

PREVENTING FRAUD, ABUSE, & WASTE: A Primer for Physical Therapists



Available at: <http://www.apta.org/Integrity>

PREVENTING FRAUD, ABUSE, AND WASTE:

A Primer for Physical Therapists



APTA
American Physical Therapy Association.



Overview

- ① Background
- ② Explanation of fraud, abuse, and waste
- ③ Fraud and abuse laws
- ④ PT relationships with payers
- ⑤ PT relationships with referral sources
- ⑥ PT relationships with patients
- ⑦ Professionalism
- ⑧ Compliance programs

Health Care Fraud: The Problem

- National Academy of Medicine reported that \$765 billion per year has been lost to fraud, abuse, and waste (\$75 billion due to fraud)
- Fraud, abuse, and waste results in:
 - Overutilization of services
 - Increased costs for payers
 - Corruption of medical decision making
 - Unfair competition
 - Harm to patient

Government Investing Resources to Fight Fraud

- Government views recovering funds from fraud, abuse, and waste as a significant source of revenue
- The return on investment (ROI) for the Health Care Fraud and Abuse Control (HCFAC) program:
 - 3-year average (2010-2013), \$8.10 returned for every \$1.00 expended
 - Recovered \$4.3 billion in 2013

What Is Fraud?

- **Fraud:** intentional deception or misrepresentation that a person makes to gain a benefit to which they are not entitled
- **Examples:**
 - Knowingly billing for services not furnished
 - Knowingly altering claims forms to receive more payment
 - Falsifying documentation

What Is Abuse?

- **Abuse:** payment for items or services that the provider is not entitled to and for which the provider has not intentionally misrepresented facts to obtain payment
- Examples include:
 - Billing services that are not medically necessary
 - Unbundling services and billing
 - Billing services that do not meet professionally recognized standards

What Is Waste?

- **Waste:** incurring unnecessary costs as a result of deficient management practices, systems, or controls
- Examples include:
 - Duplication of services already provided elsewhere
 - Spending on services that lack evidence of producing better outcomes compared with less-expensive alternatives

Major Fraud and Abuse Laws

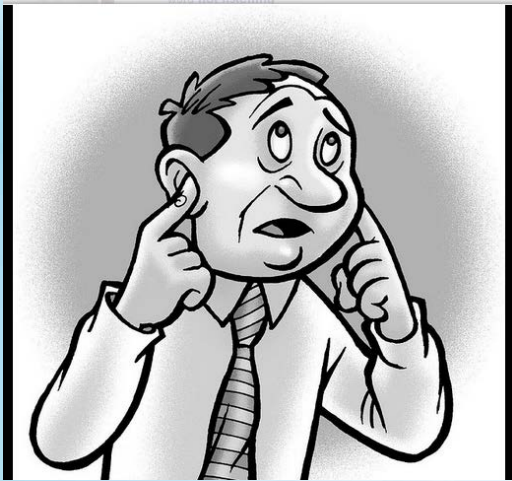
- ⦿ False Claims Act
- ⦿ Federal Anti-Kickback Statute
- ⦿ Physician Self-Referral Law
- ⦿ Exclusion Authorities
- ⦿ Civil Monetary Penalty Law

False Claims Act

- Prohibits the knowing submission of false claims or the use of a false record or statement for payment to Medicare or Medicaid
- Monetary penalties of up to \$22,000 per claim, **plus** 3 times the damages sustained by the government
- License sanctions and exclusion from federal program

“Knowing” Under False Claims Act

- “Knowing” includes actual knowledge, **deliberate ignorance**, and **reckless disregard** for the truth or falsity of the information
 - Can’t choose to ignore information (bulletins, etc)



False Claims Act and Whistleblowers

- ◎ Strong Incentive for whistleblowers to report fraud
 - Can receive up to 30% of recovery
- ◎ Whistleblowers may include:
 - ✗ ex-business partners
 - ✗ staff
 - ✗ competitors
 - ✗ patients



Fraud: Real World Example

- Employee of a physical therapy service signed his name on patient files as the provider of PT services, including blank treatment data forms, progress notes, and daily physical therapy records. He was not licensed, trained, or otherwise qualified to provide physical therapy.
- Sentenced to 9 years of incarceration and ordered to pay more than \$26 million for health care fraud.

Fraud: Real World Example

- ① US v Mackby
- ① Mackby billed physical therapy through a physician's (his father) provider number. The physician was in another state.
 - ✗ \$58,151.64 damages x3=\$174,454.92
 - ✗ 111 claims x \$5000 = \$555,000
 - ✗ Total liability =\$729,454.92
 - ▶ Only pursued claims exceeding cap

Anti-Kickback Statute

- Prohibits anyone from “knowingly and willfully” offering or receiving a form of payment in return for referring a patient to another provider for services or items covered by Medicare and Medicaid
- Payment can include anything of value (eg cash for referrals, free rent, gifts)
- Safe harbors permit nonabusive arrangements

Real World Examples

- ① PT gives referrer free or steeply discounted office space.
- ① DME company pays cash or provides free or steeply discounted equipment/supplies/services in exchange for “preferred vendor status.”
- ① PT discounts and/or waives patient payment responsibility (eg, copays, deductibles).

Real World Example

- ① Defendants operated a physical therapy clinic in Brooklyn, recruiting patients by offering a payment of \$50 per visit.
- ① Billed Medicare for services that were unnecessary or never provided at all.

Physician Self-Referral Law

- ⦿ Prohibits physician referrals for certain health care services (eg, physical therapy) when there is a financial relationship with an entity **unless an exception applies**
 - ✗ Financial relationships include ownership and compensation

Stark Laws

Is there a **referral** by a **physician** for a **designated health service** (includes physical therapy) payable by Medicare?

Then, does the physician have a **financial relationship** with the **entity** furnishing the DHS?

If so, does the financial relationship fit in an **exception** (eg, in office ancillary service)?

If not, there's a violation.

Exclusion Statute

- ① The government may exclude inviolate providers from participation in federal health care programs, meaning:
 - ✗ The provider may not bill for treating patients
 - ✗ An employer may not bill for the provider's services

Physical Therapist Relationships With Payers

- Coding and billing
- Documentation
- Enrollment



Coding and Billing for Physical Therapists

- ① Payers rely on physical therapists to submit proper claims for payment with accurate information
- ① When the federal government pays for services for Medicare and Medicaid beneficiaries, federal fraud and abuse laws apply
- ① For private payers, states may have similar laws that apply

Coding and Billing for Physical Therapists

- ⦿ Examples of improper coding and billing:
 - ✗ Billing for services not provided
 - ✗ Billing for services that are not medically necessary
 - ✗ Billing for services provided by aides
 - ✗ Billing for services provided by PTAs not properly supervised

Real World Examples

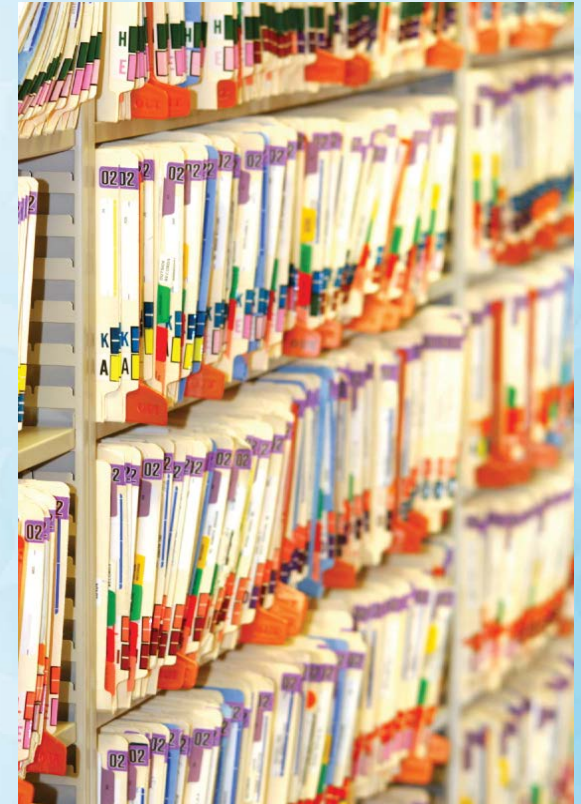
- ① PT billed for treatments lasting 30 to 60 minutes when actual time with patients was 10 to 20 minutes.
- ② SNF engaged in a scheme to place Medicare patients in the “ultra high” rehabilitation utilization group (RUG), which pays a higher amount. Therapists in the facility were pressured to provide services to patients that were not necessary.

Physical Therapist Documentation

- ① Documentation is a professional responsibility and legal requirement
- ① Physical therapists must support the claims they submit with complete medical records and documentation
- ① Payers may review the medical records to verify the claims and quality of care through audits

Physical Therapist Documentation

- Is a record of patient care
- Is a communication vehicle among providers
- Demonstrates compliance with federal, state, payer, and local regulations
- Can demonstrate appropriate utilization



Physical Therapist Documentation

⦿ Medicare has identified the following problems:

- ✗ Missing or incomplete plan of care
- ✗ Missing provider signatures and dates
- ✗ Missing total time for procedures and modalities
- ✗ Missing certification and recertification of plan of care

Real World Example

- ① Medicare contractor notified a physical therapist of upcoming audit. PT told employees to delay the audit by telling the contractor medical records were stored at a nonexistent storage facility.
- ② They used the time to alter and augment patient records by creating notes that did not exist for services not provided.

Enrolling as a Medicare and Medicaid Provider

- ① Physical therapists in private practice should individually enroll in the federal health care programs to be paid for services to Medicare or Medicaid beneficiaries
- ① Enrolled physical therapists are responsible for making sure correct claims are submitted and for updating enrollment for any changes

Relationships With Physicians and Other Referral Sources

- ⦿ Rental of office space
- ⦿ Medical directors
- ⦿ Gifts to physicians



Relationships With Referral Sources

- ◎ If a health care business offers something for free or below fair market value, or offers cash in exchange for referrals, question the reason:
 - ✗ Am I getting paid by a company for very little work? Do they need my expertise?
 - ✗ Does the amount of money I am offered seem appropriate for services I am going to provide
 - ✗ Am I being asked to refer patients to that particular company?

Relationships With Referral Sources

- ⦿ Rental of office space from physicians
 - ✗ Do not pay for more space than necessary
 - ✗ Do not pay greater than fair market value
 - ✗ Fraud alert available at:

<http://www.oig.hhs.gov/fraud/docs/alertsandbulletins/office%20space.htm>

Relationships With Referral Sources

Medical Directors

- ✗ Should actively oversee clinical care, be involved
- ✗ Should be paid fair market value
- ✗ Should spend an appropriate amount of time providing services

Relationships With Referral Sources

🕒 Gifts to physicians

- 🕒 **Caution:** Gifts could be considered an inducement to refer patients to your practice (potential violation of anti-kickback laws)
- 🕒 Stark II law allows nominal gifts
- 🕒 Analyze gifts case-by-case
 - ▶ Does the gift (eg, free lunch) involve education?
 - ▶ Is the intent to induce referrals?

Physical Therapist Relationships With Patients

- 🕒 Gifts to patients
- 🕒 Waiver of coinsurance
- 🕒 Collecting cash from Medicare beneficiaries



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Relationships With Patients

- ⦿ Federal laws generally prohibit gifts to Medicare and Medicaid beneficiaries
 - ✗ Seen as inducing a patient to come to your practice instead of another
- ⦿ Inexpensive gifts allowed if:
 - ✗ Not cash or cash equivalents; and
 - ✗ Value is no more than a \$15 individually/\$75 in aggregate annually per patient

<http://www.oig.hhs.gov/fraud/docs/alertsandbulletins/SABGiftsandInducements.pdf>

Relationships With Patients

- Providing free services to patients or waiving coinsurance and deductibles is generally prohibited as it may influence a patient to receive your services
- There is an exception for financially needy patients

Exceptions to Discounts or Waiver Violations

- ① Provider does not advertise discounts or waivers of copays
- ① Provider does not routinely waive or discount copays
- ① Provider shows extensive efforts to collect money from patient **or**
- ① Patient meets federal poverty guidelines or facility-specific poverty/catastrophic guidelines

Exception for Discounts

- ⦿ OIG and HHS issued letters to hospitals 02/04 (applicable to physicians/PTs)
- ⦿ Discounts to uninsured and underinsured okay
- ⦿ Must establish a policy and apply it uniformly
- ⦿ Documentation important

<http://www.oig.hhs.gov/fraud/docs/alertsandbulletins/2004/FA021904hospitaldiscounts.pdf>

Relationship With Patients

- ⦿ A physical therapist may not collect out-of-pocket payment from a Medicare beneficiary for a service that Medicare would cover
- ⦿ There are claims submission requirements under Medicare for covered services

Evidence-Based Practice, Ethics, and Professionalism

- To protect against the risk of fraud, abuse, and waste, incorporate clinical practice guidelines and evidence-based patient care decisions about appropriate health care for specific clinical conditions
- More information:
<http://www.apta.org/EthicsProfessionalism/>

Compliance Programs

- ① Compliance programs can prevent fraud, abuse, and waste
- ② Voluntary compliance program guidance is available from OIG
- ③ 7 core elements for a compliance program



7 Core Elements of a Compliance Program

1. Written standards of conduct, policies, and procedures
2. Designation of a compliance officer
3. Effective education and training programs
4. Hotline to receive complaints
5. System to respond to allegations of improper and/or illegal activities
6. Audits to monitor compliance
7. Investigation and remediation of identified systemic problems

Taking Action



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If There's a Problem

- ① Contact the compliance officer
- ① Immediately stop submitting problematic bills
- ① Seek knowledgeable legal counsel
- ① Determine whether there are any overpayments that need to be returned
- ① Disentangle yourself from problematic relationship
- ① When appropriate, consider reporting information to OIG or CMS

Potential Resources

- ⦿ Experienced health care lawyers
- ⦿ State physical therapy board
- ⦿ CMS local Medicare administrative contractors (MACs)
- ⦿ Office of Inspector the General hotline and email
800-HHS-TIPS (1-800-447-8477)
HHSTIPS@oig.hhs.gov

Questions





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