



## What Is A Medical Fraud & Compliance Program

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<http://oig.hhs.gov/compliance/provider-compliance-training/index.asp>

## Disclaimer

- This presentation is intended for educational purposes only. The information in this presentation is a guide to Federal Laws and regulations and should not be considered when initiating or refuting a legal claim. If legal advice is needed, it is recommended that you contact a legal professional. This is a guide that will assist you in developing your own internal program. Ethics Helpline is: 1-800-584-2529 or [www.ethicshelpline.com](http://www.ethicshelpline.com)

## Please Understand

- You are responsible for your actions
- You can be fined
- You **must not do anything** illegal, knowingly or unknowingly
- You should **NEVER** do anything that you feel is incorrect
- You can call the OIG and ask any question to keep you out of trouble
- No one should ever ask you to do any illegal**

## 2014 Case of Optometrist

- "At the end of an all-day sentencing hearing in U.S. District Court on Thursday, Judge J. Randal Hall told Dr. Jeffrey Sponseller that what troubled him most about the hours of testimony was the defense's apparent theme that bad employees and sloppy record-keeping were to blame."

<http://chronicle.augusta.com/news/crime-courts/2014-01-09/optometrist-sentenced-33-months-federal-prison-medicare-fraud>

7/14/2017

## Charge For Holding New Born

Itemized Statement of Services				
Facility Name: [REDACTED]		Patient Name: [REDACTED]		
Date: 9/23/2016		Encounter Number: [REDACTED]		
SERVICES RECEIVED:				
DATE	DESCRIPTION	CPT CODE	QUANTITY	AMOUNT
04/2016	LEVEL 1		19	\$52.82
04/2016	LEVEL 3		38	\$212.04
04/2016	DELIVERY C SECTION		79	\$3106.28
04/2016	SKIN TO SKIN AFTER C-SEC		1	\$39.35
06/2016	IP LACTATION CONSULT LVL 1		2	\$61.96
07/2016	BILLED SELECT MED			\$0.00
PAYMENTS & ADJUSTMENTS				
08/2016	COMMERCIAL INSURANCE PAYMENT		1	-\$6087.15
09/2016	CONTRACTUAL ALLOWANCE ADJUSTMENT		1	-\$5566.82
TOTAL CHARGES: \$13280.49		PAYMENTS & ADJUSTMENTS: -\$11653.97		CURRENT BALANCE: \$1626.52

## OIG Whistle Blower Policy

- You cannot take any retaliatory action against an employee that that contacts the OIG for a violation
- This is a federal law and violating it only adds insult to injury

## The Law

- Ask the questions
- Write down the response
- Ignorance of the law is no excuse

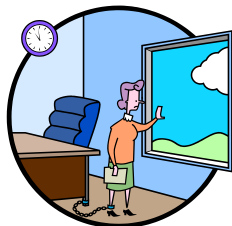


## Overview

- What is Compliance and Fraud Prevention
- Who is responsible for compliance
- What makes a great compliance program
- Vital Link for Success
- False Claim Act
- Violation Reporting
- Accuracy of information
- Great compliance programs
- Government Required Reporting

## 3 Main Categories

- Compliance Program Guidance: 11 originals and 2 supplements
  - Principles and risk areas
  - Suggested practices
  - Organized by industry
- Special Fraud Alerts
  - Industry trends
  - Formal and legal guidance thru OIG, review FAQs 1<sup>st</sup>
  - sign-up for e-mail alerts
- Advisory Opinions
  - Aids in preventing legal issues
  - Mergers are advised upon



## Who is Responsible For Compliance

- Organization
- Compliance officer
- Leadership driven
- Constant monitoring
- Tracking compliance
- The organization must instill an attitude of compliance because:  
**Everyone is responsible for compliance**



## Great Compliance Programs

- Written policies and procedures and share with organization
- Have a compliance professional that is empowered
- Effective training
- Effective communication and all employees
- Internal monitoring/ review
- Standards enforcement
- Prompt response to issues



## Vital Link for Success

- Accuracy of information is critical and verified
- Everyone working with your office must conduct themselves in a ethical and legal manner
- Never work in doubt
- Fair and honest behavior is a must
- Responsibility with you and reporting infractions
- Compliance with Federal, state, local and office policies are imperative
- HIPAA applies when sending information
- Incorporate compliance at every level of organization

<http://oig.hhs.gov/compliance/provider-compliance-training/index.asp>

## Justification for Care

- Documentation: **if it is not documented, it didn't happen**
- Health and Physical
- Physician orders
- Interpretation
- Plan for care



## What must you report?

- Someone must be informed
- Violations of laws or policies
- Dishonest or unethical behavior
- Fraud, waste and abuse
- Questionable Accounting
- Conflict of Interest
- Any suspicious activity



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## Medical Personnel

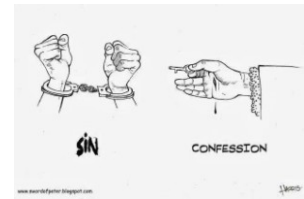
- Must be compliant with Medicare Part A, B, C, and D rules
- All insurance companies have the legal right to turn you in for confirmed or suspected fraud violations



Perspective matters

## Hiring Practices

- Background investigations for all new hires
- Increased potential for an audit
- Exclusion list



<http://exclusions.oig.hhs.gov/Default.aspx>

## False Claims Act U.S.C. Title 18 Section 1347

- Federal Law
- Designed to give the federal government power to levy penalties and agencies and individuals who knowingly commit or cause someone else to fraud against the government
- Liable for 3x damages plus civil penalties to include federal prison



Has become the most widely enforced statutes to combat Medicare Fraud

## False Claims Act

- This is the primary legal foundation in which the federal government uses to combat fraud against Medicare and Medicaid



## Submitting CMS Claims

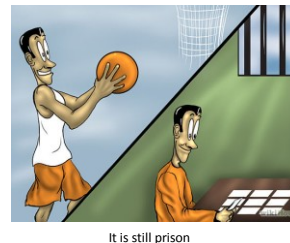
- All claims MUST be verified as accurate
- If you cause another person to submit a false claim, you can be held liable for your actions
- If you are made aware of a false claim, you must notify CMS and all insurances immediately



## FCA Prohibits

Knowingly or causing:

- A false claim to be presented for approval
- False record or statement to be used for approval
- A false record to conceal, avoid, or decrease an obligation to pay
- Conspiring to defraud based on a fraud claim



## FCA False Claims Occur

When:

- Has actual knowledge of fraudulent activity and does not report it
- Acts in deliberate ignorance of the truth or falsity of information
- Acts in direct disregard of the truth or falsity of information: no proof is required



The Federal government does not constitute "innocent mistake" as a good defense

## Recovery Act Contractor Audits

- DHCS contracts them and they are paid based on collections
- Common RAC findings:
  - No documentation
  - Insufficient documentation
  - Medical necessity
  - Incorrect coding
  - Duplicate claims
  - New vs Established
- Solo practice: 10/45 days
- 2-5 docs: 20/45 days
- 6-15 docs: 30/45 days
- 16+ docs: 50/45 days
- Last 4 weeks of EOBs to identify denial trends
- You will need your policy letters available... SOPs
- \* **Remember timelines for your practice, meet every deadline,**

## Asked To Do Something Suspect

- There are rules
- Whistle Blower
- Leadership involvement
- Documentation
- 202-619-1343 for questions
- **Retaliation is illegal!!!**



## Anti-Kickback Laws

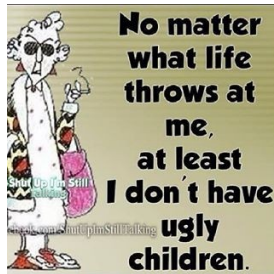
Healthcare Pros cannot

- Knowingly offer, pay, or solicit receiving remuneration of any kind for referral business
- Transfer anything of value, directly or indirectly overtly or covertly
- **Know your individual state laws** as well
- Impacts both parties



## Samples of Kickbacks

- Waiving co-pays
- Sending a gift to compensate for an office visit
- Giving of gifts is dangerous
- If you are unsure you should seek legal advice
- **Safe Harbor**
- Impacts both parties



## Examples of Illegal Practices

- Price fixing conspiracies
- Corporate mergers which likely will reduce vigorous competition
- Predatory acts designed to achieve or maintain monopolistic power
- Intentionally filling false claims



## Fraud Waste and Abuse

- The detention, correction, and prevention of FWA is essential to maintain a healthcare system that is affordable for everyone
- [www.cns.hhs.gov/prescriptiondrugcovcontra/downloads/pdbmanual.chapter9\\_FWB.pdf](http://www.cns.hhs.gov/prescriptiondrugcovcontra/downloads/pdbmanual.chapter9_FWB.pdf)



## Samples of FWA

- Changing medical records
- Double billing
- Billing for more expensive procedures
- Doctor shopping for Rx drugs
- Pharmacy short filling
- Rx forging or altering
- Use of untrained personnel to provide services
- Distribution of unapproved devices or drugs
- Bill for services never rendered



## Waste

- Waste means to use up healthcare benefits or healthcare dollars without a real need
- Example:
- Prescribing medication for 30 day use when it is not known that the medication will be needed



## Abuse

- Means provider practices are inconsistent with sound fiscal, business or medical practices, and result in unnecessary cost to the healthcare system
- Reimbursements that fail to meet professionally recognized standards
- Includes beneficiary practices that result in cost to the healthcare system



## STARK Law: Provider Financial Gains

- Prohibit improper referral relationships
- Prohibiting Medicare Patients from being referred to entities of the provider when a financial gain is involved
  1. designated health service
  2. Dr. or family mbr have financial requirements
  3. Financial fit into Stark Law
  4. Referrals that lead to personal gains



## Part D Risk

- Consumer
- Healthcare plans
- Insurance agents and brokers
- Pharmacies
- Pharmacy benefit managers
- Providers
- Contract personnel that develop their own coverage



## The Most Common Kind of Fraud

- Involves a **false statement or deliberate omission** that is critical to determination of benefits being payable



T+ - Très toxique

## Procurement Integrity Act

- Receiving contractor bid or proposal info that would give them an unfair advantage
- Giving anything of value to a procurement official
- Discussing or making an offer to government official or family member
- **2 yrs ban & Lifetime ban**



## Billing Mistakes

- **Provider responsibility**
- Within 60 days
- 3 x the loss + \$11K per claim
- **Whistle blowers get 30%**
- Most common whistle blowers are partners, current or former employers and patients
- Integrity Agreements when you are caught



## Conflicts of Interest

- Business decisions and actions must be wholly based on best interest of the members and must not be motivated by personal interest or relationships
- Best general rule, avoid any action or association with anyone that the public would deem unfit
- Sample,
  - a physician prescribing a drug in which he/she receives money from that company would be considered a conflict of interest.



## Government Requires

Refrain from hiring:

- Convicted of a criminal offense related to healthcare
- Barred or excluded for healthcare programs
- Executive Order 13224,, people connected with or support known terrorist
- Listed on OIG and GSA exclusion list
- Any felony involving dishonesty or breach in trust



Checked initially and annually

## How To Prevent Fraud

- Start by knowing your benefits and reading your Explanation of Benefits (EOB) statements and any paperwork received from Group Health Cooperative or your health care providers.
- Be wary of any "free" medical treatment, as these are usually scams.



## Gifts

- A very touchy area
- Ensure that the American Medical Assoc agrees with your decision [WWW.ama-assn.org/ama/pub/category4001.com](http://WWW.ama-assn.org/ama/pub/category4001.com)



## How to Report Suspected Fraud and Abuse

- Send e-mail to [FWA@ghc.org](mailto:FWA@ghc.org)
- Call our confidential, toll-free hotline at 800-741-7817
- Call our FWA department at 206-988-2967
- Mail or fax a written description of your complaint, including copies of any supporting documentation to:  
Group Health Cooperative  
Fraud, Waste, and Abuse  
Department  
12501 E. Marginal Way S., ASB 2  
Seattle, WA 98168  
Fax: 206-988-2538



<http://oig.hhs.gov/compliance/provider-compliance-training/index.asp>

## The Best Policy

- **Proper documentation and record keeping**
- Avoid any impropriety of in all aspects of Compliance and Prevention
- Promote an environment of compliance
- **Partner with the Federal government to ensure compliance**
- Train the entire staff
- Caution...civilian programs...ask questions

## CMS Comes Out Against Scribes

- **EHR Meaningful Use Update:**  
*Despite [Academy efforts](#), the Centers for Medicare & Medicaid Services clarified this week that medical scribes – even those who are certified – are not permitted to enter electronic medication, laboratory, or radiology orders into electronic health record systems. The Academy believes that changes to the criteria for satisfying the EHR Meaningful Use Program's Computerized Provider Order Entry measure lacked clarity regarding appropriate personnel who may perform this task.*

## Cont...

- *In communication to the Academy, CMS explained that it is not permitting scribes to enter medical data under the CPOE measure. Medical staff entering orders into EHRs for purposes of satisfying the CPOE measure must be, at minimum, a certified medical assistant or equivalent, which includes certified ophthalmic technicians, certified ophthalmic technologists, and certified ophthalmic assistants.*

## Cont...

- *The previous uncertainty raised concerns about appropriately attesting for the Meaningful Use requirements for both Stage I and Stage II. The Academy will continue to push CMS to allow non-certified staff to satisfy the requirements of this measure.*
- **According to JCAHPO, CMS states that the scribe cert is not enough to enter for CPOE.**

Thank You

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