

MEDICAL FRAUD **ARE YOU AT RISK OR GUILTY?**

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As Chiropractors, we can all relate to the negative impact on our profession that fraud creates. Fraud is defined as: “an intentional perversion of truth for the purpose of inducing another in reliance upon it, to part with something of value belonging to another or surrendering a legal right”. Fraud is an intentional misrepresentation of a material fact that is actually relied upon by another, causing a legal injury.

There are four major elements of fraud that include: **false statement of a material fact**, which is **willfully** made with an **intent to deceive**. All states have theft statutes, which address violations of the Insurance Codes and deal with fraud issues. In healthcare, false and fraudulent insurance claims account for over 100 billion dollars a year in insurance fraud.

A person commits insurance fraud if any insurer or healthcare provider presents or causes to be presented any written or oral statement as part of, or in support of a claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains **any** false, incomplete, or misleading information concerning any material fact to such claims. If you prepare or make any written or oral statement that is presented to any insurance company for payment of a claim knowingly conceals information concerning **any** material fact, you are guilty of insurance fraud.

On all your claim forms there is clear language that states: “Anyone who knowingly and with intent to injure, defraud, or deceive any insurer, files a statement of claim with **any** false, misleading or incomplete information is guilty of a third degree felony. Most all states consider insurance fraud as a felony.

In addition, any physician who licensed under state statutes, who knowingly and willfully assists, conspires, or urges any party to fraudulently violate any provision of the insurance codes or statutes is guilty of insurance fraud.

Any insurer damaged as a result of an insurance fraud violation, when there has been a criminal adjudication of guilt, may recover compensatory damages, plus investigation fees, litigation fees and attorney fees.

A health care provider, an owner, or medical director of a clinic who is required to be licensed, is responsible for any and everything that happens in that clinic. It is in your best interest if you are in a medical director position to review all claims before they leave the office. If you are not allowed to do so, resign as their medical director. The higher the dollar amount of claims that are fraudulently submitted, the more severe the penalty. In Florida, amounts greater than \$100,000 are punishable as a 1st degree felony. Anyone who organizes, plans, or knowingly participates in an intentional vehicle crash for the purpose of filing a tort claim for personal injury is guilty of a second degree felony. I hope by now everyone is getting the seriousness of insurance fraud and the measures states are taking to control and prevent fraud.

Prior to becoming a Chiropractor, I spent 18 years as a law enforcement officer. During that time I investigated many cases of white collar crime, including insurance fraud. All states have a Department of Insurance that investigates cases involving motor vehicle fraud. Most states give the department agents arrest powers, and most work alongside state, local and county police departments, to investigate, arrest and prosecute violations. Medicare and Medicaid fraud issues are usually investigated by a federal agency, most often by the FBI and the Office of the Inspector General (OIG). Medicare and Medicaid fraud exceed millions dollars per day. About 15% of all public and private spending is attributed to fraud and waste in the US. One out of every fifty doctors participates in some form of fraudulent medical activity.

Some of the areas of fraud include: up coding and unbundling, unnecessary procedures, product switching, physician recruitment, and self-referrals just to name a few.

TYPES OF HEALTHCARE SCHEMES:

- 1. Insurance agents sell bogus claims with no intention of paying**
- 2. Provider insuring non-existent people**
- 3. Submission of bogus claims by policy holders**
- 4. Submission of false claims or inflated insurance claims by healthcare providers.**
- 5. Billing for expenses not related to patient care.**
- 6. Bill for services not provided**
- 7. Up coding**
- 8. Provide unnecessary services while representing that service as necessary**
- 9. Kickbacks for referrals**
- 10. Paying people to sign in on a sign in sheet and signing a claim blank claim for submission.**

Personal injury account for most of the fraudulent schemes, including disability claims, slip and fall accidents, staged automobile accidents to name a few. With staged accidents, the claimant or medical provider justify a longer treatment time and more reimbursement by aggravating medical conditions resulting from an actual accident. The slip and fall is the most popular of the schemes involving minor soft tissue injuries. The next most popular is the staged automobile accident with multiple victims. Sometimes these accidents only happen on paper, but often involve unsuspecting motorists who likely have insurance. Here are the most popular insurance fraud schemes: For obvious reasons, I'm not going to go into the particulars of how each is carried out. I'm very familiar with them all and have in the past investigated each of these types of schemes

- 1. Ditching**
- 2. Past Posting**
- 3. Automobile Repair**
- 4. Automobile Smuggling**
- 5. Paper Cars**
- 6. Staged Accidents**
- 7. Slip and Fall**
- 8. Ambulance Chasing**

Clinic investigations are becoming more routine than not. Inspections focus of a number of things including billing, excessive treatment, proper treatment, properly licensed personnel, operation of the clinic and medical files. Once a clear picture is developed, there will be a basis for decisions as to further action. Remember you can be held liable from a civil and criminal stand point and be required to make restitution for substantiated false claims. In some state if you are convicted of insurance fraud you may not be able to file claims for reimbursement of your treatments. In addition you are putting your license and freedom on the line. Remember, You have a duty to treat that patient, if you breach that duty though fraud that cause damages to the patient or insurance company your are negligent and possible guilty of fraud.

Healthcare fraud mutates like a virus. When you find one, five other emerge. Well over \$100 billion dollars are lost on fraud each year. Helpful hits to stay out of trouble:

- 1. Don't bill for services not rendered**
- 2. Don't bill for medically unnecessary or higher level of service**
- 3. Billing for services by unlicensed personnel**
- 4. Falsifying a diagnosis to justify a service**
- 5. Unbundling and Up coding**
- 6. Altering claim forms**
- 7. Soliciting, offering or receiving kickbacks**
- 8. Concealing ownership in a facility**
- 9. Becoming a medical director facility that signs your name to the claim form and never allows you to review them.**

HCFA'S "MOST WANTED" LIST:

- 1. TENS Units**
- 2. New patient office visits**
- 3. Concurrent care by two or more doctors**
- 4. Consultations**
- 5. E/M Codes**
- 6. Physical Therapy visits**
- 7. Unbundling**

Criminal and Civil Prosecution:

Even though fraud is against the law, it may also result in a civil action to recover monies; a criminal action could lead to jail time and the loss of your license. Proving a civil action requires a "preponderance of evidence" or 51% of the evidence against you. In a criminal trail, proof requires "beyond a reasonable doubt".

The FALSE CLAIMS ACT, also known as the "qui tam" suit. Whistle blowers involving healthcare fraud against the government are entitled to 15-30% of all money collected. If the government gets involved than the percentage is 15-25%. Typically providing information, explaining records, and helping in proceeding are required. A provider submitting a false claim is liable for treble damages, a

mandatory fine of \$1,000-\$25,000 for each false claim submitted, and paying the whistleblower's attorney fees. In addition, imprisonment, loss of your license and becoming a convicted felon.

Keep in mind if you are in a position as medical director you may be involved in healthcare fraud and not even know it until someone comes to your clinic and informs you that you and the clinic are under investigation. This is especially true if you are a clinic medical director at a facility that is owned by someone else. You are responsible for everything that goes on in that clinic including the billing. Insist on full access to all records before you become a clinic medical director. Don't be one of the doctors every other reads about in the journals.

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