

AVOIDING FRAUD AND ABUSE

Responsibility, Protection, Prevention

Presented by:



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Today's Lecturers:

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and

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OVERVIEW

- Federal Fraud and Abuse Laws
 - Cover an array of fraudulent and abusive activities
 - Giving payment to beneficiary to influence the receipt of reimbursable items or services
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OVERVIEW

- Florida Specific Statutes on Health Care Fraud and Abuse
 - Risk Areas
 - What it Means to be Excluded from Health Care Programs
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INTRODUCTION


- Federal government relies on physicians to submit accurate and truthful claims
 - Use pay and chase model for collecting on denied claims
 - Dishonest health providers exploiting the system for illegal personal gain have created need for fraud and abuse laws
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FRAUD AND ABUSE LAWS


Five most important Federal laws




FALSE CLAIMS ACT

- Protects the government from being overcharged
 - Civil liability on any person who knowingly submits a false claim to the government
 - Qui Tam (whistleblower) actions
 - Bring suit on behalf of the government
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FALSE CLAIMS ACT

- Knowingly means:
 - Acting in deliberate ignorance
 - Reckless disregard for the truth
 - Violating False Claims Act:
 - Fines
 - Criminal penalties including fines and imprisonment
- 


ANTI-KICKBACK STATUTE

- To offer, pay, solicit or receive any remuneration to induce or reward referrals of items or services reimbursable by a Federal health care program
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ANTI-KICKBACK STATUTE

- If arrangement satisfies regulatory safe harbors, not treated as an offense
 - Violating Anti-Kickback Statute:
 - Fines and imprisonment
- 


PHYSICIAN SELF-REFERRAL LAW (STARK LAW)

- Prohibits a physician from making a referral for certain designated health services payable by Medicare or Medicaid to an entity in which the physician or an immediate family member has an ownership/investment interest or with which he or she has a compensation arrangement, unless an exception applies
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DESIGNATED HEALTH SERVICES

- Clinical laboratory services
 - Physical therapy services
 - Occupational therapy services
 - Outpatient speech-language pathology services
 - Radiology and certain other imaging services
 - Radiation therapy services and supplies
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DESIGNATED HEALTH SERVICES

- Durable medical equipment and supplies
 - Parenteral and enteral nutrients, equipment and supplies
 - Prosthetics, orthotics and prosthetic devices, and supplies
 - Home health agencies
 - Inpatient and outpatient hospital services
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PHYSICIAN SELF-REFERRAL LAW (STARK LAW)

- Violating Physician Self-Referral Law (Stark Law)
 - Exclusion from participation in all Federal health care programs


CIVIL MONETARY PENALTIES (CMP) LAW

- Authorizes the imposition of substantial civil money penalties against an entity that engages in activities, including:
 - Presenting or causing to be presented a claim for services not provided as claimed or which is otherwise false or fraudulent in any way
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CIVIL MONETARY PENALTIES (CMP) LAW

- Giving or causing to be given false or misleading information reasonably expected to influence the decision to discharge a patient
 - Offering or giving remuneration to any beneficiary of a federal health care program likely to influence the receipt of reimbursable items or services
- 


CIVIL MONETARY PENALTIES (CMP) LAW

- Arranging for reimbursable services with an entity which is excluded from participation from a federal health care program
 - Knowingly or willingly soliciting or receiving remuneration for a referral of a federal health care program beneficiary
 - Using a payment intended for a federal health care program beneficiary for another use
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CIVIL MONETARY PENALTIES (CMP) LAW

- Violating the Civil Monetary Penalties Law:
 - \$10,000 to \$50,000 fine per violation
 - Assessment of up to three times the amount of remuneration received


CRIMINAL HEALTH CARE FRAUD STATUTE

- Prohibits executing or attempting to execute a scheme
 - To defraud any health care program
 - To obtain any of the money or property owned by any health care program
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CRIMINAL HEALTH CARE FRAUD STATUTE

- Proof of actual knowledge or specific intent to violate the law is **NOT** required
 - Violating the Criminal Health Care Fraud Statute:
 - Fines and imprisonment
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ENFORCERS

- Department of Justice (DOJ)
 - Department of Health & Human Services
Office of Inspector General (OIG)
 - Centers for Medicare & Medicaid Services
(CMS)
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FLORIDA STATUTES ON HEALTH CARE FRAUD AND ABUSE



FLORIDA STATUTES ON HEALTH CARE FRAUD AND ABUSE

- Florida Patient Self-Referral Act – prohibits a health care provider from referring a patient for designated health services to an entity in which the health care provider is an investor or has an investment interest
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FLORIDA STATUTES ON HEALTH CARE FRAUD AND ABUSE

- Is not limited to Medicare and Medicaid
 - Also called “Mini-Stark”
 - Exists in many other states
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FLORIDA STATUTES ON HEALTH CARE FRAUD AND ABUSE

- Florida Anti-Kickback Statute – prohibits offering, paying, soliciting, or receiving a kickback for referring or soliciting patients
 - A.K.A. Florida Patient Brokering Act
 - FL Stat 817.505 et. seq


FLORIDA STATUTES ON HEALTH CARE FRAUD AND ABUSE

- Florida law grants exceptions that are permitted under federal law
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RISK AREAS




CODING AND BILLING

- Billing for items or services not rendered or not provided as claims
 - Submitted claims for equipment, medical supplies and services not necessary
 - Double billing
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CODING AND BILLING

- Billing for non-covered services
 - Misusing provider identification number
 - Unbundling – billing for each component instead of using an all-inclusive code
 - Clustering - the practice of coding/billing one or two middle levels of service codes exclusively
 - Upcoding – billing for a higher reimbursement than necessary
- 


PHYSICIAN DOCUMENTATION

- Accurate medical record documentation
 - Records should be complete and legible
 - Keep detailed records
 - Support the CPT and ICD-9-CM codes
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RETENTION OF RECORDS

- Specify the length of time that a physician practice's records are to be retained
 - Consult federal and state statutes for specific times frames
 - Secure medical records against loss, destruction, unauthorized access, corruption and damage
- 


RETENTION OF RECORDS

- Stipulate the disposition of medical records in the event the physician practice is sold or closed, subject to state law
- 


IMPROPER KICKBACKS AND SELF-REFERRALS

- Financial arrangements with health care providers to whom the physician practice may refer business
 - Joint ventures with providers supplying goods and services to the physician practice or its patients
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IMPROPER KICKBACKS AND SELF-REFERRALS

- Consulting contracts or medical directorships
 - Office and equipment leases with health care providers to which the physician refers
 - Soliciting, accepting or offering any gratuity of more than nominal value to or from those who may benefit from a physician practice's referral
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IMPROPER KICKBACKS AND SELF-REFERRALS

- Avoid offering inappropriate inducements to patients
 - Waiving/reducing co-pays
 - Free meds
 - Prompt pay discounts
 - Cash discounts
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WHAT IT MEANS TO BE EXCLUDED




EXCLUSION

- Exclusion from health care programs can have devastating and far-reaching consequences, including:
 - Termination for cause from all health care programs
 - Loss of state professional licenses in other states
 - Loss of hospital, ambulatory surgical center and nursing home clinical privileges
 - Removal from the provider panels of health insurers
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EXCLUSION

- Loss of ability to contract or work for any individual or entity that contracts with health care programs in any capacity, including physicians, medical groups, hospitals, healthcare systems, ambulatory surgical centers, health insurance companies
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EXCLUSION

- Administration (GSA) Exclusions List (or "Debarred" List) from government contracting
 - Loss of ability to contract or work for any individual or entity that contracts with the federal government in any capacity
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QUESTIONS?

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