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FOR IMMEDIATE RELEASE
WEDNESDAY, JULY 18, 2007
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CRM
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TDD (202) 514-1888

MIAMI JURY CONVICTS DEFENDANT FOR DEFRAUDING MEDICARE OF MILLIONS OF DOLLARS

Third Trial Conviction for Medicare Strike Force

WASHINGTON – The owner of a Florida pharmacy has been convicted by a federal jury in Miami of Medicare fraud, Assistant Attorney General Alice S. Fisher of the Criminal Division and U.S. Attorney R. Alexander Acosta of the Southern District of Florida announced today.

After a five-day trial at federal court in Miami, the jury found Nelson Valdes guilty on all charged counts, including conspiracy to defraud the U.S. government, to submit false claims to Medicare, and to receive kickbacks; conspiracy to commit health care fraud; and three counts of receiving kickbacks in exchange for referring patients to co-conspirator pharmacies.

Valdes owned Florida Pharmacy and Discount and F & M Medical Rentals Inc. from March of 2000 to the present. In September of 2001, Valdes conspired with the owners of Med-Pro Billing and Unimed Pharmacy to refer paid patients in exchange for half of what Medicare paid for “compounded” aerosols. Compounding refers to the process of a pharmacist making medication as opposed to a pharmaceutical manufacturer.

After Unimed Pharmacy was shut down in 2003 by the FBI, Valdes obtained a pharmacy license through the assistance of Benjamin Metsch, an attorney convicted of Medicare fraud in 2006, and continued to compound medication for his paid patients. From 2001 to 2003, Unimed collected \$7 million for aerosols, and from 2004 to 2007, Valdes’ pharmacy collected in excess of \$3 million for aerosols and other durable medical equipment (DME).

A Medicare beneficiary testified at trial that Valdes paid him \$150 per month to use his Medicare card, and in return, Valdes received half of all of Unimed’s receipts from Medicare, and collected over \$40,000 for items that his own company never provided the patient. Evidence at trial established that Valdes continued to bill Medicare for many of his patients, even after his arraignment in this case.

“Focusing our energy and efforts on combating the most prevalent Medicare fraud schemes will help protect patients from unnecessary, non-FDA prescribed medication and help protect the financial viability of the health care program designed to help the retired and disabled,” said Assistant Attorney General Fisher. “The Criminal Division’s

Fraud Section is providing leadership through the Medicare Fraud Strike Force and its work with U.S. Attorney's Offices to take steps to assure we are preparing for the future in Medicare fraud enforcement."

"The U.S. Attorney's Office in the Southern District of Florida is working hand-in-hand with the Fraud Section to utilize the Medicare Fraud Strike Force to assure that those who steal from Medicare are prosecuted and appropriately punished," said U.S. Attorney Acosta of the Southern District of Florida. "We will seek tough sentences for those who jeopardize the financial integrity of the Medicare program, particularly where their fraud endangers the lives of the elderly and disabled."

In 2006, the Medicare program paid for over \$155 million worth of aerosol medications in Miami-Dade County alone. These drugs amassed the single most common item billed to Medicare Part B and accounted for over 32 percent of all claims filed with the durable medical equipment regional carrier (DMERC) in Miami-Dade County. From 2005 to 2006, claims for aerosol medications rose approximately 115 percent. According to Medicare data, Miami-Dade County alone accounted for more paid DME claims than every state in the country except California, Texas, New York, Michigan and Ohio.

Centers for Medicare and Medicaid Services recently announced that it will no longer pay for compounded aerosol, as it has concluded that such drugs are medically unnecessary. Trial testimony established that compounding was done for the sole purpose of defrauding Medicare, and the prescriptions were predetermined before any of the over 1,000 beneficiaries at Unimed saw a physician or received a prescription.

Valdes faces a maximum sentence of 30 years in prison. He is scheduled to be sentenced on Sept. 26, 2007, before U.S. District Judge Cecilia Altonaga.

The case was prosecuted by Deputy Chief Kirk Ogrosky and Trial Attorney Jay Darden of the Fraud Section of the Criminal Division, with the investigative assistance of the U.S. Department of Health and Human Services, Office of the Inspector General, and the FBI. The strike force teams are led by a federal prosecutor supervised by both the Criminal Division's Fraud Section in Washington and the office of U.S. Attorney R. Alexander Acosta of the Southern District of Florida. Each team has four to six agents, at least one agent from the FBI and HHS Office of Inspector General, as well as representatives of local law enforcement. The teams operate out of the federal Health Care Fraud Facility in Miramar, Fla.

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