

# On the Up and Up

Physical therapists must be diligent in learning as much as possible about fraud, waste, and abuse situations and ensuring they don't inadvertently participate in any of them.

By Lisa K. Brown



**F**ederal and state guidelines for documenting and billing medical services can be complicated, but it's imperative for you to understand proper procedures to prevent fraud, waste, and abuse. Due diligence will not only help minimize the risk of claim denials and ensure timely payments, said Amy Wright, PT, chief clinical officer at OptumHealth Physical Health, it will also help secure your career in the physical therapy profession.

The National Health Care Anti-Fraud Association estimates that "financial losses due to health care fraud are in the tens of billions of dollars each year." Physical therapists (PTs) who are found guilty of committing fraud against coding and billing regulations are liable to lose their licenses and, in some cases, face jail time. However, Wright said instances of abuse are far more common.

## Is it Fraud, Waste, or Abuse?

The Centers for Medicare and Medicaid Services (CMS) defines fraud as "making false statements or representations of material facts to obtain some benefit or payment for which no entitlement would otherwise

exist." CMS defines abuse as "practices that, either directly or indirectly, result in unnecessary costs to the Medicare program." And waste can be defined as "unnecessary consumption of health care resources resulting in undue payment or reimbursement," Wright said.

Although these definitions are specifically related to Medicare and Medicaid, they are generally consistent with private-payer situations, as well.

Katherine Karker-Jennings, PA, a health law attorney specializing in Medicare compliance, views fraud as intentional, while abuse is more the result of reckless disregard. However, it's not always easy to distinguish between fraud and abuse.

For example, a patient could be billed for treatment from a PT, yet the patient was actually only treated by a physical therapy aide. This could be classified as fraud if someone intentionally billed the patient incorrectly to get a higher payment, or it could simply be the result of an inadvertent coding error, which would be abuse.

Consider the following scenarios describing hypothetical situations a new physical therapy professional could encounter.

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## SCENARIO 1

### Incorrect Billing for 1-on-1 Aquatic Therapy When Group Therapy Was Provided

*Peter, PT, DPT, (age 24) is a new professional. Upon graduation from a physical therapist program, he was hired by a busy private practice providing aquatic therapy for patients with Medicare. He enjoys being in the pool with his patients to provide direct hands-on therapy. The practice, however, has become so busy that he no longer has time to provide direct hands-on therapy with each patient 1-on-1.*

*His supervisor, the practice owner, suggests he schedule all patients requiring aquatic physical therapy sessions at the same time. "That way," he said, "you can direct the therapeutic exercises of several patients simultaneously from the pool deck, and bill CPT code 97113 for each patient."*

*After doing this for several months, Peter discovers the CPT code (97113) he's been using is defined only for 1-on-1 contact with a single patient, not multiple patients from a distance.*

*Peter has a dilemma. He knows for sure he can no longer continue to bill group sessions as if they were 1-on-1. But what about the sessions he's already billed? Should he go back and correct those, even though the practice has already been paid for them? And what about telling his supervisor, the practice owner? It is possible his supervisor was just mistaken about the coding. Shouldn't he give him a chance to correct his mistake?*

*What if his supervisor thanks him for pointing out the error and tells him to use the correct code going forward but not to worry about the already-billed sessions as that would be an administrative nightmare? What should Peter do then?*



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Peter should correct the previous coding errors with the proper notation and his signature, Karker-Jennings said. Peter should also inform his supervisor of his intentions. If the supervisor insists the previous errors

stay uncorrected, Peter should find a new job and consider reporting the supervisor to the compliance officer or the federal government, Karker-Jennings said.

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## SCENARIO 2

### Improper Documentation and Billing

Jessica, PT, DPT, (age 26) has been practicing in an established outpatient private practice for 6 months. The practice has outgrown its current space, so the clinic recently moved to a larger location. With all of the extra duties involved in relocating the practice, Jessica and many of the other PTs fell behind on their documentation. After all, they have so many new patients with Medicare being referred to them because their new location is so close to the hospital.

Some unsettling news is shared with the PTs. The practice owner was just informed by a Medicare contractor that her practice is scheduled to be audited. The owner, who knows the PTs are all behind on their documentation, instructs everyone to “spend the next few days creating notes for the patients’ records from memory and date the documentation to reflect the date patients were actually treated so nothing is amiss during the audit.”

It’s hard for Jessica to remember all of the details of each patient’s therapy sessions. Jessica does her best to complete the documentation as accurately as possible.

Jessica is confronted by a problem. She is not sure she documented accurately from memory and is concerned she did not date her notes appropriately. For certain patients, she documented interventions without knowing whether they were in fact provided during the session. Preferably documentation should have been completed at the time care was delivered or at a minimum on the same day as the care was given. Additionally, adding documentation to a patient’s record after the fact is only permitted when the additional note is shown in the record as a late addition and the date of the late addition or addendum includes the date it was written and included in the record. Jessica’s actions, whether she knew it or not, could be considered fraud and abuse by the government.

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“Never back date,” warns Karker-Jennings. It’s perfectly legal to make corrections or amendments to medical records, but they need to include the date of the revision. All Jessica needed to have done is simply admit to her supervisor that she couldn’t remember certain details, Karker-Jennings said.

In both of these case scenarios, Jessica and Peter could refer to the CMS Manual System for guidance on making amendments, corrections, and delayed entries in medical records. Also, they would ideally follow the employer’s compliance program. With the enactment of the Affordable Care Act, certain health care providers are now required to have compliance programs in place to prevent similar situations that can result in fraud, waste, or abuse.

“Clinicians should be diligent in learning as much as possible about these areas of practice and avoiding potentially fraudulent situations,” said physical therapist and attorney, Paul Welk, PT, Esq.

In 2000, the US Department of Health and Human Services Office of Inspector General (OIG) published guidelines for creating a compliance program for individual and small group physician practices. These guidelines can be applied to physical therapy settings, Welk said. “The guidance describes using processes to maintain the anonymity of the reporting person and ensuring that there will be no retribution for reporting conduct,” Welk said.

The guidelines include 7 components on which to base a compliance program:

- Conducting internal monitoring and auditing,
- Implementing compliance and practice standards,
- Designating a compliance officer or contact,
- Conducting appropriate training and education,
- Responding appropriately to detected offenses and developing corrective action,
- Developing open lines of communication, and
- Enforcing disciplinary standards through well-publicized guidelines.

“As employees, it is important for PTs to be aware of the practice’s compliance plan and what reporting mechanisms may be in place and to use these processes when appropriate,” Welk said.

If you suspect a fraud, waste, or abuse situation in the workplace, a reasonable first step is to approach your employer, whether anonymously or directly, to state your concern, Welk said. If your employer does not respond appropriately and your employer’s compliance plan proves inadequate to address suspected fraud, waste or abuse, you may report your suspicion to the OIG through its website ([forms.oig.hhs.gov/hotlineoperations/](http://forms.oig.hhs.gov/hotlineoperations/)) or by phone (800/HHS-TIPS).

To share your thoughts and/or concerns about fraud, waste, and abuse in physical therapy settings, e-mail [newprofessionals@apta.org](mailto:newprofessionals@apta.org). ■

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**Lisa K. Brown** is communications and marketing associate, APTA. She can be reached at [lisabrown@apta.org](mailto:lisabrown@apta.org).



**what  
you  
don't  
know  
CAN  
hurt  
you.**

**Stephanie, PT, DPT**, recently joined a state-of-the-art private practice. She and her team work like a well-oiled machine and are known for improving patients' quality of life.

When the practice owner suggests that Stephanie bill her last 30-minute treatment session as a 1-hour session, she's unsure of what to do. "Excellent care deserves compensation," he explains. "Besides, it more accurately reflects what the practice should be paid and ensures that we can serve more patients who need us."

Listening to the practice owner, in this situation, could land Stephanie in big trouble.

Could the government view any of your billing practices as fraud, abuse, or waste?

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## For More Information on Fraud, Waste, and Abuse

The federal government and APTA provide several resources for physical therapy professionals to learn more about fraud, waste, and abuse issues.

### Government

- US Department of Health and Human Services Centers for Medicare and Medicaid Prevention, Detection, and Reporting Guidelines:  
[http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/Fraud\\_and\\_Abuse.Pdf](http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/Fraud_and_Abuse.Pdf)  
This document gives an overview of Medicare fraud and abuse facts and laws.
- US Department of Health and Human Services Office of Inspector General Tip Hotline: <https://forms.oig.hhs.gov/hotlineoperations/>  
This site allows for anyone to anonymously report suspicions of fraud, waste, or abuse in health care settings.
- Compliance Program for Individual and Small-Group Physician Practices: <https://oig.hhs.gov/authorities/docs/physician.pdf>  
This document provides guidelines for creating and adhering to effective compliance programs.

### APTA

- CE Module in the APTA Learning Center, *Navigating the Regulatory Environment: Ensuring Compliance While Promoting Professional Integrity*  
<http://learningcenter.apta.org>
- Coding and Billing  
[www.apta.org/Payment/CodingBilling/](http://www.apta.org/Payment/CodingBilling/)  
This site includes links to course information, podcasts, frequently asked questions, and more.
- Compliance Page  
[www.apta.org/Compliance/](http://www.apta.org/Compliance/)  
This site features information on fraud and abuse, Medicare audits, physician self-referral, and more.
- Core Documents  
[www.apta.org/Policies/CoreDocuments/](http://www.apta.org/Policies/CoreDocuments/)  
This site features links to the Code of Ethics for the Physical Therapist, Standards of Ethical Conduct for the Physical Therapist Assistant, Guide for Professional Conduct, Guide for Conduct of the Physical Therapist Assistant, and Professionalism in Physical Therapy: Core Values. Each document sheds light on responsibility to prevent fraud, abuse, and waste.
- Defensible Documentation for Patient/Client Management  
[www.apta.org/Documentation/DefensibleDocumentation/](http://www.apta.org/Documentation/DefensibleDocumentation/)  
The site features a variety of downloadable documents, covering everything from elements and checklist samples to current concerns in physical therapy documentation and case scenarios.
- Physical Therapy Classification and Payment System  
[www.apta.org/PTCPS/](http://www.apta.org/PTCPS/)  
This site contains information about a payment-reform plan for outpatient physical therapist services.
- *PT in Motion* Articles  
[www.apta.org/PTinMotion/](http://www.apta.org/PTinMotion/)  
“Addressing the ‘Biggest Threat’ to Physical Therapy” (February 2014)  
“Medicare Prepayment Review” (June 2013)  
“Determining Medical Necessity Under Medicare” (November 2012)  
“Fighting Fraud and Abuse in Physical Therapy” (June 2012)  
“Medicare Audits: Reducing Risk” (February 2012)
- Strategic Plan  
[www.apta.org/StrategicPlan/Plan/](http://www.apta.org/StrategicPlan/Plan/)  
The document presents the specific objectives for goals related to effectiveness of care, patient- and client-centered care across the lifespan, professional growth and development, and value and accountability.