

# Fraud, Waste, and Abuse



**BEACON**  
Specialized Living

# What is Fraud?

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Fraud is any activity defined by an intent to deceive on the part of a member, provider or client, a third-party biller, or even a payor, with the purpose of receiving an improper benefit.

In order to be considered fraud, the act must be done knowingly, willfully, and intentionally.

# Examples of Fraud

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- Billing for services not done
- Asking for, receiving, or offering a bribe or kickback
- Falsifying information on any document(s)
- Selling or sharing a resident's information
- Using incorrect codes to ensure that the services will be paid for

# Fraudulent Statements

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Healthcare providers are prohibited from making false or fraudulent statements or causing such statements to be made when they are used to obtain payment.

These are felonies and carry fines.

# Fraudulent Statements

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## Examples include:

- Knowingly and willfully making or using any false, fictitious, or fraudulent statements in connection with healthcare benefits, items, or services.
- Concealing or covering things up by any trick, scheme, or device.
- Falsely certifying that services were medically necessary
- Up-coding: billing for services not actually rendered
- Charging rates in excess of established rates

# What is Abuse?

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Abuse is very similar to fraud but occurs when a providers' practices are not consistent with sound fiscal or business practices, but unlike fraud, it may not involve acts that are done intentionally.

# Examples of Abuse

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- Routinely submitting duplicate claims.
- Using codes to describe more complex procedures than what was actually performed.

# What is the difference?

## Fraud

- Felony
- Knowingly, willfully, intentionally, and deliberately charging for services not provided, miscoding, or falsely documenting.

## Abuse

- Unknowing and unintentional.

# What is Waste?

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**Waste occurs from practices that result in unnecessary costs.**

# Deficit Reduction Act and Corporate Compliance

The Deficit Reduction Act (DRA) was created in 2005 and requires compliance programs for health care entities, including mandatory annual training for all employees and contractors.

Non-compliance with the Act can result in fines up to \$500,000 for entities, civil penalties of \$10,000 per claim, and exclusion as a provider.

The Deficit Reduction Act (DRA) requires employers to:

- Provide education to employees
- To have written policies for detecting and/or preventing fraud, abuse, and waste.
- To have an employee handbook that includes fraud and abuse laws.

# What is the False Claims Act?



The State of Michigan also has a False Claims Act. This applies when a person or company knowingly submits a “false or fraudulent” claim for payment to the Federal Government. For example, if anyone directly bills Medicaid for services provided and they elaborate on time spent by a case manager with a resident, this would be covered under the False Claims Act.

- **Knowingly** means actual knowledge, deliberate ignorance, and/or reckless disregard.
- A simple error is not enough; intent is generally required. However, failing to follow procedures, or failing to question something that doesn't seem right, may be found to be deliberate ignorance or reckless disregard.
- The False Claims Act also protects anyone who reports fraud, abuse, or waste.

# Examples of False Claims



- Submitting false information or documents to the government.
- Falsifying types and/or dates of services.
- Failing to perform a service that was billed.
- Billing for a service that was misrepresented (1:1 staffing when not given).
- Billing for an hour of service when given a lesser amount of time.
- Billing for services that are not medically necessary.

# Monetary Damages



A person who violates the False Claims Act must repay three times the amount of damages suffered by the government plus a mandatory civil penalty of at least \$5,500 and no more than \$11,000 per claim.

*A person who submits 50 false claims for \$50 each is liable for between \$282,500 and \$557,500 in damages.*

# Stark Prohibitions

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The legislation prohibits a physician from referring Medicare or Medicaid patients to an entity for designated health services (DHS) if the physician or an immediate family member has a financial relationship with that entity.

Only items and services payable by Medicare or Medicaid are designated health services.

# Stark Prohibitions

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The Center for Medicare and Medicaid Services has designated certain Medicare codes to define all designated health services, physical therapy, occupational therapy, radiology, and certain other imaging services and radiation therapy services.

# What is the Anti-Kickback Statute?

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The Anti-Kickback Statute states that it is a crime to knowingly and willfully solicit, receive, or offer to pay remuneration in cash or other valuables for

- Referring an individual or arranging for the furnishing of services/items payable by Medicare or Medicaid.
- Purchasing or leasing of any goods or services for which payment can be made under any federal health care program.

Claims that are submitted as a result of a violation of the Anti-Kickback Statute may be subject to the False Claims Act.

# Kickback Consequences

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Offenders face a fine of no more than \$25,000 or imprisonment of no more than 5 years.

Anyone who receives, offers, or pays illegal remuneration commits a felony.

# Charging vs Billing

- Charging is NEVER optional (professional and technical services).
- Billing is optional (professional services only).

# Why we must charge for services.

- Could otherwise be considered a kickback
- Needed to recognize revenue
- Serves as workload indicators
- To track type and number of services rendered
- Aids in determining budget and staff needs

# What is Unlawful Patient Inducement?

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Unlawful patient inducement is similar to the prohibitions of the Anti-Kickback Statute. It is unlawful in some situations to provide gifts (remuneration), or free items or services, to promote potential beneficiaries to receive services from your company that are reimbursable by a federal health care program.

# Exception to Unlawful Patient Inducement

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Items and services of nominal values – less than \$15.00, and less than \$75.00 per year.



# Penalties Associated with Violating Laws

Penalties for individuals and/or entities that violate the previously mentioned laws:

- Civil lawsuits and monetary penalties
- Criminal prosecution and monetary penalties
- Treble damages (three times the actual damages)
- Suspension or exclusion from participation in the Medicare and Medicaid programs



# Federal Whistleblower's Act



The Federal Whistleblower's Act provides protection to employees who report a violation of the law. It states that an employer shall not discharge, threaten, or discriminate against an employee who reports a violation or suspected violation.

Penalties for employers found to be in violation include fines, reinstatement of the employee, back wages paid, and additional damages such as attorney fees.

**Report False Claims to:**

**Chris Taylor, Chief Compliance Officer**

[christopher.taylor@beaconspecialized.org](mailto:christopher.taylor@beaconspecialized.org)

You can find out additional information on the Whistleblowers Act in the Employee Handbook, Postings, or Basecamp under the Policy Manual.

# Affordable Care Act

This Act includes increased screening and enrolling of providers. If a provider is terminated from the Medicare program, they are also terminated from Medicaid. States can suspend payments to any provider under investigation of credible allegations of fraud.

# Anonymous Reporting

Your initial report of fraud, waste, or abuse can remain anonymous. However, if the inquiry has merit and bears a fuller review, your identity will need to be added to the reporting process. You will also need to be available to answer questions or make statements on the record as the result of your report.

Remember, if you make a good faith report of fraud, waste, or abuse, you are protected from retaliation by the Whistleblower's Act and the False Claim Act.

Corporate Compliance is a plan that covers much of the False Claims Act, Whistle-blowers Protection Act, Criminal History checks, and policies to keep our employee base sound and ethical.

# Office of Investigator General Official Hotline

855-MI-FRAUD (855-643-7283) Voicemail After Hours

Office Hours: Monday – Friday 8:00AM to 5:00PM

**For more information on the False Claims Act or any of the information in this training, you can contact via email:**

**Beacon's Compliance Department**

**[compliance@beaconspecialized.org](mailto:compliance@beaconspecialized.org)**

