

JGBW/JP/MH

FILED IN OPEN COURT  
ON 6-20-2012 (JR)  
Julie A. Richards, Clerk  
US District Court  
Eastern District of NC

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:12-CR-213-1H (2)  
No. 5:12-CR-213-2H (2)

UNITED STATES OF AMERICA )  
 )  
 )  
 V. )  
 )  
 JOHN CURTIS ALSPAUGH and )  
 HELEN BLUE ALSPAUGH )  
 )

INDICTMENT

The Grand Jury charges that:

GENERAL INTRODUCTION

1. JOHN CURTIS ALSPAUGH (JOHN ALSPAUGH) and HELEN BLUE ALSPAUGH (HELEN ALSPAUGH), were husband and wife operating a health care business in the Dunn, North Carolina area. The ALSPAUGHS have residences in both the Dunn and the Greensboro, North Carolina areas.

2. The ALSPAUGHS started Basic Home Health Care in 2002 to provide personal care services (PCS or personal care services) to people who need assistance with their activities of daily living (ADL) and other needs called instrumental activities of daily living (IADL).

3. The ALSPAUGHS together owned and operated Basic Home Health Care. They submitted an Application for Provider Participation, Personal Care Services, to the Division of Medical

Assistance (DMA), Department of Health and Human Services (DHHS), State of North Carolina, dated October 18, 2002.

4. The Application for Provider Participation indicated that the business was to be operated as a partnership in the Dunn, North Carolina area. JOHN ALSPAUGH was the President with a forty-nine percent (49%) controlling interest in the business. The Application further identified HELEN ALSPAUGH, as the Executive Director with a fifty-one percent (51%) controlling interest in the business. Both JOHN ALSPAUGH and HELEN ALSPAUGH signed the Application.

5. A Medicaid Participation Agreement was submitted to DMA and was signed by JOHN ALSPAUGH as the President of Basic Home Health Care. The Medicaid Participation Agreement was dated October 18, 2002 and was approved by DMA on November 15, 2002.

6. Articles of Incorporation, including Articles of Conversion for Basic Home Health Care, Inc. were filed with the North Carolina Secretary of State on December 31, 2003, to be effective January 1, 2004. The Articles of Incorporation converted Basic Home Health Care, a North Carolina General Partnership, to a Corporation under the laws of North Carolina. The resulting corporation was named Basic Home Health Care, Inc. (Basic Home Health).

7. The Articles of Incorporation identified JOHN ALSPAUGH and HELEN ALSPAUGH as the Directors of the corporation and the Incorporators of the business. HELEN ALSPAUGH was further named as

the Initial Registered Agent of the corporation. The Articles of Incorporation were signed by JOHN ALSPAUGH and HELEN ALSPAUGH.

8. Basic Home Health Care, Inc. had been operating as a Sub-Chapter S Corporation since January 1, 2004. JOHN ALSPAUGH was the President and Agency Director of the business and was a forty-nine (49) percent owner of the business. HELEN ALSPAUGH was the Secretary and Treasurer of the business and was a fifty-one (51) percent owner of the business.

#### TAX INTRODUCTION

9. During the relevant time periods, the ALSPAUGHS, prepared or caused to be prepared tax forms including filings for corporate tax returns, payments of taxes, and the withholding of taxes from its employees' paychecks, including federal income taxes, medicare, and social security taxes, frequently referred to as Federal Insurance Contribution Act ("FICA") or employment taxes.

10. The ALSPAUGHS, through Basic Home Health, were required to make deposits of the employment taxes collected from their employees to the Internal Revenue Service (IRS) on a periodic basis. In addition, businesses must file an Employer's Quarterly Federal Tax Return (Form 941), which sets-forth the wages and amounts withheld for income tax payments and other taxes or contributions of their employees on a quarterly basis.

11. During the period of March 2006, through December 2007, defendants, JOHN ALSPAUGH and HELEN ALSPAUGH, used or caused to be

used thousands of dollars of withheld payroll tax funds, for their personal benefit, while at the same time, failing to pay over to the IRS the employment taxes withheld from employees.

## MEDICAID INTRODUCTION

### The Medicaid Program

12. Medicaid was a federal-state assistance program established under the Social Security Act. It provided services to low-income persons. Medicaid was operated by state and local governments within federal guidelines. Medical bills of recipients were paid from federal, state, and local tax funds. Patients generally paid a nominal co-pay for covered medical expenses.

13. Under the Medicaid program, each state was required to have a plan and administer its own Medicaid program. North Carolina enacted a statewide medical plan in accordance with the Medicaid Act. The plan was approved by the Centers for Medicare and Medicaid Services (CMS), an agency of United States Department of Health and Human Services (HHS), as required by law. CMS administered the Medicaid program at the federal level. The Division of Medical Assistance (DMA) of the North Carolina Department of Health and Human Services was responsible for administering and monitoring the Medicaid program at the state level. DMA submitted quarterly reports to HHS detailing the amount and nature of Medicaid claims. HHS then reimbursed the federally qualified Medicaid claims at a set percentage for each dollar paid

by North Carolina.

14. The Medicaid program provided for the payment of the costs of services rendered to recipients by health care providers, by means of claims. Such reimbursement could be made by direct wire deposit to the bank account of the provider or by check mailed to the provider. Electronic Data Systems was a company employed by DMA as the fiscal agent for the purpose of processing Medicaid claims.

15. Entities that provided services that were reimbursed by Medicaid were called Medicaid providers. Each Medicaid provider obtained a unique identification number, called a Medicaid provider number, after completing an application to DMA. Approved Medicaid providers submitted claims for payment to DMA either on paper or electronically. An electronically submitted claim was submitted through the use of specific billing software and an electronic data interface. Whether submitted on paper or electronically, providers were required to comply with federal and state laws, regulations, state reimbursement plans and policies governing services authorized under the Medicaid program. Providers were only permitted to bill for services that: (1) were medically necessary; and (2) were personally furnished by the provider, its employees, or persons with whom the provider had contracted to render services under its direction. Claim information submitted must have been true, accurate and complete.

16. Providers were required to sign a Participation Agreement that acknowledged that "any false claims, false statements or documents or misrepresentations or concealment of material fact may be prosecuted under applicable State and/or Federal law."

**HEALTH CARE FRAUD**

17. After JOHN ALSPAUGH signed an Electronic Claims Submission Agreement on October 18, 2002, Basic Home Health Care, Inc. was given the right to submit claims electronically to DMA.

18. JOHN ALSPAUGH or his designees used the unique Medicaid provider number, user name, and password issued to Basic Home Health to access the website that allowed Basic Home Health Care, Inc. to submit Medicaid claims electronically.

19. JOHN ALSPAUGH electronically submitted false claims to DMA for Basic Home Health Care, Inc. to receive reimbursement for services that JOHN ALSPAUGH knew had not, in fact, been provided.

20. On at least one occasion, JOHN ALSPAUGH submitted fraudulent claims to the Medicaid program claiming Basic Home Health to have provided personal care services during a time period when the client was deceased and did not receive personal care services.

21. On at least one occasion, JOHN ALSPAUGH submitted fraudulent claims to the Medicaid program claiming to have provided personal care services during a time period when the client was incarcerated and did not receive personal care services from Basic

Home Health.

22. On at least one occasion, JOHN ALSPAUGH submitted fraudulent claims to the Medicaid program claiming to have provided personal care services during a time period when the client had been discharged as a client of Basic Home Health and did not receive personal care services from Basic Home Health.

**AGGRAVATED IDENTITY THEFT**

23. In connection with the receipt of services reimbursable under the Medicaid program, all Medicaid recipients were assigned a unique alphanumeric identifier, known as a Medicaid Identification Number.

24. Medicaid recipients were given a copy of their Medicaid Identification Number in the form of a card. Recipients typically produced this card to a Medicaid provider at the time they began to receive services. Providers were entrusted to keep the Medicaid Identification numbers of their customers secure, and to utilize the Medicaid Identification Number only for services furnished by the provider to the Medicaid recipient.

25. Medicaid relied upon the provider's use of Medicaid Identification Numbers to identify which Medicaid recipient received services from a provider on a given date, as well as the type and extent of services. The provider's use of the Medicaid Identification Number at the time of the claim transmission and on supporting documentation allowed DMA to determine the provider's

entitlement to payment for the billed services and to examine the nature and extent of the services allegedly provided to the recipient on a given date.

26. JOHN ALSPAUGH and Helen Alspaugh, though Basic Home Health Care, Inc., routinely obtained the names and Medicaid Identification Numbers of individuals allegedly receiving personal care services from Basic Home Health Care.

27. JOHN ALSPAUGH and Basic Home Health Care, Inc., routinely utilized the names and Medicaid Identification Numbers of its alleged clients in its electronic billing submissions.

28. Between approximately January 5, 2008, and September 3, 2009, JOHN ALSPAUGH, billed Medicaid on approximately 91 occasions for services allegedly rendered to Medicaid recipient Lena E. by utilizing Lena E.'s Medicaid Identification Number, \*\*\*\*\*4710Q.

29. Lena E. had not authorized JOHN ALSPAUGH, or Basic Home Health to use her Medicaid Identification Number during the time period from January 5, 2008, through September 3, 2009.

30. Lena E. received none of the services which JOHN ALSPAUGH and Basic Home Health billed to Medicaid using Lena E.'s name and Medicaid Identification Number during this period.

31. In fact, for at least part of this time period, Lena E. was receiving services from another Medicaid provider. Furthermore, for at least part of this time period, the other Medicaid provider's legitimate reimbursement claims were initially



denied by DMA, because DMA had already processed the fraudulent claims for Lena E. that had been submitted by Basic Home Health.

**THE CHARGES**

**COUNT ONE**

**[Conspiracy - Tax Related; 18 U.S.C. §371]**

1. The allegations set forth in the introduction of this Indictment are incorporated by reference herein and are realleged.

**CHARGE**

2. From on or about September 2004, and continuing up to and including through April 2011, in the Eastern District of North Carolina and elsewhere, the defendants, JOHN CURTIS ALSPAUGH (JOHN ALSPAUGH) and HELEN BLUE ALSPAUGH (HELEN ALSPAUGH), did knowingly and unlawfully combine, conspire, agree, and confederate with each other and others, known and unknown to the Grand Jury, to commit offenses against the United States, that is, to defraud the United States and an agency thereof, specifically, the Internal Revenue Service of the U.S. Department of Treasury, by impeding, impairing, obstructing and defeating the lawful functions of the Internal Revenue Service in the ascertainment, evaluation, computation, assessment, and collection of employment taxes.

**MANNER AND MEANS**

3. The manner and means by which the conspiracy was carried out included, among others, the following:

A. Defendants withheld taxes from employees' pay checks;

and

B. Defendants failed to set-up an employment tax trust fund account, or otherwise take steps to hold employees' taxes, for payment to the IRS of employee taxes which had been withheld from employee gross paychecks.

**OVERT ACTS**

4. In furtherance of the conspiracy, and to accomplish the objects thereof, the defendants and co-conspirators committed the following overt acts, among others, in the Eastern District of North Carolina:

A. On or about July 18, 2007, the ALSPAUGHS, filed Forms 941 (delinquently) with the IRS for the quarters March 2005 through December 2006.

B. JOHN ALSPAUGH prepared and signed the delinquently filed Forms 941 for the quarters March, 2005 through June, 2007.

C. On or about October 30, 2007, the ALSPAUGHS filed a Form 941 (delinquently) for the quarter September, 2007.

D. JOHN ALSPAUGH prepared and signed a Form 941 (delinquently) for the quarter September, 2007.

E. On or about February 27, 2008, the ALSPAUGHS filed a Form 941 (delinquently) for the quarter December, 2007.

F. JOHN ALSPAUGH prepared and signed a delinquent Form 941 for the quarter December, 2007.

G. On or about June 18, 2009, HELEN ALSPAUGH filed Chapter 11 Bankruptcy on behalf of Basic Home Health Care, Inc. The estimated debt to the IRS was \$2,339,772. A proposed monthly payment plan of \$30,000 to the IRS was scheduled to begin August 15, 2009.

H. On or about September 18, 2010, the ALSPAUGHS paid a single \$30,000 payment to the IRS pursuant to the Chapter 11 Plan of Reorganization. No payments were paid to the IRS thereafter.

I. During the tax years 2006 and 2007, the ALSPAUGHS signed payroll checks on behalf of Basic Home Health Care, Inc. from bank accounts at First Federal Bank and SunTrust Bank.

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

**COUNTS TWO THROUGH NINE**

**[Failure to Truthfully Account for and Pay Over Withholding and F.I.C.A. (Social Security) Taxes; 26 U.S.C. § 7202]**

1. The introductory paragraphs are realleged and incorporated herein by reference.

2. At all times relevant to this Indictment, the Defendants, JOHN CURTIS ALSPAUGH (JOHN ALSPAUGH) and HELEN BLUE ALSPAUGH (HELEN ALSPAUGH), through their business, Basic Home Health Care, Inc. (named but not indicted herein) withheld taxes from employees' paychecks, including federal income tax, and Federal Insurance

Contribution Act or "FICA" taxes (medicare and social security taxes). All these taxes are commonly called employment taxes and will be referred to in this Indictment as "employment taxes."

3. JOHN ALSPAUGH and HELEN ALSPAUGH were required to make deposits of the employment taxes to the Internal Revenue Service on a periodic basis. In addition, they were required to file, following the end of each calendar quarter, an Employer's Quarterly Federal Income Tax Return (Form 941), setting forth the total amount of wages and other compensation subject to withholding, the total amount of income tax withheld, the total amount of social security and medicare taxes due, and the total tax deposits.

4. As President and Agency Director of the business, JOHN ALSPAUGH, a forty-nine percent (49%) owner of the business and HELEN ALSPAUGH, the Secretary and Treasurer, a fifty-one percent (51%) owner of Basic Home Health Care, Inc., were responsible persons, that is, they had the corporate responsibility to collect, truthfully account for, and pay over employment taxes.

5. Throughout the calendar years 2006 and 2007, the ALSPAUGHS through Basic Home Health Care, Inc. withheld employment taxes from employees' paychecks. However, beginning in approximately January, 2006, through April, 2011, Basic Home Health, Inc. made no deposits or payments of the withheld funds to the Internal Revenue Service, as required.

CHARGES

6. During the eight (8) calendar quarters alleged in Counts Two through Nine (2-9) of this Indictment, in the Eastern District of North Carolina, defendants JOHN CURTIS ALSPAUGH (JOHN ALSPAUGH) and HELEN BLUE ALSPAUGH (HELEN ALSPAUGH) through Basic Home Health Care, Inc. failed to account for and pay over approximately \$458,452 in employment taxes, as set forth on or about the dates below, each date constituting a separate count of this Indictment:

Count	Quarter/Date	Employment Tax Due Per Form 941
TWO	03/2006	\$48,852
THREE	06/2006	\$59,099
FOUR	09/2006	\$52,843
FIVE	12/2006	\$63,296
SIX	03/2007	\$57,146
SEVEN	06/2007	\$65,354
EIGHT	09/2007	\$53,218
NINE	12/2007	\$58,644

Every entry in the above table representing a separate violation of Title 26, United States Code, Section 7202 and Title 18, United States Code, Section 2.

COUNTS TEN THROUGH TWENTY-FIVE

[Health Care Fraud; 18 U.S.C. §§ 1347 and 2]

1. The introductory paragraphs are realleged and incorporated herein by reference.

CHARGES

2. On or about the dates listed in the table below, in the Eastern District of North Carolina, and elsewhere, Defendant, JOHN CURTIS ALSPAUGH, did knowingly and willfully devise a scheme and artifice to defraud a healthcare benefit program, as defined in Title 18, United States Code, Section 24, and to obtain by means of materially false and fraudulent pretenses, representations and promises, money owned by and under the custody and control of a health care benefit program, in connection with the delivery of and payment for healthcare benefits, items and services and, for the purpose of attempting to execute and executing such scheme and artifice, did knowingly and willfully submit materially false and fraudulent claims for payment, as described more particularly below:

Count	Dates	Name	Number of Claims	Medicaid Identification Number	Amount
TEN	6/18/2007-01/08/2009	E.B.	338	*****2787 M	\$13,810.56
ELEVEN	8/08/2008-04/30/2009	N.B.	167	*****6692 K	\$6,982.44
TWELVE	3/08/2007-9/03/2009	D.C.	627	*****0528 P	\$25,389.00
THIRTEEN	11/15/2007-8/20/2009	L.E.	421	*****6801 C	\$17,248.96
FOURTEEN	01/05/2008-9/03/2009	Lena E.	403	*****4710 Q	\$16,422.84

FIFTEEN	1/05/2008- 7/17/2008	B.J.	105	*****5984 I	\$4,492.80+
SIXTEEN	6/12/2007- 7/18/2007	E.M.	27	*****2958 L	\$1,105.60
SEVENTEEN	8/21/2009- 4/15/2010	D.M.	163	*****7102 G	\$4,984.14
EIGHTEEN	11/20/2007- 10/22/2008	J.M.	184	*****8588 N	\$7,586.00
NINETEEN	3/02/2009- 3/05/2009	J.M.	4	*****8588 N	\$178.56
TWENTY	9/22/2006- 3/17/2008	C.R.	238	*****2865 S	\$9,954.16
TWENTY-ONE	11/26/2008- 8/31/2009	B.S.	211	*****6250 R	\$8,440.68
TWENTY-TWO	4/10/2010- 5/08/2010	E.T.	20	*****9974 P	\$708.00
TWENTY-THREE	12/20/2010- 4/21/2011	E.T.	89	*****9974 P	\$3,026.70
TWENTY-FOUR	3/08/2007- 9/24/2007	R.W.	132	*****2845 S	\$5,249.40
TWENTY-FIVE	2/21/2008- 9/03/2009	A.W.	389	*****7450 L	\$15,850.92

Each entry in the above table constituting a separate violation of Title 18, United States Code, Sections 1347.

**COUNT TWENTY-SIX**

**[Aggravated Identity Theft; 18 U.S.C. § 1028A (a) (1)]**

1. The introductory paragraphs are realleged and incorporated herein by reference.

**CHARGE**

2. On or about January 5, 2008, up to and including on or about September 3, 2009, in the Eastern District of North Carolina, and elsewhere, defendant, JOHN CURTIS ALSPAUGH, did knowingly possess and use, without lawful authority, a means of identification of another person, that is a Medicaid Identification Number for Lena E., during and in relation to the violation alleged in Count Fourteen, all in violation of Title 18, United States Code, Section 1028A(a)(1).



FORFEITURE NOTICE

The defendants are given notice of the provision of Title 18, United States Code, Section 982(a)(7), that all the defendants' interests in all property specified herein are subject to forfeiture.

As a result of the foregoing offenses in Counts 10 through 25 of the indictment, the defendants shall forfeit to the United States any and all property, real or personal, constituting, or derived from any gross proceeds the said defendant obtained directly or indirectly as a result of the said offenses.

If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s) cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty; it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of said defendant(s) up to the value of the forfeitable property described above.


A TRUE BILL,


Foreperson

DATE: 6 / 20 / 2012

THOMAS G. WALKER  
United States Attorney

**REDACTED VERSION**  
Pursuant to the E-Government Act and the  
federal rules, the unredacted version of  
this document has been filed under seal.

  
BY: J. GASTON B. WILLIAMS  
Assistant United States Attorney

  
BY: JACQUELINE M. PÉREZ  
Special Assistant United States Attorney

  
BY: ERNEST MICHAEL HEAVNER  
Special Assistant United States Attorney

\*\*\*