

Yikes! It's the Cops!

Ohio Association of Medical
Equipment Services

Columbus, Ohio
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Dinsmôre



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OHIO ATTORNEY GENERAL'S OFFICE

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Laws the Ohio Attorney General's Office Enforces:

1. Theft – R.C. § 2913.02
2. Medicaid Fraud – R.C. § 2913.40
3. Patient Abuse and Neglect – R.C. § 2903-34
4. Civil False Claims – R.C. § 5111.03
5. Workers' Comp Fraud – R.C. § 2913.48

Provider Types:

- ▶ Any and all Medicaid providers – including nursing homes, medical suppliers, home health providers, transportation providers, physicians, pharmacists, labs, hospitals, etc.
- ▶ WCFU prosecutes providers, claimants and employers.

Federal False Claims Act, 31 USC 3729 et seq.

- ▶ The FCS prohibits any person from knowingly submitting false or fraudulent claims for payment to the federal government
- ▶ Punishes those with “deliberate ignorance” or “reckless disregard” for the truth
- ▶ Damages may include:
 - ▶ Reimbursement for the claim
 - ▶ Triple damages
 - ▶ \$5,500 to \$11,000 per claim
 - ▶ Exclusion from federal health care programs

Federal False Claims Act, 31 USC 3729 et seq.

- ▶ Most of the cases resulting in recoveries are brought to the government by whistleblowers under FCA, also known as qui tam actions
- ▶ Whistleblowers may receive up to 30% of the recovery

July 1, 2012 to June 30, 2013

- ▶ MFCU received 889 complaints of Medicaid fraud and patient abuse or neglect
- ▶ Opened 672 complaints for active investigation
 - ▶ 391 relating to Medicaid fraud
 - ▶ 281 relating to patient abuse or neglect
- ▶ Completed 603 investigations
 - ▶ 397 related to Medicaid fraud
 - ▶ 206 related to patient abuse neglect

July 1, 2012 to June 30, 2013

- ▶ **Obtained 167 indictments**
 - ▶ 150 related to Medicaid fraud
 - ▶ 17 related to patient abuse or neglect
- ▶ **Obtained 147 convictions**
 - ▶ 135 related to Medicaid fraud
 - ▶ 12 related to patient abuse or neglect
- ▶ **Completed 21 civil settlements**
 - ▶ \$77,234,518.76

The Workers' Compensation Fraud Unit

- ▶ **Statistical Highlights**

- ▶ The Unit posted 85 indictments
- ▶ The Unit posted 88 convictions
- ▶ The Unit posted \$2,519,621.52 in recoveries

How Do We Discover Fraud

- ▶ We work closely with ODJFS and Auditor of State looking at billing data
- ▶ Outlier billing
- ▶ Impossible billing, such as billing for dead people, or billing for home health while person was in the hospital
- ▶ Hotline: employees, ex-employees, ex-spouses, ex-lovers, consumers complaining, competitors
- ▶ Working with federal agencies
- ▶ Notified of abuse and neglect by ODH

Investigative Tools

- ▶ Surveillance (direct and video)
- ▶ GPS monitoring
- ▶ Cell phone historical data
- ▶ GJ subpoenas/Search warrants
- ▶ Records comparison (overlaps)
- ▶ Handwriting analysis
- ▶ Old-fashioned witness interviews

Who Do We Work With

- ▶ U.S. Attorneys
- ▶ HHS OIG Agents
- ▶ FBI
- ▶ Ohio Department of Health
- ▶ Ohio Department of Job and Family Services
- ▶ Auditor of State
- ▶ Medical and other licensing boards
- ▶ Local police
- ▶ Bureau of Workers' Compensation

Home Health

- ▶ Our biggest area of fraud
- ▶ Services not rendered
- ▶ Kickbacks with recipients
- ▶ Corrupt agencies
- ▶ Use of pole cameras
- ▶ Workers with criminal records

Transportation

- ▶ Wheelchair vans (ambulettes)
- ▶ Only purpose is to transport people in wheelchairs
- ▶ Many times – no wheelchair
- ▶ False mileage, false extra attendant, plain old services not rendered

Other Areas

- ▶ **Nursing Homes**
 - ▶ Abuse
 - ▶ Neglect
 - ▶ Billing fraud
 - ▶ Theft (from Pt. Trust Funds and from the patient)
- ▶ **Doctors**
- ▶ **Pharmacists**
- ▶ **Drug Diversion – abuse of prescription drugs**

Augustine Kotee

- ▶ Created string of four companies (one transportation, three DME)
- ▶ Never actually provided any supplies
- ▶ Last three companies – 100% fraud
- ▶ Hid his ownership: payments to debit card accounts, used his wife's name on provider agreement
- ▶ Convicted of multiple felonies

Joyce Fried

- ▶ Owned and operated hearing aid company
- ▶ Billed for batteries and repairs not provided
- ▶ Outlier for battery billing
- ▶ Not nice to employees
- ▶ They told our investigator the truth
- ▶ Convicted of felony
- ▶ Excluded from Medicaid

Joyce Fried (Again)

- ▶ After conviction, had her son start a new company
- ▶ She ran everything
- ▶ Employees told on her again
- ▶ All billings under the new company were false due to sham company. Also billed for services not rendered.
- ▶ Convicted of another felony
- ▶ Son also convicted

Deavault Medical Supply

- ▶ Derek Deavault owned and operated
- ▶ Identified by ODM for billing for supplies allegedly provided to himself
- ▶ 95% of billings were false
- ▶ Paid Suzetta Ross to obtain Medicaid numbers
- ▶ \$250 each
- ▶ Ross paid people in the neighborhood for the numbers
- ▶ \$66,000 stolen
- ▶ Both convicted. Deavault to prison.

Robert Hoyer

- ▶ Operated and part owner of Stevens Medical Supply
- ▶ Hoyer handled all the Medicaid billing
- ▶ Documents from respiratory therapists indicated that patient had died
- ▶ Hoyer billed Medicaid for oxygen services for the deceased patients
- ▶ Convicted of a felony

Paul Brockman

- ▶ Owned and operated Midwest Medical Supply
- ▶ Complaint came from a former employee
- ▶ Provided used equipment, billed for new
- ▶ Convicted in federal court

UNITED STATES ATTORNEY'S OFFICE

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Disclaimer

The views and opinions of the speakers may not necessarily be those of the
U.S. Department of Justice



Which Cases Get Prosecuted?

- ▶ Monetary Loss
- ▶ Victim Harm
- ▶ Deterrence (General and Specific)

Federal Criminal Statutes

- ▶ **Health Care Fraud**
 - ▶ (0 – 10 years)
 - ▶ (0 – 20 years if serious bodily injury)
 - ▶ (0 – life if results in death)
- ▶ **Mail and Wire Fraud**
 - ▶ (0 – 20 years)
 - ▶ (0 – 30 years if a financial institution affected or disaster relief involved)

Federal Statistics 2012

- ▶ \$3.0 billion in health care fraud judgments
- ▶ \$1.2 billion in administrative actions
- ▶ 1,131 criminal health care fraud investigations involving 2,148 potential defendants
- ▶ Criminal charges in 452 cases involving 892 defendants
- ▶ 826 defendants were convicted of health care fraud-related crimes
- ▶ 885 civil health care fraud investigations opened
- ▶ 1,023 civil health care fraud matters pending

Angel Home Health

- ▶ Home Health Agency providing nurses and home health aids
- ▶ Services not rendered
- ▶ Obstruction of justice
- ▶ Wilma Kpohanu convicted by jury
- ▶ 10 year sentence

Markell Boulis

- ▶ Defroked Chiropractor opened up “consulting business”
- ▶ Billed for “lost income” from rendered services
- ▶ Fraudulently obtained \$820K over 4 years
- ▶ Ohio BWC defrauded \$275K
- ▶ After guilty plea he was sentenced to 5 years

Typical Appellate Issues

- ▶ Fails to meet statutory purposes of sentencing:
 - ▶ Just punishment (not fair)
 - ▶ Deterrence (general and specific)
 - ▶ Unreasonable weight to impermissible factors
- ▶ Ineffective assistance of counsel
- ▶ Failure to advise on plea negotiations and agreements
- ▶ Unfair loss calculations

PROVIDER SIDE

Principal Laws Enforced By Feds

▶ Criminal

- ▶ 18 USC 1035 – Health Care False Statements
- ▶ 18 USC 1347 – Health Care Fraud (Scheme)
- ▶ 18 USC 1349 – Conspiracy to Commit Health Care Fraud
- ▶ 18 USC 371 – Conspiracy to Commit Offense or to Defraud the United States
- ▶ 18 USC 1001- Fraud or False Statements
- ▶ 18 USC 1028A – Aggravated Identity Theft
- ▶ 42 USC 1320a-7(b) – Anti-Kickback Statute

Anti-Kickback Statute

- ▶ Prohibits asking for or receiving any remuneration in exchange for your referrals of federal health care program business
- ▶ Applies to payers and recipients of kickbacks
- ▶ Prohibited kickbacks include:
 - ▶ Cash for referrals
 - ▶ Free or reduced price rent for medical office
 - ▶ Free clerical staff
 - ▶ Excessive compensation for medical directorships
 - ▶ Giving patients financial incentives to use your devices

Anti-Kickback Statute

- ▶ **Penalties**
 - ▶ Prison sentences
 - ▶ Fines and penalties up to \$50,000 per kickback
 - ▶ Exclusion from federal health care programs

Civil False Claims Act (FCA)

- ▶ The FCA prohibits any person from knowingly submitting false or fraudulent claims for payment to the federal government
 - ▶ Punishes those with “deliberate ignorance” or “reckless disregard” for the truth
- ▶ Damages may include:
 - ▶ Reimbursement for the claim
 - ▶ Triple damages
 - ▶ \$5,500 to \$11,000 per claim
 - ▶ Exclusion from federal health care programs

Civil Monetary Penalties Law

- ▶ Monetary penalties for a wide variety of conduct, including:
 - ▶ False or fraudulent claim: up to \$10,000 for each item or service improperly claimed and an assessment of up to 3 times the amount improperly claimed
- ▶ May also seek exclusion from participation in all Federal health care programs

Signs of Fraud

- ▶ Billing data showing amount of billings (or type of coding) is inconsistent with others similarly situated – e.g., too many billings in a day or servicing too many patients in a day
- ▶ Numerous complaints alleging same fraudulent conduct

Discovering Fraud

- ▶ **Complaints**
 - ▶ Residents
 - ▶ Provider employees
 - ▶ Anonymous – HHS/OIG and MFCU
- ▶ **Data Mining**
 - ▶ Program Safeguard Contractor – AdvanceMed
 - ▶ USA/MFCU/Insurance Auditors

Patient Protection and Affordable Care Act

- ▶ Directs the Sentencing Commission to increase the federal sentencing guidelines for health care fraud offenses by 20% - 50% for crimes that involve more than \$1,000,000 in losses.
- ▶ Updates the definition of “health care fraud offense” in the federal criminal code (18 U.S.C. § 24(a)) to include violations of the Anti-Kickback Statute and the Food, Drug and Cosmetic Act.

Patient Protection and Affordable Care Act

- ▶ Clarifies that a violation of the Anti-Kickback Statute constitutes a violation of the False Claims Act. This will ensure that all claims resulting from illegal kickbacks are false, even if the claims are submitted by an innocent third-party and not directly by the wrongdoers themselves

Patient Protection and Affordable Care Act

- ▶ Clarifies that the term “willful” under the health care fraud statute (18 U.S.C. § 1347) does not require proof that defendants either had knowledge of that particular statute or had specific intent to violate the law. This bill clarifies that “willful conduct” in this context does not require proof that the defendant had actual knowledge of the law in question or specific intent to violate that law.

How Does The Investigation Begin?

- ▶ Receipt of a subpoena
- ▶ Law enforcement agencies arrive at your business offices and begin seizing records
- ▶ Hear news from former employees that they have been interviewed by the FBI, HHA, or another agency
- ▶ Hear rumors of people “going to the government”

“What Is Going On?”

- ▶ The prosecution has no obligation to make any disclosures to you
- ▶ The investigation could be criminal or civil

Investigators Have Many Available Tools and Techniques

- ▶ Audit data
- ▶ Subpoenas
- ▶ Search warrants
- ▶ Civil Investigative Demands (CID)
- ▶ Trash
- ▶ Witness testimony and documents
- ▶ Electronic surveillance/wiretapping

Investigative Tools and Techniques – Audit Data

- ▶ Includes billing and payment information
- ▶ Key source for information
- ▶ Data not only from you but also from every government insurance and private insurance source
- ▶ Used to determine the scope of any suspected fraud

Investigative Tools and Techniques – Subpoenas

- ▶ Could be for any relevant documents, including patient files, memos, telephone records, emails, financial records, billing data
- ▶ May also subpoena anyone related to you that has relevant information, such as billing companies or banks

Investigative Tools and Techniques – Subpoenas

- ▶ Two types:
 - ▶ Grand Jury Subpoenas – used in criminal investigations
 - ▶ Inspector General Subpoenas – used in civil investigations but may have the potential for criminal investigations
 - ▶ May investigate fraud “relating to the delivery of and payment for health care in the United States” including fraud against private insurers
 - ▶ Not just Medicare and Medicaid, the investigation may include investigation of private health care billings

Investigative Tools and Techniques – Subpoenas

- ▶ Inspector General Subpoenas (continued)
 - ▶ Usually served by the investigative agent, requiring the production of documents at a given time and place
 - ▶ If you do not comply, the Department of Justice will file a petition to a court to enforce the subpoena
 - ▶ Non-compliance risks being excluded from Medicare or Medicaid programs

Investigative Tools and Techniques – Subpoenas

- ▶ **How to respond to a subpoena**
 - ▶ Record the date of service and the name of the serving agent
 - ▶ Destroy nothing. Convey this message to all staff. Halt all routine purging or destruction of documents
 - ▶ Meet with legal counsel as quickly as possible
 - ▶ Meet with key personnel to determine the location or source of the information subject to the subpoena
 - ▶ Know how all records are kept, where they are kept, and who keeps them
 - ▶ If the scope of the subpoena is broad, call the investigative agent or prosecutor. Ask for a reasonable extension

Investigative Tools and Techniques – Subpoenas

- ▶ **How to respond to a subpoena (continued)**
 - ▶ Ask a specific person to compile the information
 - ▶ Collect, organize, and create an inventory of the information
 - ▶ Segregate documents for which a privilege can be asserted
 - ▶ If the investigator requires original, make copies for you to keep and deliver the originals
 - ▶ Negotiate to have agents review the files on-site then take only what they need or produce copies first, then original on demand

Investigative Tools and Techniques – Subpoenas

▶ Attorney-Client Privilege

- ▶ Protects documents from disclosure where legal advice is sought from a lawyer in confidence
 - ▶ Not business advice
 - ▶ Must be in confidence and not communicated to others. If the contents of the communication are disclosed to a third-party, the privilege is waived and the documents must be produced.
 - ▶ Communications to further a crime are not protected

Investigative Tools and Techniques – Search Warrants

- ▶ Likely indicator of criminal charges pending
- ▶ Scope of the warrant is likely to be broad, especially if the government suspects systematic fraud
- ▶ Will result in a document search on the premises
- ▶ May include interviewing witnesses
- ▶ No clear limits to the length of the search

Investigative Tools and Techniques – Search Warrants

- ▶ **How to respond to a search warrant:**
 - ▶ Assure the agents of your willingness to cooperate
 - ▶ Request a copy of the warrant
 - ▶ Ask for the identity of the agents or officers and ask for the type of information being requested – make a list of this information
 - ▶ Notify legal counsel – fax a copy of the warrant to corporate and/or outside counsel
 - ▶ Ask that all government inquiries should be directed to a Response Coordinator until the arrival of legal counsel
 - ▶ Close the location and send home all non-essential employees (primarily for PR and morale reasons)

Investigative Tools and Techniques – Search Warrants

- ▶ **As the search progresses:**
 - ▶ Request a copy of the search inventory from the agent in charge
 - ▶ Make copies of the documents taken, and compile a list of documents seized to compare with the agent's list (a detailed record will help your attorney craft a defense or recommend a settlement or plea offer)

Investigative Tools and Techniques – Witness Testimony and Documents

- ▶ **Could include:**
 - ▶ Competitors
 - ▶ Current employees
 - ▶ Former employees
 - ▶ Residents or their family members
 - ▶ Doctors or nurses dissatisfied with the practice of level of care
 - ▶ Targets or subjects of an investigation
 - ▶ Other defendants
 - ▶ Payors
 - ▶ Insurance companies or fiscal intermediaries
 - ▶ Audits of the billing activity

Investigative Tools and Techniques – Witness Testimony and Documents

- ▶ Typically, a voluntary arrangement to meet at a convenient location between the witness and the investigator
- ▶ Ask: Is the employee witness represented by counsel for the health care organization?
- ▶ Grand jury testimony
 - ▶ Determine what the subject matter of the investigation and the scope of the testimony
 - ▶ A witness may assert Fifth Amendment rights or obtain federal immunity for testimony

Plan Ahead For Possible Investigations

- ▶ Assemble a “Response Team”
- ▶ Prepare detailed instructions to follow in the event of an investigation
- ▶ Anticipate and prepare for media attention

Plan Ahead For Possible Investigations

- ▶ Educate employees about their rights in the event of an investigation, specifically:
 - ▶ The employee has no obligation to talk to investigators
 - ▶ If the employee is willing to talk, the employee may request a time and place that is more convenient
 - ▶ The employee has the right to have their personal attorney (as opposed to corporate counsel which represents the entity) present during any interview, and the employee may terminate the interview at any time
 - ▶ Any statements made by an employee could be used against the employee or the company in subsequent prosecutions

The Best Way To Avoid An Investigation Is To Prevent It

- ▶ Implement an effective compliance plan to track overpayments and address billing, coding and quality issues
- ▶ An effective compliance plan also helps support the defense that billing mistakes were unintentional (distinguishable from fraudulently submitted claims)

The Best Way To Avoid An Investigation Is To Prevent It

- ▶ **Elements of an effective compliance plan include:**
 - ▶ Utilization of a trustworthy compliance manager to conduct internal audits
 - ▶ Proper training of employees and sufficient monitoring of internal processes
 - ▶ Taking appropriate disciplinary action where lapses are detected
 - ▶ Meticulous documentation and record-keeping is key – records must support the medical necessity and appropriateness of services rendered

Once An Investigation Starts, Avoid Making The Situation Worse

- ▶ Do *not* encourage an employee to refuse to talk to a government agent or lie to the agent
- ▶ Do *not* destroy or alter any files or documents

There Are Emotional Consideration In An Investigation

- ▶ Anticipate a lengthy process – one that will feel like a personal and professional marathon
- ▶ You will likely experience stress, anger, depression, and an inability to concentrate
- ▶ Seek the support of family and close friends
- ▶ Some liability insurers and medical societies now sponsor programs to assist medical professionals with the adverse emotional byproduct of investigations and/or litigation

THANK YOU!

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