In Florida, First Coast Service Options, Inc. ("First Coast") served as the fiscal intermediary and carrier until September 2008, at which time it was awarded a contract to serve as the MAC for the Florida region.

10. Providers who wished to be eligible to participate in Medicare Part A were requested to periodically sign an application form, CMS Form 855A. The application, which was required to be signed by an authorized representative of the provider, contained a certification that stated:

I agree to abide by the Medicare laws, regulations, and program instructions that apply to this provider. The Medicare laws, regulations, and program instructions are available through the Medicare contractor. I understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations and program

instructions (including, but not limited to, the federal anti-kickback statute and the Stark law), and on the provider's compliance with all applicable conditions of participation in Medicare.

11. CMS Form 855A contained additional certifications that the provider "will not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare and will not submit claims with deliberate ignorance or reckless disregard of their truth or falsity."

12. Every SNF cost report contained a "Certification" that must be signed by the chief administrator of the provider or a responsible designee of the administrator.

13. SNFs submitted the CMS-1450 electronically under Medicare Part A to their local fiscal intermediary or MAC, which in this case was First Coast. First Coast, on behalf of CMS, processed and paid the Medicare Part A claims.

14. In addition to the services covered under Medicare Part A, Medicare Part B provided coverage for, among other things, certain physician office and home visits, and other health care benefits, items, and services. The physician services at issue in this Third Superseding Indictment were covered by Part B.

15. An "Assisted Living Facility" or "ALF" was a facility licensed by AHCA, whether operated for profit or not, which undertook through its ownership or management, to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who were not relatives of the owner or administrator. Medicaid covered a portion of certain costs associated with ALF stays.

16. In Florida, AHCA was responsible for administering the Medicaid program, and was tasked with regulating and licensing health care facilities in Florida, including SNFs and ALFs. AHCA was funded by both the state and federal governments. AHCA received benefits in

excess of \$10,000 each year from the federal government at all times relevant to the Third Superseding Indictment.

17. AHCA's Division of Health Quality Assurance investigated patient complaints and conducted unannounced inspections of a wide range of health care facilities in the state of Florida, including ALFs and SNFs. In connection with these duties, AHCA surveyors entered and inspected health care facilities to review clinical records, interview patients, and interview staff, among other things, to ensure that the providers were complying with applicable state and federal statutes in a manner that protected the health and safety of the patients.

18. If AHCA surveyors identified deficiencies or fraud during their inspections, they could fine or, ultimately, revoke the operating license of the facility. The surveyors also notified the Florida Medicaid Fraud Control Unit at the Florida Attorney General's Office if they observed evidence of fraud.

**The Defendants, Related Companies and Individuals**

19. Defendant **PHILIP ESFORMES**, a resident of Miami-Dade County, controlled, owned, or operated the following SNFs and ALFs (collectively referred to as the "Esformes Network"), located throughout Miami-Dade County, in the Southern District of Florida, and elsewhere:

Facility Name	Type of Facility
ADME Investment Partners LTD dba Oceanside Extended Care	SNF
Almovea Associates LLC dba North Dade Nursing and Rehabilitation Center	SNF
Ayintove Associates LLC dba Harmony Health Center	SNF
Courtyard Manor Retirement Living, Inc.	ALF
Eden Gardens LLC	ALF
Fair Havens Holding LLC/Fair Havens Center LLC	SNF/ALF
Flamingo Park Manor LLC/The Pointe	ALF

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