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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

EMILIO BERRIOS-ANTUNA, M.D.

Defendant.
_____/

Case No.: 20-cr-20275

Hon. George Caram Steeh

VIO: 18 U.S.C. § 1347
18 U.S.C. § 1035(a)
18 U.S.C. § 2
18 U.S.C. § 982

SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES:

GENERAL ALLEGATIONS

At all times relevant to this Superseding Indictment:

The Medicare Program

1. The Medicare program ("Medicare") was a federal health care program providing benefits to persons who were 65 years of age or older or disabled. Medicare was administered by the Centers for Medicare and Medicaid Services ("CMS"), a federal agency under the United States Department of Health and Human Services ("HHS"). Individuals who received benefits under Medicare were referred to as Medicare "beneficiaries."

2. Medicare was 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 1320a-7b(f).

3. Medicare was divided into four parts and covered specific benefits, items, and services: hospital insurance (Part A), medical insurance (Part B), Medicare Advantage (Part C), and prescription drug benefits (Part D).

4. Specifically, Medicare Part B covered medically necessary physician office services and outpatient care, including the ordering of durable medical equipment, prosthetics, orthotics, and supplies ("DME") that were ordered by licensed medical doctors or other qualified health care providers.

5. Physicians, clinics, laboratories, and other health care providers that provided services to Medicare beneficiaries were able to apply for and obtain a "provider number." A health care provider that received a Medicare provider number was able to file claims with Medicare to obtain reimbursement for services provided to beneficiaries.

6. To receive Medicare reimbursement, providers had to fill out an application and execute a written provider agreement, known as CMS Form 855. The application contained certifications that the provider agreed to abide by Medicare laws and regulations, and that the provider "[would] not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare, and

[would] not submit claims with deliberate ignorance or reckless disregard of their truth or falsity." Medicare providers were given access to Medicare manuals and service bulletins describing procedures, rules, and regulations.

7. CMS contracted with various companies to receive, adjudicate, process, and pay Part B claims, including claims for DME. Wisconsin Physicians Service was the CMS contracted carrier for Medicare Part B in the state of Michigan. AdvanceMed (now known as "CoventBridge Group") was the Zone Program Integrity Contractor ("ZPIC") for the state of Michigan, and as such, it was the Medicare contractor charged with investigating fraud, waste, and abuse.

Durable Medical Equipment

8. Medicare covered an individual's access to DME, such as off-the-shelf ("OTS") ankle braces, knee braces, back braces, elbow braces, wrist braces, and hand braces (collectively, "braces"). OTS braces required minimal self-adjustment for appropriate use and did not require expertise in trimming, bending, molding, assembling, or customizing to fit the individual.

9. A claim for DME submitted to Medicare qualified for reimbursement only if it was medically necessary for the treatment or diagnosis of the beneficiary's illness or injury and prescribed by a licensed physician. In claims submitted to Medicare for the reimbursement of provided DME, providers were required to set forth, among other information, the beneficiary's name and unique Medicare

identification number, the equipment provided to the beneficiary, the date the equipment was provided, the cost of the equipment, and the name and provider number of the provider who prescribed or ordered the equipment. To be reimbursed from Medicare for DME, the claim had to be reasonable, medically necessary, documented, and actually provided as represented to Medicare.

10. Medicare claims were required to be properly documented in accordance with Medicare rules and regulations. For certain DME products, Medicare promulgated additional requirements that a DME order was required to meet for an order to be considered "reasonable and necessary." For example, for OTS knee braces billed to Medicare under the Healthcare Common Procedures Coding System ("HCPCS") Code L1851, an order would be deemed "not reasonable and necessary" and reimbursement would be denied unless the ordering/referring physician documented the beneficiary's knee instability using an objective description of joint laxity determined through an examination of the beneficiary.

Telemedicine

11. Telemedicine provided a means of connecting patients to doctors by using telecommunications technology to interact with a patient.

12. Telemedicine companies provided telemedicine services to individuals by hiring doctors and other health care providers. Telemedicine companies typically paid doctors a fee to conduct consultations with patients. In order to generate

revenue, telemedicine companies typically either billed insurance or received payment from patients who utilized the services of the telemedicine company.

13. Medicare Part B covered expenses for specified telemedicine services if certain requirements were met. These requirements included, but were not limited to, that (a) the beneficiary was located in a rural or health professional shortage area; (b) services were delivered via a two-way, real-time interactive audio and video telecommunications system; and (c) the beneficiary was at a practitioner's office or a specified medical facility – not at a beneficiary's home – during the telemedicine consultation with a remote practitioner.

14. Medicare regulations regarding telehealth concerned payment for telehealth consultation services only and did not prohibit ordering DME where the consultation itself was not billed to Medicare. However, some Medicare contractors took the position that the failure to comply with these requirements could inform their determination of medical necessity for DME ordered.

15. In or around March 2020, in response to the COVID-19 pandemic, some of these requirements were amended temporarily to, among other things, cover telemedicine services for certain office and hospital visits, even if the beneficiary was not located in a rural area or a health professional shortage area and even if the telemedicine services were furnished to beneficiaries in their home.

The Defendant

16. Defendant EMILIO BERRIOS-ANTUNA, a resident of Sterling Heights, Michigan, was a medical doctor licensed to practice in Michigan. BERRIOS-ANTUNA was a Medicare provider and was required to abide by all Medicare rules and regulations. BERRIOS-ANTUNA worked as an independent contractor for purported telemedicine companies, including Company 1 and Company 2, described below.

Related Individuals and Entities

17. Company 1, a company known to the Grand Jury, was an Arizona company that operated as a purported telemedicine company that did business throughout the United States.

18. Company 2, a company known to the Grand Jury, was a Delaware company that operated as a purported telemedicine company that did business throughout the United States.

19. B.J. was a beneficiary residing in the Eastern District of Michigan.

20. C.B. was a beneficiary residing in the Eastern District of Michigan.

21. F.B. was a beneficiary residing in the Eastern District of Michigan.

22. F.P. was a beneficiary residing in the Eastern District of Michigan.

23. R.B. was a beneficiary residing in the Eastern District of Michigan.

COUNTS 1–12
18 U.S.C. §§ 1347 and 2
(Health Care Fraud)

24. Paragraphs 1 through 23 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

25. From in or around April 2018, and continuing through in or around September 2020, the exact dates being unknown to the Grand Jury, in Macomb County, in the Eastern District of Michigan, and elsewhere, the defendant, EMILIO BERRIOS-ANTUNA, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud Medicare, a Federal health care benefit program affecting commerce, as defined in 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, said health care benefit program, in connection with the delivery of, and payment for, health care benefits, items, and services.

Purpose of the Scheme and Artifice

26. It was a purpose of the scheme and artifice for EMILIO BERRIOS-ANTUNA and his accomplices to unlawfully enrich themselves by: (a) submitting and causing the submission of false and fraudulent claims to Medicare that were (i) medically unnecessary, (ii) not eligible for Medicare reimbursement, and (iii) not

provided as represented; (b) concealing the submission of false and fraudulent claims and the receipt and transfer of the proceeds from the fraud; and (c) diverting proceeds of the fraud for their personal use and benefit.

The Scheme and Artifice

27. On or about April 6, 2009, EMILIO BERRIOS-ANTUNA certified to Medicare that he would comply with all Medicare rules and regulations. For all times during the charged period, EMILIO BERRIOS-ANTUNA was a Medicare provider and was required to abide by all Medicare rules and regulations and federal laws, including that he would not knowingly present or cause to be presented a false and fraudulent claim for payment by Medicare.

28. Thereafter, EMILIO BERRIOS-ANTUNA devised and engaged in a scheme to submit false and fraudulent claims to Medicare for: (a) DME that was not medically necessary and (b) DME that was not eligible for reimbursement from Medicare.

29. EMILIO BERRIOS-ANTUNA agreed with others at Company 1 to sign brace orders for Medicare beneficiaries in exchange for approximately $20 per patient consultation.

30. EMILIO BERRIOS-ANTUNA agreed with others at Company 2 to sign brace orders for Medicare beneficiaries in exchange for approximately $50 per patient consultation.

31. EMILIO BERRIOS-ANTUNA received pre-filled unsigned prescriptions for DME, from accomplices working on behalf of Company 1 and Company 2, for him to electronically sign.

32. EMILIO BERRIOS-ANTUNA ordered braces that were medically unnecessary, for patients with whom he lacked a pre-existing doctor-patient relationship, and without communicating with the Medicare beneficiary.

33. EMILIO BERRIOS-ANTUNA and others falsified, fabricated, altered, and caused the falsification, fabrication, and alteration of patient files, brace orders, and other records, all to support claims to Medicare for braces that were medically unnecessary, ineligible for Medicare reimbursement, and not provided as represented.

34. Specifically, with respect to Company 1, EMILIO BERRIOS-ANTUNA (a) falsely stated that he determined, through his assessment of the Medicare beneficiary, that a particular course of treatment, including the prescription of braces, was appropriate and medically necessary; (b) falsely attested that he was treating the Medicare beneficiary; (c) falsely stated that he had explained the benefits of the brace to the Medicare beneficiary; and (d) concealed the fact that he never communicated with the beneficiaries.

35. Specifically, with respect to Company 2, EMILIO BERRIOS-ANTUNA (a) falsely stated that he determined, through his assessment of the

Medicare beneficiary, that a particular course of treatment, including the prescription of braces, was appropriate and medically necessary; (b) falsely attested that the information in the medical record was true, accurate, and complete; (c) falsely represented that he had performed certain diagnostic tests prior to ordering braces; (d) falsely stated that he had provided the Medicare beneficiary with a phone number to schedule a follow up medical evaluation; (e) falsely stated that he had explained the benefits of the brace to the Medicare beneficiary; and (f) concealed the fact that he never communicated with the beneficiaries.

36. EMILIO BERRIOS-ANTUNA submitted orders for DME on behalf of beneficiaries residing in the Eastern District of Michigan, and elsewhere, which caused DME providers to ship medically unnecessary DME to beneficiaries, including beneficiaries residing in the Eastern District of Michigan, and to submit claims to Medicare for reimbursement.

37. From in or around April 2018, through in or around September 2020, EMILIO BERRIOS-ANTUNA and others submitted and caused the submission of more than $10 million in false and fraudulent claims to Medicare for DME that was ineligible for Medicare reimbursement because the DME was not medically necessary, not eligible for reimbursement, and not provided as represented.

Acts in Execution of the Scheme and Artifice

38. On or about the dates specified below, in Macomb County, in the Eastern District of Michigan, and elsewhere, the defendant, EMILIO BERRIOS-ANTUNA, aided and abetted by others, and aiding and abetting others known and unknown to the Grand Jury, submitted and caused to be submitted the following false and fraudulent claims to Medicare for DME that were, among other things, not legitimately prescribed, not needed, and not used, and in execution of the scheme as described in paragraphs 27 to 37 of this Superseding Indictment, with each execution set forth below forming a separate count:

Count	Medicare Beneficiary	Approx. Date of Service	Claim Number	Description of Devices Billed; HCPCS Code	Approx. Amount Billed
1	B.J.	1/10/19	119015832457000	Back orthosis (L0650)	$1,508.84
2	B.J.	1/10/19	119015832458000	Right shoulder orthosis (L3960)	$845.40
3	B.J.	1/10/19	118016809733000	Left knee orthosis (L1851); Left suspension sleeve (L2397)	$1,187.18
4	B.J.	1/10/19	119015832460000	Right knee orthosis (L1851); Right suspension sleeve (L2397)	$1,187.18
5	C.B.	1/22/19	119023806216000	Right and left knee orthosis (L1851); Right and left suspension sleeve (L2397)	$2,356.60
6	C.B.	1/22/19	119023806218000	Back orthosis (L0650)	$1,594.13

Count	Medicare Beneficiary	Approx. Date of Service	Claim Number	Description of Devices Billed; HCPCS Code	Approx. Amount Billed
7	F.B.	2/28/19	119063825421000	Right shoulder orthosis (L3960)	$890.22
8	F.B.	2/28/19	119063825422000	Right and left knee orthosis (L1851); Left suspension sleeve (L2397)	$2,400.48
9	F.B.	2/28/19	119063825423000	Right and left ankle orthosis (L1971); Heel stabilizer (L3170)	$1,229.02
10	F.P.	2/4/20	120036814517000	Right knee orthosis (L1851); Right suspension sleeve (L2397)	$1,214.49
11	F.P.	2/4/20	120036814518000	Left knee orthosis (L1851); Left suspension sleeve (L2397)	$1,214.49
12	R.B.	2/5/20	120042816813000	Right and left knee orthosis (L1851); Right and left suspension sleeve (L2397)	$2,700.00

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

COUNTS 13–15
False Statements Relating to Health Care Matters
(18 U.S.C. §§ 1035(a) and 2)

39. The allegations set forth in paragraphs 1 through 23 and 26 through 37 of this Superseding Indictment are realleged and incorporated as if fully set forth in this paragraph.

40. On or about the dates set forth below, in Macomb County, within the Eastern District of Michigan, and elsewhere, the defendant, EMILIO BERRIOS-ANTUNA, in a matter involving a health care benefit program, specifically Medicare, did knowingly and willfully (a) falsify, conceal, and cover up by trick, scheme, and device material facts, and (b) make materially false, fictitious, and fraudulent statements and representations, and make and use materially false writings and documents, knowing the same to contain materially false, fictitious, and fraudulent statements and entries, in connection with the delivery of and payment for health care benefits, items, and services, in that defendant EMILIO BERRIOS-ANTUNA prepared and signed medical records and brace orders in which EMILIO BERRIOS-ANTUNA (a) falsely stated that he determined, through his assessment of the Medicare beneficiary, that a particular course of treatment, including the prescription of braces, was appropriate and medically necessary; (b) falsely attested that the he was treating the Medicare beneficiary; (c) falsely stated that he had explained the benefits of the brace to the Medicare beneficiary; and (d) concealed the fact that he never communicated with the beneficiaries.

Count	Approx. Date	Medicare Beneficiary	Record Containing False Statements and Concealment of Material Facts
13	1/7/19	B.J.	Detailed written orders for knee braces, shoulder brace, and back brace
14	1/16/19	C.B.	Detailed written orders for knee braces and back brace
15	2/24/19	F.B.	Detailed written orders for knee braces, ankle braces, and shoulder brace

Each in violation of Title 18, United States Code, Sections 1035(a) and 2.

COUNTS 16–17
False Statements Relating to Health Care Matters
(18 U.S.C. §§ 1035(a) and 2)

41. The allegations set forth in paragraphs 1 through 23 and 26 through 37 of this Superseding Indictment are realleged and incorporated as if fully set forth in this paragraph.

39. On or about the dates set forth below, in Macomb County, within the Eastern District of Michigan, and elsewhere, the defendant, EMILIO BERRIOS-ANTUNA, in a matter involving a health care benefit program, specifically Medicare, did knowingly and willfully (a) falsify, conceal, and cover up by trick, scheme, and device material facts, and (b) make materially false, fictitious, and fraudulent statements and representations, and make and use materially false writings and documents, knowing the same to contain materially false, fictitious, and fraudulent statements and entries, in connection with the delivery of and payment

for health care benefits, items, and services, in that defendant EMILIO BERRIOS-ANTUNA prepared and signed medical records and brace orders in which EMILIO BERRIOS-ANTUNA (a) falsely stated that he determined, through his assessment of the Medicare beneficiary, that a particular course of treatment, including the prescription of braces, was appropriate and medically necessary; (b) falsely attested that the information in the medical record was true, accurate, and complete; (c) falsely represented that he had performed certain diagnostic tests prior to ordering braces; (d) falsely stated that he had provided the Medicare beneficiary with a phone number to schedule a follow-up medical evaluation; (e) falsely stated that he had explained the benefits of the brace(s) to the Medicare beneficiary; and (f) concealed the fact that he communicated with the beneficiaries.

Count	Approx. Date	Medicare Beneficiary	Record Containing False Statements and Concealment of Material Facts
16	1/31/20	F.P.	Detailed written orders for knee braces
17	2/3/20	R.B.	Detailed written orders for knee braces

Each in violation of Title 18, United States Code, Sections 1035(a) and 2.

FORFEITURE ALLEGATIONS
Criminal Forfeiture
(18 U.S.C. § 982(a)(7))

40. The allegations contained in this Superseding Indictment are incorporated by reference as if set forth fully herein for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 982.

41. Upon conviction of the violations alleged in Counts 1 through 17 as set forth in this Superseding Indictment, the defendant, EMILIO BERRIOS-ANTUNA, shall forfeit to the United States any property, real or personal, that constitutes or is derive, directly or indirectly, from gross proceeds traceable to the commission of the offense, pursuant to Title 18, United States Code, Section 982(a)(7).

37. Substitute Assets: If the property described above as being subject to forfeiture, 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 party;

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 that cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b), to seek to forfeit any other property of the defendant, EMILIO BERRIOS-ANTUNA, up to the value of the forfeitable property described above.

38. Money Judgment: The government shall also seek a forfeiture money judgment from the defendant for a sum of money representing the total amount of proceeds obtained as a result of defendant's violations of 18 U.S.C. § 1347 and 18 U.S.C. § 1035, as alleged in this Superseding Indictment.

THIS IS A TRUE BILL.

s/Grand Jury Foreperson
GRAND JURY FOREPERSON

SAIMA S. MOHSIN
ACTING UNITED STATES ATTORNEY

JOSEPH S. BEEMSTERBOER
Acting Chief
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U.S. Department of Justice

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s/Claire T. Sobczak
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Date: September 2, 2021

United States District Court Eastern District of Michigan	**Criminal Case Cover Sheet**	**Case Number** 20-cr-20275

NOTE: It is the responsibility of the Assistant U.S. Attorney signing this form to complete it accurately in all respects.

Companion Case Information	**Companion Case Number:**
This may be a companion case based upon **LCrR 57.10 (b)(4)**[1]:	**Judge Assigned:**
☐ **Yes** ☒ **No**	**AUSA's Initials:** CTS

Case Title: USA v. EMILIO BERRIOS-ANTUNA, M.D.

County where offense occurred : Macomb County

Check One: ☒**Felony** ☐**Misdemeanor** ☐**Petty**

____Indictment/____Information --- **no** prior complaint.
____Indictment/____Information --- based upon prior complaint [**Case number:**]
✓ Indictment/____Information --- based upon **LCrR 57.10 (d)** ***[Complete Superseding section below]***.

Superseding Case Information

Superseding to Case No: 20-cr-20275 **Judge:** George Caram Steeh

☐ Corrects errors; no additional charges or defendants.
☐ Involves, for plea purposes, different charges or adds counts.
☒ Embraces same subject matter but adds the additional defendants or charges below:

Defendant name	**Charges**	**Prior Complaint (if applicable)**
Emilio Berrios-Antuna	18 U.S.C. § 1347 and 2 18 U.S.C. § 1035(a) and 2	

Please take notice that the below listed Assistant United States Attorney is the attorney of record for the above captioned case.

September 2, 2021
Date

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[1] Companion cases are matters in which it appears that (1) substantially similar evidence will be offered at trial, or (2) the same or related parties are present, and the cases arise out of the same transaction or occurrence. Cases may be companion cases even though one of them may have already been terminated.