

2. Medicare was subdivided into multiple Parts. Medicare Part B covered physician's services and outpatient care, including an individual's access to durable medical equipment ("DME"), such as orthotic devices and wheelchairs.

3. Orthotic devices were a type of DME that included rigid and semi-rigid devices such as foot braces, ankle-foot braces, knee braces, leg braces, cervical braces, back braces, shoulder braces, elbow braces, hand braces, neck braces, head-neck braces, and quad canes (collectively "orthotics").

4. Individuals who qualified for Medicare benefits were commonly referred to as Medicare "beneficiaries." Each beneficiary was given a Medicare identification number.

5. DME companies, pharmacies, physicians, and other health care providers that provided services to Medicare beneficiaries were referred to as Medicare "providers." In order to participate in Medicare, providers were required to submit an application in which the providers agreed to comply with all Medicare-related laws and regulations. If Medicare approved a provider's application, Medicare assigned the provider a Medicare "provider number." A health care provider with a Medicare provider number could file claims with Medicare to obtain reimbursement for services rendered to beneficiaries.

6. Medicare reimbursed DME companies and other health care providers for services rendered to beneficiaries. Medicare would generally pay reimbursement for DME and related medications only if they were prescribed by the beneficiary's physician and were medically necessary to the treatment of the beneficiary's illness or injury.

7. To receive reimbursement from Medicare, providers submitted or caused the submission of claims to Medicare for payment of services to beneficiaries, either directly or through a billing company.

8. CMS contracted with Durable Medical Equipment Regional Carriers ("DMERCs") to provide Medicare benefits and process claims for reimbursement. The DMERCs that processed and paid Medicare DME claims in Texas was Cigna Government Services ("Cigna").

9. In order to bill Medicare for services rendered, a provider submitted a claim form (Form 1500) to Cigna. When a Form 1500 was submitted, usually in electronic form, the provider certified: (1) that the contents of the form were true, correct, and complete; (2) that the form was prepared in compliance with the laws and regulations governing Medicare; and (3) that the contents of the claim were medically necessary.

10. A Medicare claim for DME reimbursement was required to set forth, among other things, the beneficiary's name and unique Medicare identification number, the equipment or medicine provided to the beneficiary, the date that the equipment or medicine was provided, the cost of the equipment or medicine, and the name and unique physician identification number ("UPIN") or national provider identifier ("NPI") of the physician who prescribed or ordered the equipment or medicine.

11. KO Medical Inc. ("KO") was a Texas business entity, purportedly doing business at 301 South 9th Street, Suite 108, Richmond, Texas 77469. Among other things, KO provided power wheelchairs and other DME to Medicare beneficiaries.

12. Defendant **OLIVER NKUKU**, a resident of Fort Bend County, Texas, was an owner and operator of KO.

13. Defendant **KATE NKUKU**, a resident of Fort Bend County, Texas, was an owner and operator of KO.

14. Defendant **CALLISTUS EDOZIE** was a resident of Harris County, Texas.

15. Defendant **OBISIKE OKEREKE** was a resident of Fort Bend County, Texas.

16. Defendants **CALLISTUS EDOZIE** and **OBISIKE OKEREKE** were

employees of KO who delivered medically unnecessary DME to Medicare beneficiaries, including power wheelchairs.

COUNT 1

**Conspiracy to Commit Health Care Fraud
(Violation of 18 U.S.C. § 1349)**

1. Paragraphs 1 through 16 of the General Allegations section of this Indictment are realleged and incorporated by reference as if fully set forth herein.

2. From in or around December 2007, through the present, the exact dates being unknown to the Grand Jury in the Houston Division of the Southern District of Texas, and elsewhere, the defendants,

**OLIVER NKUKU,
KATE NKUKU,
CALLISTUS EDOZIE
and
OBISIKE OKEREKE,**

did knowingly and willfully 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, Section 1347, that is, to execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, 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 Conspiracy

3. It was a purpose of the conspiracy for defendants and others, to unlawfully enrich themselves by (a) submitting false and fraudulent claims to Medicare, (b) concealing the submission of false and fraudulent claims to Medicare and the receipt and transfer of the proceeds from the fraud; and (c) diverting proceeds of the fraud for the personal use and benefit of the defendants and their co-conspirators.

Manner and Means

4. The manner and means by which the defendants and their co-conspirators sought to accomplish the purpose and object of the conspiracy included, among other things:

5. Defendants **OLIVER NKUKU** and **KATE NKUKU** caused several submissions to be made to Medicare, each of which fraudulently concealed **OLIVER NKUKU**'s past criminal conviction for fraud.

6. Defendants **OLIVER NKUKU** and **KATE NKUKU** would apply for and maintain a valid Medicare provider number for KO in order to submit Medicare claims

for DME, including power wheelchairs, that was medically unnecessary and in certain cases was not provided.

7. Defendants **OLIVER NKUKU** and **KATE NKUKU** would control the day-to-day operations of KO.

8. Defendants **OLIVER NKUKU** and **KATE NKUKU** would submit medically unnecessary claims to Medicare for DME, including power wheelchairs, wheelchair accessories and motorized scooters. The wheelchair accessories were billed as catastrophe related in connection with Hurricanes Katrina, Ike and Gustave, even though many of the Medicare beneficiaries had never owned a power wheelchair during these catastrophes or owned one that was not damaged during the catastrophes. In addition, Medicare beneficiaries for whom claims were submitted to Medicare for power wheelchairs and wheelchair accessories from KO either received no wheelchair or received a less expensive motorized scooter instead. Medicare beneficiaries who actually received a power wheelchair and wheelchair accessories did not need them.

9. Defendants **CALLISTUS EDOZIE** and **OBISIKE OKEREKE** would deliver medically unnecessary DME, including power wheelchairs, to Medicare beneficiaries

10. Defendants **OLIVER NKUKU**, **KATE NKUKU**, **CALLISTUS EDOZIE** and **OBISIKE OKEREKE** and their conspirators would cause the

submission of over \$931,000 in claims to the Medicare program for DME purportedly provided by KO, when in fact, such DME was not medically necessary, and in certain cases was not provided.

11. After the payments from Medicare were deposited into KO bank accounts, defendants **OLIVER NKUKU** and **KATE NKUKU** would cause the transfer of the fraudulent proceeds to themselves, their family members, **CALLISTUS EDOZIE** and **OBISIKE OKEREKE**, and other co-conspirators.

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

COUNTS 2-4

**Health Care Fraud
(Violation of 18 U.S.C. § 1347 and 2)**

1. Paragraphs 1 through 16 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. From in or around December 2007 and continuing through the present, the exact dates being unknown to the Grand Jury in the Houston Division of the Southern District of Texas, and elsewhere, the defendants,

**OLIVER NKUKU,
KATE NKUKU
and
CALLISTUS EDOZIE,**

each aiding and abetting each other and others known and unknown to the Grand Jury, in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, 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 Medicare, in connection with the delivery of and payment for health care benefits, items, and services.

Purpose of the Scheme and Artifice

3. It was the purpose of the scheme and artifice for the defendants and their co-conspirators to unlawfully enrich themselves through the submission of false and fraudulent Medicare claims for medically unnecessary durable medical equipment.

The Scheme and Artifice

4. Paragraphs 4 through 11 of Count 1 of this Indictment are realleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

Acts in Execution of the Scheme and Artifice

5. On or about the dates specified as to each count below in the Houston Division of the Southern District of Texas, and elsewhere, the defendants specifically

identified as to each count below, in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, the above-described scheme and artifice to defraud a health care benefit program affecting commerce, that is, Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owed by, and under the custody and control of, said health care benefit program:

<u>Count</u>	<u>Defendants</u>	<u>Medicare Beneficiary</u>	<u>Approx. Date of Claim</u>	<u>Description of Item Billed</u>	<u>Approx. Amount of Claim</u>
2	OLIVER NKUKU and KATE NKUKU	H.P.	09/10/08	Power wheelchair	\$5,000
3	OLIVER NKUKU, KATE NKUKU and CALLISTUS EDOZIE	S.V.	11/03/08	Power wheelchair	\$5,000
4	OLIVER NKUKU and KATE NKUKU	G.T.	12/17/08	Power wheelchair	\$5,000

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

CRIMINAL FORFEITURE
(18 U.S.C. § 982)

1. The allegations contained in Counts 1 through 4 of this Indictment are realleged and incorporated by reference as though fully set forth herein for the purpose

of alleging forfeiture to the United States of America of certain property in which the defendants have an interest.

2. Upon conviction of any violation of Title 18, United States Code, Section 1349 or Title 18, United States Code, Section 1347, the defendants shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense, pursuant to Title 18, United States Code, Section 982(a)(7).

3. The property which is subject to forfeiture, includes but is not limited to, a money judgment in the amount of approximately \$376,317.27, which represents the gross proceeds of the fraud.

4. Pursuant to Title 21 United States Code, Section 853(p), as incorporated by reference by Title 18, United States Code, Section 982(b), if any of the forfeitable property, or any portion thereof, as a result of any act or omission of the defendants:

- (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 which cannot be

subdivided without difficulty;

it is the intent of the United States to seek the forfeiture of other property of the defendants up to the value of the above-described forfeitable properties, including, but not limited, any identifiable property in the name of defendants **OLIVER NKUKU, KATE NKUKU, CALLISTUS EDOZIE** and **OBISIKE OKEREKE**.

All pursuant to Title 18, United States Code, Section 982(a)(7), and the procedures set forth at Title 21, United States Code, Section 853, as made applicable through Title 18, United States Code, Section 982(b)(1).

A TRUE BILL

Original Signature on File

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