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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs.

ARIELL DIX(003)

Defendant.

Cause No.: **CR2021-002107-005DT X**
CR2023-006554-003DT

**STATE'S SENTENCING
MEMORANDUM**

(The Honorable Daniel Martin)

The State of Arizona, through undersigned counsel, submits the following
Sentencing Memorandum.

I. Victims' Rights

The State has complied with Victims' Rights and anticipates victims will submit, or have already submitted, Victim Impact Statements to the Court and the Maricopa County Superior Court Adult Probation Department.

II. Facts

In late-2019, Defendant, in her capacity as a high managerial agent of Co-Defendant L&L Investments, moved to the Phoenix-metro area, from Nevada, to establish Behavioral Health Care Treatment facilities for the purpose of defrauding the American Indian Health Program (AIHP) within the Arizona State Medicaid Program Administrator – AHCCCS. At the time of her move to Arizona Defendant had been permanently excluded from Nevada's State Medicaid Program. Specifically, Defendant, as well as two entities for which she owned greater than 5%, were excluded by Nevada's program in 2018. Additionally, in 2020, Defendant was charged with multiple criminal offenses related to Medicaid Billing Fraud by the Nevada Attorney General's Office. The charges resulted in Defendant's plea of guilty on March 12, 2020; and, her conviction for Intentional Failure to Maintain Adequate Records, a misdemeanor offense in Nevada, on June 30, 2020. Defendant did not disclose her exclusion, nor her misdemeanor conviction to AHCCCS at any time during the years-long scheme to defraud AHCCCS. Defendant received a probation grant of three years in her Nevada criminal case and was ordered to pay nearly \$400k in restitution.

Defendant recruited contacts from Nevada to move to Arizona in order to defraud AHCCCS' AIHP *via* fraudulent reimbursement requests. For instance, Co-defendants Sharon Lawson and Nevada 1st Choice, LLC, worked with Defendant and co-defendant L&L Investments in Nevada as early as January, 2019, Defendant solicited Co-defendant Lawson to move to Arizona to bill AHCCCS on the basis that such a behavioral health care treatment facility in Arizona would be a lucrative enterprise. Lawson entered a testimonial agreement with the State and, as part of that agreement, forfeited \$1.65M to the State and is permanently excluded from the Federal Medicaid Program.

Co-Defendant Lawson averred the Defendant provided a list of names, AHCCCS ID#s, and dates of birth for AHCCCS Members to submit to AHCCCS for reimbursement of treatment services purported to have been rendered at Nevada 1st Choice, when no services had been rendered. Defendant also provided a billing matrix to Lawson – a uniform scheme of CPT treatment codes and unit hours to submit to AHCCCS for reimbursement. The “matrix” is evident in text messages and emails sent by Defendant to Lawson and other recruited co-defendants (Together Time, Aaron Wright, Trisha Wright, Dale Henson, Keyana Carter, and Ohana), as well as the AHCCCS billing records associated with Nevada 1st Choice. Defendant’s billing “matrix” entailed billing AHCCCS for 10 hours of treatment services purportedly rendered to each and every AHCCCS Member on the list provided every weekday. This billing pattern was expressed in the billing records for nearly all of the aforementioned co-defendants and for Defendant’s own facility, Apogee, which she opened in late 2020.

The Court has received several briefs and memoranda from the State in this case and will supplement the record at the Sentencing hearing should the Court so desire. However, the Defendant occupied a unique and critical role in the racketeering enterprise to defraud AHCCCS: she recruited and maintained the scheme across more than 10 entities under L&L Investments control and, due to her success, was responsible for the industrial-scale of the scheme and the tremendous amount of illicit proceeds derived from the fraud on AHCCCS. In the 2023 cause number, the facts above remain applicable; however, in the 2023 case the Defendant both solicited and generated forged patient treatment notes in an attempt to obfuscate the prospects of a potential criminal prosecution. Obviously, Defendant’s attempts were unsuccessful in this regard.

Perhaps most importantly, as a result of the Defendant’s conduct between 2019 and 2022, AHCCCS was defrauded for millions of taxpayer dollars of Arizonans and American citizens.

III. Aggravating Factors

The length of any sentence must be determined by the presence of aggravating and mitigating factors. A.R.S. § 13-701(C). The State submits the appropriate aggravating factors for the Court's consideration are the following:

1. A.R.S. § 13-701(D)(4) – The crimes committed involved the presence of more than two dozen accomplices across both CR2021-002107-005 and CR2023-006554-003.

As referenced above, the Defendant worked in concert with numerous co-conspirators to continuously defraud AHCCCS for years. The Defendant actively sought out third parties to grow the scheme at an accelerative rate. Defendant occupied a managerial role within the racketeering enterprise and was critical to the massive illicit proceeds generated and relative longevity of the scheme.

2. A.R.S. § 13-701(D)(6) – The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

Defendant's motivation was obviously pecuniary. Defendant generated millions of illicit proceeds for herself and all members of the conspiracy. Further, Defendant used the identities, and physical presence, of vulnerable members of the Native American community as investment chattel through which she could defraud AHCCCS and extract millions of dollars from taxpayers, all while knowing the proceeds were derived from her continuous racketeering offenses.

3. A.R.S. § 13-701(D)(24) – Any other factor that the state alleges is relevant to the defendant's character or background or to the nature or circumstances of the crime.

- i. The Defendant marketed facilities; or, more accurately, the vehicles through which the criminal enterprise drove the fraud scheme, as places where Native Americans in need could obtain behavioral health care under the Medicaid/AHCCCS Fee-for-Service American Indian Health Plan (AIHP). This claim was a gross misrepresentation, at minimum, and likely misled dozens of Native American residents our State who sought quality care and received none, ultimately.

- ii. Defendant violated her felony probation grant from Washoe County District Court in Nevada when she continued to engage in the racketeering enterprises to defraud AHCCCS in the instant case.

4. Additional Non-Statutory Recognized Aggravating Factors:

- i. The defendant has previously been convicted of similar criminal offenses to that of the case at bar. As referenced above, Defendant was previously convicted of Failure to Maintain Adequate Records, a misdemeanor. In this case, the Defendant participated in two, albeit somewhat overlapping, racketeering enterprises, which existed for the specific purpose of executing a fraud scheme to steal dollars from the AHCCCS Medicaid AIHP Plan. The defendant was on

supervision for her Nevada-based misdemeanor conviction for a substantial portion of the time she was orchestrating and expanding participation in the criminal enterprise here in Arizona. *State v. Harold*, 74 Ariz. 210 (1952); *State v. Jones*, 95 Ariz. 4, 10 (1963); *State v. Aleman*, 210 Ariz. 232 (App. 2005).

V. Plea Stipulations

CR2021-002107-005:

For Count 3: Illegal control of an Enterprise, a class 3 felony, Defendant agreed to be sentenced to the Arizona Department of Corrections.

CR2023-006554-003:

For Count 3: Illegal control of an Enterprise, a class 3 felony, Defendant agreed to be sentenced to the Arizona Department of Corrections..

VI. State's Recommendation

CR2021-002107-005:

Count 3: Illegal Control of an Enterprise, a class 3 felony, the State recommends the defendant be to a term of incarceration in the Arizona Department of Corrections for the slightly aggravated term of five (5) years.

CR2023-006554-003:

Count 3: Illegal Control of an Enterprise, a class 3 felony, the State recommends the defendant be to a term of incarceration in the Arizona Department of Corrections for the slightly aggravated term of five (5) years.

The State recommends both terms of incarceration run concurrently.

VII. Rationale For Recommendation

The profound damage caused to society when vital taxpayer-financed institutions are defrauded is too often discounted. While there may be a host of reasons for such unfortunate oversight, it seems the lack of an identifiable victim(s) is the likely primary cause. However, in

addition to severe financial harm, an enduring racketeering scheme which targets an established, revered social program serves to inflict deep, fundamental harm on our community, and our larger society, as it inexorably erodes citizens' sense of mutual humanitarian obligation to one another and arduously achieved collective societal trust. Undoubtedly, AHCCCS and the Medicaid Program constitute one of these invaluable public institutions. Medicaid was specifically conceived as a social insurance program to provide indigent Americans with health care. Since then it has enjoyed solid public support as a social contract, as a matter of fairness and necessity. As poverty and inequality have increased in recent years, Medicaid has remained a bulwark assuring necessary medical care for millions of Arizonans. Indeed, since inception Medicaid has served as a backstop for America's scattershot health care regime.

As is present in the instant case, the degree to which this deleterious social impact is amplified, when it involves a demographic which has suffered pervasive historical oppression, is more than significant. Protection of the most vulnerable among us is a foundational, bedrock principle, upon which our society rests. This recognition – that if our community stands for anything, it must both safeguard and endeavor to prevent harm to those who cannot adequately sustain or help themselves– is a crucial precept which undergirds the collective belief in the legitimacy of the government of our State, as well as the entire nation. Thus, when vulnerable members of our community are exploited, whether figuratively or literally, it represents a disturbing harbinger indicative of the relative health of society is in distress, generally.

Defendant's conduct in the instant case rather bluntly illustrates not only that she views crime as a profitable enterprise, lifestyle or career path of sorts, but also that her motivation to commit criminal endeavors is unbounded by any limiting principle, moral or otherwise. Evidence of Defendant's greed is not only circumstantial; at no point in her communications with co-conspirators did she exhibit any concern for the quality of any prospective treatment for

the AHCCCS members. Correspondingly, none of the records from any of the co-conspirator individuals, or entities were remotely sufficient to assess progress for any patients who were present at any of the aforementioned behavioral health shell companies under the overarching L&L Investment structure. Instead, most of Defendant's communications with co-conspirators concerned her inquiries about when payment would be received by L&L Investments for the patients and billing "matrix" she provided to her AHCCCS proxy biller accomplices. The balance of her communications pertained to whether more illicit revenue was possible *via* billing on weekends, or for more services, or the creation of additional L&L Investment- involved criminal behavioral health franchises. Defendant continuously solicited both her co-conspirators and legitimate AHCCCS Providers to expand this fraud scheme business model in Arizona.

In sum, Defendant devised and facilitated the unrelenting billing pattern of extreme treatment hours across all dates, ranges, and AHCCCS patients as she provided a seemingly ever-expanding foundation of AHCCCS AIHP Members to the illegal enterprise for the sole purpose of maximizing the prospective amount of illicit proceeds.

The State urges the Court to further consider the demographics of those AHCCCS Patients collectively used by the Defendant as the means by which to successfully execute the collective fraud scheme. As referenced above, the vast majority (>90%) of Defendant's effective Patient census were Native American AHCCCS Members of the AIHP Program. Unlike AHCCCS Managed Care Plans, where a third-party private health care provider administers and oversees the reimbursements for treatment services rendered to AHCCCS Patients, the AIHP Program was monitored internally by AHCCCS managers and employees. As result of this structural bifurcation, AIHP was subject to reduced scrutiny in terms of legitimacy of reimbursement requests/payouts. Further, Native American applications for AHCCCS benefits were subject to fewer prerequisite and/or requirements prior to an AHCCCS Membership grant.

Notwithstanding the fact there exist altogether valid policy reasons for AHCCCS effectively maintained these reduced standards, in the context of the instant case, these reduced standards provided Defendant with an opportunity to successfully, and thoroughly, exploit the AIHP Program.

Each of the Members of whom elements of the Defendant's criminal enterprise purportedly rendered treatment services received 10 hours of services, or greater, on a daily basis during pendency of the fraud scheme. This level of care is extraordinary for any one Member and, in light of the reimbursement claims billed by proxy for the Defendant, the fact it was purportedly delivered to nearly all of Defendant's L&L Investments franchises' patient census, more than strains credulity – it amounts to indefensible fantasy. Moreover, the excessive rate at which the racketeering franchises purportedly rendered treatment services was patently non-therapeutic. It is antithesis of therapy; and, instead more resembles a systemic campaign of patient torment.

As the Court is undoubtedly aware, most of the persons who are eligible for, or actively receive, Medicaid/AHCCCS benefits are, in a colloquial sense, vulnerable people. Generally, AHCCCS beneficiaries are vulnerable insofar as they are people exposed to the danger of severe, prolonged decrease in living standards below critical thresholds, to a point of abject deprivation. However, with respect to the case at bar, the near total Native American composition of those Defendant used as a means defraud AHCCCS enhanced the risk to patients, as indigenous peoples are among the most marginalized communities in society. Often, Native American communities have suffered enduring periods of maltreatment and/or outright exclusion. As a consequence of these longstanding inequities, indigenous persons are less likely to seek out treatment for physical or mental ills, having been so exploited by Defendant. Additionally, and

perhaps more troubling, is the fact the same exploited citizens will be less likely to seek help from the law enforcement agencies or the State in the future.

Defendant, at minimum, was unconcerned with the unique past, present and future risks associated with Native Americans purportedly under her care. Rather, the evidence suggests she viewed them as essential revenue-producing instruments/assets in service of achieving tremendous material wealth.

Perhaps above all else, the Defendant's racketeering enterprise deprived legitimate behavioral health treatment providers of critical public resources. For every dollar the Defendant defrauded from Medicaid/AHCCCS for treatment services never rendered, meant one less dollar for those honest and legitimate behavioral health treatment providers who represent the best of the social promise of Medicaid to never abandon or forget those who are less fortunate because indigence or ailment. Medicaid is a critical final barrier to substance abuse and mental health crises and the devastating consequences those crises impose on the individual, as well as local populations. Such local propagation can, if insufficiently addressed, with considerable speed and relative ease, metastasize through the larger community and potentially result in practical failure of nearly all favorable aspects of that community. The Defendant weakened this barrier in selfish service to his desire for personal luxury.

Ultimately, when a purported health care provider like the Defendant, and/or her accomplices, intentionally engages in fraudulent billing the taxpaying public is victimized. In sum, the Defendant defrauded each and every taxpayer in Arizona and simultaneously made more difficult for the most vulnerable in society to obtain medical treatment.

The State submits the attendant aggravating factors in this case substantially outweigh any mitigating factors; and, the mitigating factors, if any, are not sufficiently substantial to justify a lesser term if the Court imposes a term of imprisonment as a sentence. *See* A.R.S. § 13-

701(F). Thus, because the Defendant pled guilty to Illegal Control of an Enterprise, a class 3 felony, in each of the cases referenced herein, the Court has may legally impose the State's recommended sentence of four (4) years incarceration for both cases, to be served concurrently.

VIII. Conclusion

Based on the foregoing information and argument, the State respectfully requests the Court sentence the defendant to an aggravated term of five (5) years incarceration in the Arizona Department of Corrections.

RESPECTFULLY SUBMITTED this 28^h day of May, 2024.

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ORIGINAL of the foregoing filed
this 28^h day of May, 2024, with:

Clerk of the Court, Criminal Unit
Maricopa County Superior Court
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COPIES of the foregoing delivered via
email this 28^h day of May, 2024, to:

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