

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,)		
)		
Plaintiff,)		
)		
vs.)		
)		
ROSALINE NATAZHA MAVAEGA,)		
aka: ROSALINA NATAZHA MA)		
VAEGA,)		
aka: ROSALINE N. MAVAEGA,)		
DOB: 12/7/1981)		
APSIN ID: 6838367)		
DMV NO. 6838367 AK)		
ATN: 114-356-277	)	Case No. 3AN-14-	CR.
)		
ENI IERUSALEMA MAVAEGA,)		
DOB: 3/28/1990)		
APSIN ID: 7348778)		
DMV NO. 7241198 AK)		
ATN: 114-356-286	)	Case No. 3AN-14-	CR.
)		
ALLYZIA S. THAMPITHAK,)		
aka: ALLYSIA SANH)		
KEODOUANGDY,)		
aka: SANH THAMPITHAK,)		
aka: ALLY THAMPITHAK,)		
DOB: 7/4/1966)		
APSIN ID: 7200952)		
DMV NO. 7200952 AK)		
ATN: 114-356-647	)	Case No. 3AN-14-	CR.
)		
ESAU M FUALEMA, JR.,)		
aka: ESAU JR. FUALEMA,)		
aka: ESAU FAULEMA,)		
aka: ESAU FUALEMA,)		
aka: FUALEMA ESAO,)		
aka: ESAU FAULUMA,)		
aka: ESAU M. FUCLEMA,)		
aka: ESAU M. FAULEMA,)		
aka: ESAU M. FUALEMA,)		

DOB: 6/21/1979)		
APSIN ID: 6660030)		
DMV NO. 6660030 AK)		
ATN: 114-356-295	)	Case No. 3AN-14-	CR.
)		
PELA FUATINO MAVAEGA,)		
aka: ISAPELA MAVAEGA,)		
DOB: 5/28/1980)		
APSIN ID: 6744345)		
DMV NO. 6744345 AK)		
ATN: 114-356-637	)	Case No. 3AN-14-	CR.
)		
A LOVING CARE PCA AGENCY,)		
ATN: 114-356-385	)	Case No. 3AN-14-	CR.
)		
Defendants.)		

INFORMATION

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

The following counts charge a crime involving DOMESTIC VIOLENCE as defined in AS 18.66.990:

Count I - AS 47.05.210(a)(7) Misd B
 Medical Assistance Fraud
 Rosalina Mavaega - 001
 Eni Mavaega - 001
 Allysia Thampithak - 001
 Esau Fualema – 001
 Isapela Mavaega – 001
 A Loving Care PCA - 001

Count II - AS 47.05.210(a)(7) Misd B
 Medical Assistance Fraud
 Rosalina Mavaega - 002
 Eni Mavaega - 02
 Allysia Thampithak – 002
 A Loving Care PCA – 002

THE OFFICE OF SPECIAL PROSECUTIONS AND APPEALS CHARGES:

Count I

That on or about December 2013 through April 2014, at or near Anchorage in the Third Judicial District, State of Alaska, ROSALINA MAVAEGA, ENI MAVAEGA, ALLYSIA THAMPITHAK, ESAU FUALEMA, ISAPELA MAVAEGA and A LOVING CARE PCA, violated a regulation adopted under AS 47.07 (Background Check Regulations).

All of which is a class B misdemeanor offense being contrary to and in violation of AS 47.05.210(a)(7) and against the peace and dignity of the State of Alaska.

Count II

That on or about March 5, 2014 through April 3, 2014, at or near Anchorage in the Third Judicial District, State of Alaska, ROSALINA MAVAEGA, ENI MAVAEGA, ALLYSIA THAMPITHAK, and A LOVING CARE PCA, violated a regulation adopted under AS 47.07 (Requirements for Provider Records).

All of which is a class B misdemeanor offense being contrary to and in violation of AS 47.05.210(a)(7) and against the peace and dignity of the State of Alaska.

Probable Cause Statement

The undersigned swears under oath that this probable cause statement is based upon a review of the investigative report completed to date by investigators with the Department of Health and Social Services, Quality Assurance Unit, Medicaid Fraud Control Unit and the Federal Bureau of Investigations.

On or about January 2014, the Department of Health and Social Services (DHSS) Division of Senior and Disabilities Services (SDS), collectively known as the Department, received an anonymous letter that Esau Fualema was working in the office area of A Loving Care PCA Agency (A Loving Care) and had access to confidential information without possessing a valid background check as required by Alaska Administrative Regulations. A Loving Care is a company that provides personal care

assistant (PCA) services to Medicaid recipients and is co-owned by Rosalina Mavaega, Eni Mavaega and Allysia Thampithak. SDS investigators initiated a joint investigation with the Medicaid Fraud Control Unit (MFCU) and the FBI.

DHSS is the state agency responsible for certifying and enrolling personal care agencies that provide PCA services. PCA services are provided to enable an individual, of any age, with activities of daily living or instrumental activities of daily living in order to allow the Medicaid recipient to remain at home.

Alaska Administrative Regulations provide that a provider of PCA services must be certified and enrolled by the Department and that a personal care agency must meet the applicable certification criteria, including provider qualification and program standards, set out in the Department's Personal Care Assistant Agency Certification Application Packet. See 7AAC 125.060.

A personal care agency is subject to the background check, barrier crimes and centralized registry requirements of AS 47.05.300-390 (Criminal History Check) and 7AAC 10.900-990 (Barrier Crimes & Background Check). See 7AAC 125.090(c). An agency is required to submit to the Department a request for criminal history check for all PCAs as required under 7AAC 10.910. See id. Alaska Administrative Regulation 7AAC 125.090(a)(4) provides that to be employed as a PCA, the individual must request a criminal history check required under 7AAC 125.090(c).

Alaska Administrative Regulations provide that an eligible provider shall enroll with the Department before billing the Department for covered services. See 7AAC 105.210(a). To be enrolled, a provider must comply with the requirements of AS 47.05.300-390 and 7AAC 10.900-990. See 7AAC 105.210(b)(6). Alaska Statute 47.05.300(a) provides that the criminal history provisions of AS 47.05.300-390 apply to any individual or entity that is required by statute or regulation to be licensed or certified by the Department or that is eligible to receive payments, in whole or in part, from the Department. Alaska Statute 47.05.300(b)(1) expressly states that the provisions of AS 47.05.300-390 apply to public home care providers, described in Alaska Statute 47.05.017, which includes personal care providers.

All providers of Medicaid must be enrolled with the State of Alaska Medicaid program. See 7AAC 105.210. The statutory authority for 7AAC 105.210 can be found at AS 47.07.030 and AS 47.07.040. Alaska Statute 47.05.210(a)(7) provides that a person commits the crime of medical assistance fraud if the person violates a regulation adopted under AS 47.07. Alaska law defines a “person” as a natural person and when appropriate, an organization, government or government instrumentality. See AS 11.81.900(46). Alaska Statute 12.55.035(c)(1)(C) provides that a violation of a class B misdemeanor by an organization is punishable by a fine not exceeding the greatest of \$75,000 or three times the pecuniary gain.

The criminal history provisions of Alaska law prohibit any individual from owning an entity and/or being an officer, director, partner, member or principal of such an entity if the individual was convicted of a crime that is inconsistent with the provisions or standards for licensure or certification established by the Department in regulation. See AS 47.05.310(a). Alaska law further prohibits the entity from allowing any individual from operating the entity, being retained by the entity as an employee, independent contractor or volunteer or even being present in the entity if the individual will have contact with Medicaid recipients. See AS 47.05.310(a)(1-4). Finally, Alaska Statute 47.05.310(h) provides that an individual service provider is subject to the provisions of Alaska Statute AS 47.05.310(a)-(g) as if the individual service provider were the entity subject to those provisions.

Alaska regulations establish standards, requirements and procedures for dealing with barrier crimes and conditions, criminal history checks and the centralized registry applicable to any entity or individual service provider seeking licensure, certification or approval or a finding of eligibility to receive payments from the Department. See 7AAC 10.900(a)-(b). Applicable regulations provide that any individual who is to be associated with any entity or provider in the manner described in 7AAC 10.900(b) must have a valid criminal history check under 7AAC 10.900-990 if the individual is a service provider or an employee with regular contact to recipient files, access to personal or financial information maintained by the entity. See 7AAC

10.900(b). Alaska regulation further requires a valid background check for anyone that is an officer, director, partner, member, or principal of the business organization that owns an entity if the individual has regular contact with recipients of services, access to personal or financial records maintained by the entity, or control over the impact of the financial well-being of a recipient's services. See 7AAC 10.900(b)(4).

On January 27, 2014, investigators with SDS interviewed Rosalina Mavaega, the co-owner of A Loving Care and wife of Esau. Rosalina claimed the anonymous letter received by SDS was a malicious report and that Esau was only dropping her off at work, bringing her lunch and providing construction services at the facility. Rosalina stated that Esau had no access to confidential HIPPA information for Medicaid recipients.

Investigators discussed with Rosalina the background check regulations and informed her that no individual without a background check could be on the premises and/or have access to confidential HIPPA information. Investigators further discussed with Rosalina the fact that Esau failed his background check based upon his criminal history as he was previously convicted of negligent homicide and assault in the first degree. The Department sent a letter to A Loving Care co-owner Eni Mavaega, the individual responsible for background checks, and a second letter to Esau on November 21, 2013, informing both the agency and Esau that Esau did not pass his background check. The letter further stated that Esau was barred from associating with any agency licensed or certified by the Department or that receives funding from the Department. Eni informed SDS investigators on May 2, 2014 that she did tell Esau that he could not be present in the office, but he still came to the office. Eni did not take action to keep Esau out of the business as Esau was her brother and he was related to many of the people in the office.

Interviews and text messages from employees showed that Esau was associated with the business A Loving Care beginning in December 2013 and continued to be involved after the Department issued the notice to correct. Specifically, Esau was working with the company's IT person to access company files, working on company

payroll, QuickBooks and taxes, attending financial meetings and office meetings, designing employee timesheets and establishing protocol on how employees will bill for Medicaid services provided. The timesheets and company files specifically contain confidential Medicaid information pertaining to recipients.

On March 23, 2014, Anchorage Police Officers were called to A Loving Care for a civil dispute involving the owners. There was an allegation that company property was being taken from the premises without authority. Esau went to his vehicle and retrieved a company laptop that according to co-owner Allysia Thampithak and two employees, contained confidential billing information for Medicaid. On April 26, 2014, SDS Investigator Keilman-Cruz observed Esau in the reception area of A Loving Care PCA Agency at approximately 6:15 in the evening. The notice to correct which was issued in February 2014 specifically stated that Esau was not allowed to be in the reception area due to the fact that he would have contact with confidential Medicaid information and recipients.

SDS investigators secured a copy of a text message sent on December 18, 2013 from Rosalina Mavaega to Lou Saeturn, the IT manager, apologizing for Esau continuing to mess with the network Lou set up for the company. Lou stated that he could not continue to fix the system and have someone mess it up. Rosalina stated that she talked to Esau and he agreed to not touch it anymore. Texts from other employees further confirm that Esau was altering the company network and as a result would have access to confidential information. Texts from Esau to Lou further confirm that he was accessing the company computers in order to do the company's taxes.

The investigation conducted by SDS confirmed that A Loving Care was employing numerous additional individuals without background checks. Alaska Administrative Regulation 7AAC 10.920(b) allows an individual to work under a provisional background check while waiting for the full results of the check. Lou Saeturn, the IT manager, was employed prior to receiving a provisional background check. Text messages by Lou indicate that he was associated with the company as early

as December 13, 2013. Payroll information for A Loving Care PCA Agency further confirms that he was paid \$2,154.15 for the pay period December 15-28, 2013.

Isapela (Pela) Mavaega is a sister to Rosalina and was previously a Xerox employee. Pela and/or A Loving Care never submitted a background check application for Pela to work for A Loving Care. Xerox is a company contracted by the State of Alaska to provide billing services for Medicaid. The company is a claims clearinghouse that handles Medicaid billing by companies like A Loving Care that are billing the State of Alaska for services provided to Medicaid recipients. Pela's duties did not involve anything to do with A Loving Care. An investigation conducted by Xerox showed that Pela accessed A Loving Care's account in the Enterprise System using her internal user identification on February 19, 2014 at approximately 9:00 p.m. when she was not at work. Enterprise is the billing system used by the State of Alaska that contains confidential Medicaid information pertaining to recipients. Xerox terminated Pela's employment based upon the above conduct.

Pela denied in an interview that she was providing any services for A Loving Care. However, a Text messages from Rosalina to Allysia on February 27, 2014 asks who is in the Enterprise System and further states that it is not Pela as she was locked out. Rosalina stated that the company submitted bills for services provided during the day, but Enterprise records reveal that the company billings were normally submitted at night and holidays when Pela was not working for Xerox.

Additional texts from Rosalina to Allysia state that Pela was originally offered \$4,000 a month for billing, but that the amount was re-negotiated to \$3,000 until the company's billing system was up and running smoothly. The owners debate this amount and then state that any payment must be in cash as there is no background check and that both Pela and A Loving Care can get in trouble. The company's Wells Fargo payroll statement confirms that Pela was paid \$2,000 on March 12, 2014. Allysia and Stephanie Hayes both confirm that Pela did training on billing for A Loving Care. Allysia further showed SDS investigators the Wells Fargo account statements and

confirmed that other cash payments were made to Pela in January 2014. Pela, however, claimed that the money was a re-payment for \$2,000 she loaned A Loving Care.

Nikita Mavaega was hired by A Loving Care PCA Agency to do billing. Nikita admitted that she was to be trained by Pela on how to do the billing. Background check information show that Nikita received a provisional background check authorization to work on January 8, 2014, but payroll information shows that Nikita was paid \$1,142.19 for the pay period December 15-28, 2013.

Stephanie Hayes admitted in an interview that she began helping out A Loving Care beginning in November 2013. She was hired by Allysia to do accounting for A Loving Care. A background check was not submitted until February 2014.

On March 5, 2014, A Loving Care was placed on pre-payment review by SDS due to discrepancies in billing practices. The review of the billing practices by A Loving Care revealed that the company was billing Medicaid based on recipient service authorizations as opposed to actual services provided and documented on a timesheet. The company created timesheets that were filled out for the services provided and the total hours each day. This total was based upon a seven day work week and not the actual hours provided to the recipient by the PCA. These billing forms resulted in the daily hours billed not reflecting the hours the employee stated they worked. Alaska administrative regulation 7AAC 105.230 provides that a Medicaid provider shall maintain accurate financial, clinical and other records as necessary to support the services for which the provider requests payment. This requirement includes accurate records of the extent of services provided, date and time and the start and stop times. A violation of this regulation is punishable under Alaska Statute 47.05.210(a)(7) as a class B misdemeanor.

The policy of billing from total service authorizations as opposed to actual timesheets also resulted in A Loving Care billing Medicaid a total of \$3,307.80 for 61 different recipients from March 5, 2014 through April 3, 2014 without actually possessing a timesheet. SDS investigators asked for timesheets as part of the pre-

payment review and A Loving Care was unable to provide the timesheets despite submitting bills for services allegedly provided.

The policy of billing from total service authorizations as opposed to actual timesheets also resulted in A Loving Care billing Medicaid a total of \$77.48 for a recipient that was traveling and not receiving services. The timesheet submitted by the PCA indicated that the recipient was traveling on March 16, 2014 and that no services were provided, but the agency still billed for the services.

A review by SDS of the billing practices by A Loving Care revealed that the agency submitted bills to the State of Alaska totaling 31,766.80, but valid timesheets only confirm that \$20,204.40 in services were actually rendered.

Bail Information:

Rosalina Mavega:

CONV COURT	CONV DATE	CONV CHARGE	COURT DOCKET	POS ID	FEL	ATN
DAN	12/11/12	OPERATING MOTOR VEH W/O INS	3AN-12-8870	N	N	113932233
DAN	11/01/05	OPERATING VEH W/O INS	3AN-04-0857	Y	N	109495215

Esau Mavega:

CONV COURT	CONV DATE	CONV CHARGE	COURT DOCKET	POS ID	FEL	ATN
SAN	01/31/08	ASSAULT 1 – SERIOUS INJ W/WEAPON	3AN-06-7319	Y	Y	108576873
SAN	01/31/08	CRIMINALLY NEGLIGENT HOMICIDE	3AN-06-7319	Y	N	108576873

Dated at Anchorage, Alaska, this _____ day of _____, 2014.

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

By: _____
A. Andrew Peterson
Assistant Attorney General
Alaska Bar #0601002

SUBSCRIBED AND SWORN TO before me this ____ day of June 2014, at Anchorage, Alaska.

Notary Public in and for Alaska
My Commission Expires: End of Hire