

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	<u>INDICTMENT</u>
)	
Plaintiff,)	
)	CASE NO. _____
v.)	
)	Title 18, United States Code,
ROBERT J. RIETHER)	Sections 371, 1035, 1347 and 2
)	
and)	
)	
JUDITH RIETHER,)	
)	
Defendants.)	

The Grand Jury Charges:

At all times material to this Indictment:

COUNT 1
18 United States Code § 371, Conspiracy

The Defendants

1. The defendant, ROBERT J. RIETHER, has been a doctor of osteopathy (D.O.) and radiologist licensed to practice in Ohio since February 24, 1972. He is an owner and the

medical director of Medi Trans X-Ray Service, Inc. (herein “Medi Trans”), a portable X-ray supplier. ROBERT J. RIETHER is also an owner and the medical director of Trans Ohio Radiologists (“Trans Ohio”), a medical radiology practice. Both Medi Trans and Trans Ohio did business at 9750 Portage Street N.W., Massillon, Ohio, within this district.

2. The defendant, JUDITH RIETHER, is an owner, the chief executive officer and president of both Medi Trans and Trans Ohio.

Medicare and Medicaid

3. Medicare was enacted by Congress on July 30, 1965, under Title XVIII of the Social Security Act. Medicare provides medical insurance benefits to persons age 65 or older, and to certain disabled persons. Medicare is a health care benefit program as defined in 18 U.S.C. § 24(b). Medicare has two parts: hospital insurance (Part A) and medical insurance (Part B). Medicare Part A covers inpatient hospital services, skilled nursing facilities, home health care services, and hospice care. Medicare Part B helps pay for the cost of health care items and services (including radiology, diagnostic testing and speech therapy), equipment and supplies not paid by Part A.

4. The Centers for Medicare and Medicaid Services (CMS), formerly the Health Care Finance Administration (HCFA), is the agency of the United States Department of Health and Human Services (HHS) delegated with administering Medicare. CMS administers Medicare Parts A and B through private insurance companies known as carriers.

5. Ohio providers claim Medicare Part B reimbursement from the carrier pursuant to written provider agreements. The carrier receives, processes and pays or rejects those claims according to Medicare rules, regulations and procedures.

6. The Medicaid program provides medical insurance coverage for individuals of low income. Medicaid is a health care benefit program within the meaning of 18 U.S.C. § 24(b).

7. The federal government funds approximately sixty percent of Ohio's Medicaid program. The Ohio Department of Job and Family Services (ODJFS, or "Ohio Medicaid") administers the federal Medicaid program in Ohio. Ohio providers claim Medicaid reimbursement from ODJFS pursuant to written provider agreements. ODJFS receives, processes and pays those claims according to Medicaid rules, regulations and procedures.

8. Providers who submit claims for services rendered to persons eligible for both Medicare and Medicaid receive payment from Medicaid for the amount that Medicare does not pay, known as a "crossover" payment.

9. Medicare and Medicaid pay health care providers, pursuant to written agreements, on the basis of reasonable charges for covered services provided to beneficiaries. Medicare and Medicaid assign to each participating provider a unique billing Provider Identification Number (PIN).

10. Medicare and Medicaid cover, and participating providers agree to bill, only for services that the provider actually renders, that are medically necessary to diagnose and treat illness or injury, and for which the provider maintains adequate supporting documentation, for example, a doctor's orders, progress notes, operative reports and test results. Providers agree with Medicare and Medicaid that lack of adequate documentation can constitute fraud subject to criminal sanctions.

Medical Coding

11. The American Medical Association assigns and publishes numeric codes, known as Current Procedural Terminology (CPT) and Health Care Financing Administration Common Procedure Coding System (HCPCS) codes. The codes are a systematic listing of procedures and services performed by health care providers. The procedures and services represented by the codes are health care benefits, items, and services within the meaning of 18 U.S.C. § 24(b). They include codes for radiology, diagnostic testing and evaluation, speech therapy and other services, based on complexity, severity and the average time required to perform each service. Health care providers and health care benefit programs use CPT and HCPCS codes to describe and evaluate the services for which they claim, and to decide whether to issue or deny payment. Each health care benefit program establishes a fee reimbursement for each procedure described by a CPT or HCPCS code.

12. As a condition of participation in the Medicare and Medicaid programs, providers agree to be familiar with, and abide by, the programs' reimbursement policies. Medicare carriers and Ohio Medicaid communicate their reimbursement policies to providers, including the defendants, through the Medicare manual, newsletters and other mailings, which include the policies relevant to radiology, speech therapy and related services.

13. Absent certain exceptions, Medicare Part B and Medicaid do not cover, and providers agree not to bill, for services provided by a physician or practitioner other than the one whose PIN is submitted with the claim.

14. Medicare and Medicaid do not cover, and providers agree not to bill, for services under Medicare Part B or under Medicaid if the services are covered under Medicare

Part A.

15. In addition, with respect to radiology services, Medicare and Medicaid do not cover procedures that are:
- A. provided by a portable x-ray provider involving the use of fluoroscopy, contrast media (barium), requiring the administration of a substance to the patient;
 - B. not requested by a physician in writing; or
 - C. not medically necessary.
16. In addition, Medicare and Medicaid do not pay for services that are performed at the same times as a portable x-ray procedure – for example, charges for transportation and equipment set-up – unless the portable x-ray service itself is covered.
17. From on or about February 8, 1999, through on or about November 6, 2003, the defendants billed approximately \$840,355.60, and received approximately \$565,541.60, from Medicare in the name of Medi Trans. From on or about February 8, 1999, through on or about February 26, 2004, the defendants billed approximately \$3,955,553.00, and received approximately \$3,029,042.42, from Medicare in the name of Trans Ohio.
18. From on or about June 1, 2001, through on or about January 1, 2003, the defendants billed approximately \$592,445.00, and received approximately \$95,610.38, from Ohio Medicaid in the name of Medi Trans. From on or about June 1, 2001, through on or about January 1, 2003, the defendants billed approximately \$643,584.00, and received approximately \$110,980.69, from Ohio Medicaid in the name of Trans Ohio.

The Conspiracy

19. From on or about September 24, 1997, through February 26, 2004, in the Northern District of Ohio, Eastern Division, and elsewhere, the defendants, ROBERT J. RIETHER and JUDITH RIETHER, did unlawfully, willfully, and knowingly combine, conspire, confederate and agree with each other and with others known and unknown to the Grand Jury, to violate Title 18, United States Code, Sections 1347 (Health Care Fraud) and 1035 (False Statements in Connection with Health Care).

Object of the Conspiracy

20. The object of the conspiracy was to obtain payment from Medicare and Medicaid for services for which the defendants well knew they had no right to reimbursement.

Methods and Means

_____The following were the methods and means used to further the conspiracy:

21. It was a further part of the conspiracy that ROBERT J. RIETHER and JUDITH RIETHER would claim and receive monies from Medicare and Medicaid by representing that ROBERT J. RIETHER had performed the services, when the services were performed, if at all, by others.

22. It was a part of the conspiracy that ROBERT J. RIETHER and JUDITH RIETHER would own and operate both Medi Trans and Trans Ohio, and would claim monies from Medicare and Medicaid for services that they knew were not covered.

23. It was a further part of the conspiracy that ROBERT J. RIETHER and JUDITH RIETHER would claim monies from Medicaid, whether in the name of Medi Trans or Trans Ohio, for tests conducted in nursing homes and similar settings, for example, modified barium

swallow (MBS) tests, as a portable x-ray supplier, involving fluoroscopy, the use of contrast media, and administration of a substance to the patient, knowing that Medicaid did not reimburse portable x-ray suppliers for such services.

24. It was a further part of the conspiracy that ROBERT J. RIETHER and JUDITH RIETHER would claim monies from Medicare, under the identity of Trans Ohio, for tests conducted in nursing homes and similar settings, for example, modified barium swallow (MBS) tests, as a portable x-ray supplier, knowing Medicare did not reimburse portable x-ray suppliers for such services.

25. It was a further part of the conspiracy that ROBERT J. RIETHER and JUDITH RIETHER would claim monies from Medicare and Medicaid, under the identity of Trans Ohio, for services they provided in nursing homes and similar settings, for example, modified barium swallow (MBS) tests, but would falsely represent that they had provided the services in an office setting, knowing that Medicare and Medicaid did not pay for such services if rendered in nursing homes.

26. It was a further part of the conspiracy that ROBERT J. RIETHER and JUDITH RIETHER would claim monies from Medicare and Medicaid, under the identity of Medi Trans, for additional services associated with the above described tests, for example, transportation, set-up, administration or evaluation of MBS tests by speech therapists, and still “spot film” pictures, knowing that no medical necessity had been established for the services, that the services were not ordered by a physician, and that the services were not covered because they were ancillary to the non-covered MBS tests.

27. It was a further part of the conspiracy that ROBERT J. RIETHER and JUDITH RIETHER would claim and receive monies from Medicare and Medicaid for speech therapy treatment, knowing that they did not provide such treatment, which was provided, if at all, by a speech therapist employed at the patient's nursing home.

28. It was a further part of the conspiracy that ROBERT J. RIETHER and JUDITH RIETHER would claim monies from Medicare and Medicaid for services they provided in nursing homes, knowing that the services were part of the nursing homes' Medicare Part A reimbursement.

29. It was a further part of the conspiracy that ROBERT J. RIETHER and JUDITH RIETHER would claim monies from Medicare and Medicaid for services that they knew were not supported by medical necessity or adequate documentation.

30. It was a further part of the conspiracy that ROBERT J. RIETHER and JUDITH RIETHER would carry out the scheme to defraud Medicare and Medicaid and share in its proceeds.

Overt Acts

31. In furtherance of the conspiracy and to effect the objects thereof, one or both of the conspirators committed at least one of the following overt acts:

Overt Act 1

On or about August 30, 1982, ROBERT J. RIETHER entered into a written provider agreement for Trans Ohio with Ohio Medicaid.

Overt Act 2

On or about May 26, 1983, ROBERT RIETHER signed and submitted to Ohio Medicaid an agreement with Quadax, Inc. for electronic billing of Medicaid claims.

Overt Act 3

On or about June 28, 1991, Medicaid received notice that Medi Trans had transferred ownership to ROBERT and JUDY [JUDITH] RIETHER.

Overt Act 4

On or about April 4, 1994, ROBERT J. RIETHER and JUDITH RIETHER incorporated Trans Ohio in the State of Ohio.

Overt Act 5

On or about September 24, 1997, JUDITH RIETHER signed two electronic billing applications, one for Trans Ohio and one for Medi Trans, which were submitted to Medicare.

Overt Act 6

On or about February 27, 2001, ROBERT J. RIETHER signed and caused to be submitted to the Medicare carrier a questionnaire describing the activities and practices of Medi Trans.

Overt Act 7

On or about October 5, 2001, Medicare check 116661344 in the amount of \$27,181.62 payable to Trans Ohio was deposited into a First Merit Bank account in the name of Trans Ohio with authorized signatures of ROBERT and JUDITH RIETHER.

Overt Act 8

On or about January 25, 2002, Medicare check 116964761 payable to Medi Trans in the amount of \$10,648.40 was deposited into a First Merit Bank account in the name of Medi Trans with authorized signatures of ROBERT and JUDITH RIETHER.

Overt Act 9

_____ On or about March 15, 2002, an Ohio Medicaid check payable to Medi Trans in the amount of \$2,375.69 was deposited into a First Merit Bank account in the name of Medi Trans with authorized signatures of ROBERT and JUDITH RIETHER.

Overt Act 10

On or about April 8, 2002, defendants caused the submission, in the name of Trans Ohio, of a claim for Patient L.S. for date of service March 29, 2002, with a “place of service” code for a nursing home.

Overt Act 11

On or about April 26, 2002, the defendants resubmitted the claim for Patient L.S. for date of service March 29, 2002, again in the name of Trans Ohio, but changed the “place of service” code to “office.”

Overt Act 12

On or about May 22, 2002, JUDITH RIETHER signed and caused to be submitted an electronic funds transfer agreement with the Medicare carrier to have Trans Ohio reimbursements deposited directly to a First Merit bank account.

Overt Act 13

On or about May 22, 2002, JUDITH RIETHER signed and caused to be submitted an electronic funds transfer agreement with Medicare to have Medi Trans reimbursements deposited directly to a separate First Merit bank account.

Overt Act 14

On or about June 10, 2002, Medicare check 117323512 payable to Trans Ohio in the amount of \$15,355.49 was deposited into a First Merit Bank of Ohio account in the name of Trans Ohio with authorized signatures of ROBERT and JUDITH RIETHER.

Overt Act 15

On or about July 2, 2002, a letter with the signature of JUDITH RIETHER and sent to the Medicare carrier under the names “Judy J. Riether, CEO” and “Robert J. Riether, DO - Medical Director” of Trans Ohio, stated, “We read the manual and monthly bulletins and try very hard to stay within all new changing guidelines outlined in these bulletins.”

Overt Act 16

On or about August 14, 2002, Medicare electronic reimbursement 880519519 to Medi Trans in the amount of \$1,166.29 was deposited into a First National Bank of Ohio account in the name of Medi Trans.

Overt Act 17

On or about September 9, 2002, Medicare electronic reimbursement 880533970 to Trans Ohio in the amount of \$26,711.37 was deposited into a First Merit Bank account in the name of Trans Ohio.

Overt Act 18

On or about October 4, 2002, a letter was sent to the Medicare carrier under the names “Robert J. Riether, DO - Medical Director” and “Judy J. Riether, CEO” of Trans Ohio, stating that physician orders established the medical necessity of the testing services billed by Trans Ohio.

Overt Act 19

_____ On or about December 3, 2002, a letter with the signature of JUDITH RIETHER was sent to the State of Ohio Office of Auditor under the name “Judy J. Riether, CEO-President,” stating, “We billed the Medicaid patient’s complete MBS exam and x-ray portion under the portable x-ray provider number and not our Health Care Facility License provider number for Trans Ohio Radiologists, Inc.,” and, “We try to keep up with all the new changes but, are not always successful. As you can see, we missed a very big compliance issue with the Health Care Facility billing issue and Medicaid patients.”

Overt Act 20

On or about March 7, 2003, a letter with the signature of JUDITH RIETHER was sent to the State of Ohio Office of Auditor under the name “Judy J. Riether, CEO,” stating, “We totally agree that all rules and regulations concerning mobile x-ray providers performing fluoroscopy exams are not allowable under the current laws and regulations.”

Overt Act 21

From on or about September 24, 1997, through and including November 6, 2003, Medicare and Medicaid payments were claimed and received in the name Medi Trans.

Overt Act 22

_____ From on or about September 24, 1997, through on or about February 26, 2004, Medicare and Medicaid payments were claimed and received in the name Trans Ohio.

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

COUNTS 2 - 12
18 U.S.C. § 1347, Health Care Fraud

The Grand Jury further charges:

32. The allegations of Paragraphs 1-18 and 20-22 above are alleged and incorporated herein as if fully rewritten.

33 From in or about September 24, 1997, through and including February 26, 2004, in the Northern District of Ohio, Eastern Division, and elsewhere, the defendants, ROBERT J. RIETHER and JUDITH RIETHER, knowingly and willfully executed, and attempted to execute, a scheme and artifice to defraud Medicare and Medicaid, health care benefit programs, and to obtain by means of false and fraudulent pretenses, representations and promises, money owned by and under the custody and control of Medicare and Medicaid, health care benefit programs, in connection with the delivery of or payment for health care benefits, items, and services.

34. On or after September 24, 1997, for the claimed dates of service listed below, in the Northern District of Ohio and elsewhere, the defendants, ROBERT J. RIETHER and JUDITH RIETHER, having knowingly and willfully executed and attempted to execute the scheme and artifice to defraud Medicare and Medicaid, and to obtain, by means of the false and fraudulent pretenses, representations and promises described above, did so execute and attempt to execute the scheme by the means described below, all for the purpose of executing said scheme and artifice.

COUNT	Beneficiary, Date	Billing Entity	Claimed Service	Amounts Billed, Paid
2	M.A. 11/26/2001	Medi Trans	70360	\$26.00 \$20.19
3	D.F. 12/03/2001	Medi Trans	70360	\$26.00 \$20.19
4	D.T. 03/22/2002	Medi Trans	R0070	\$80.00 \$60.82
5	C.M. 05/07/2002	Trans Ohio	92526	\$81.00 \$58.66
6	A.L. 06/06/2001	Trans Ohio	70371	\$125.00 \$99.77
7	C.R. 05/03/02	Trans Ohio	70371	\$125.00 \$90.52
8	J.G. 08/20/01	Trans Ohio	G0195	\$119.00 \$94.82
9	A.D.M. 10/24/01	Trans Ohio	70371	\$125.00 \$99.77
10	R.O. 12/04/01	Medi Trans	R0070	\$10.00 \$7.45
11	K.B. 12/04/01	Medi Trans	70371	\$125.00 \$93.79
12	W.D. 08/21/01	Medi Trans	70371	\$125.00 \$93.79

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

COUNT 13

18 U.S.C. § 1035, False Statements Relating to Health Care Matters

The Grand Jury Further Charges:

35. Paragraphs 1-18, 21-22, and 25 above are re-alleged and incorporated by reference as if fully set forth herein.

36. From in or about September 24, 1997, through in or about February 26, 2004, in the Northern District of Ohio, Eastern Division, and elsewhere, the defendants, ROBERT J. RIETHER and JUDITH RIETHER, in a matter involving a health care benefit program, knowingly and willfully falsified, concealed, and covered up by trick, scheme, or device a material fact, and made any materially false, fictitious, and fraudulent statements and representations, and made and used any materially false writing and document knowing the same to contain any materially false, fictitious, and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items, and services.

All in violation of Title 18, United States Code, Sections 1035 and 2.

A TRUE BILL

United States of America v. Robert J. Riether and Judith Riether

A TRUE BILL

FOREPERSON

GREGORY A. WHITE
United States Attorney