


# **A Roadmap for New Physicians**

A photograph of a two-lane asphalt road with double yellow lines, curving through a desert landscape. The road is flanked by steep, reddish-brown cliffs. The sky is blue with some light clouds. The perspective is from the driver's seat, looking down the road.

**Avoiding Medicare  
and Medicaid Fraud  
and Abuse**

# Introduction

- This tutorial is intended to assist new physicians in understanding how to comply with Federal laws that combat fraud and abuse by identifying “red-flags” that could lead to potential liability in law enforcement and administrative actions.

**Health care fraud  
is a serious problem**





**Fraud** includes obtaining a benefit through intentional misrepresentation or concealment of material facts

**Waste** includes incurring unnecessary costs as a result of deficient management, practices, or controls

**Abuse** includes excessively or improperly using government resources





**Physicians  
Ensure  
Quality  
Medical Care**

# **Fraud and Abuse Laws**

- **False Claims Act**
- **Anti-Kickback Statute**
- **Physician Self-Referral Statute**
- **Exclusion Statute**
- **Civil Monetary Penalties Law**



# False Claims Act

- Prohibits the submission of false or fraudulent claims to the Government

- **Under the civil FCA:**

- no specific intent to defraud is required.
- defines “knowing” to include not only actual knowledge but also instances in which the person acted in deliberate ignorance or reckless disregard of the truth or falsity of the information.
- contains a whistleblower provision that allows a private individual to file a lawsuit on behalf of the United States and entitles that whistleblower to a percentage of any recovery
- whistleblowers could be current or ex-business partners, hospital or office staff, patients, or competitors.



# **Anti-Kickback Statute**



**Prohibits asking for or receiving anything of value in exchange for referrals of Federal health care program business**



# Anti-Kickback Statute

## **Prohibited kickbacks include:**

- Cash for referrals
- Expensive hotels and meals
- Free rent for medical offices
- Excessive compensation for medical directorships



# Kickbacks Can Lead To:

- Overutilization
- Increased costs
- Corruption of medical decision making
- Patient steering
- Unfair competition





# Penalties for Kickbacks

**Fines**

**Prison  
Time**

**Program Exclusion**





# Kickback Prohibition

- Applies to all sources of referrals, even from patients. For example, where Medicare and Medicaid programs require patients to pay for services, you are required to collect that money from the patient.



- Waiving copayments routinely-could implicate the AKS
- Waiving copayments on a case by case basis for financially needy
- Providing free or discounted services to underinsured patients

# Physician Self-Referral Statute

- Limits physician referrals when you have a financial relationship with the entity.
- Proof of specific intent to violate the law is not required.
- Prohibits the submission, or causing the submission, of claims in violation of the law's restrictions on referrals.







# Consequences of Violating the Physician Self-Referral Statute:

- Payment denial
- Monetary penalties
- Exclusion



**Avoid violating the Anti-Kickback Statute and Physician Self-Referral Statute by fitting into a “Safe Harbor” or exception**

# Safe Harbors

- Safe Harbors protect certain payment and business practices that could otherwise implicate the **AKS** or ***Physician Self-Referral Statute*** from criminal and civil protection.
- To be protected by a safe harbor, an arrangement must fit squarely in the safe harbor and satisfy all of its requirements.
- Some Safe harbors address personal services, rental agreements, investments in ambulatory surgical centers, and payments to *bona fide* employees. *For additional information on safe harbors, see “OIG’s Safe Harbor Regulations” available at: <http://oig.hhs.gov/compliance/safe-harbor-regulations/index.asp>*

# Exclusion from Medicare and Medicaid

- Mandatory exclusions
- Permissive exclusions



# Being Excluded from Participation in Federal Health Care Programs...

- If you are excluded by OIG from participation in the Federal health care programs, then Medicare and Medicaid, and all other Federal health care programs, will not pay for items or services that you furnish, order, or prescribe.
- Excluded physicians may not bill directly for treating Medicare and Medicaid patients, nor may their services be billed indirectly through an employer or a group practice.
- For more information, see OIG's Special Advisory Bulletin entitled "The Effect of Exclusion From Participation in Federal Health Care Programs" available at:  
<http://oig.hhs.gov/fraud/docs/alertsandbulletins/effectuated.htm>
- For more information, see OIG's exclusion Web site available at:  
<http://oig.hhs.gov/fraud/exclusions.asp>





# **Civil Monetary Penalties Law**

***Penalties range from \$10,000 to  
\$50,000  
per violation***

# **Examples of Civil Monetary Penalties Law violations**

- Presenting a claim that the person knows or should know is for an item or service that was not provided as claimed or false or fraudulent.
- Presenting a claim that the person knows or should know is for an item of service for which payment may not be made.
- Violating the AKS.
- Violating Medicare assignment provisions.
- Providing false or misleading information expected to influence a decision to discharge.

# Common Physician Relationships



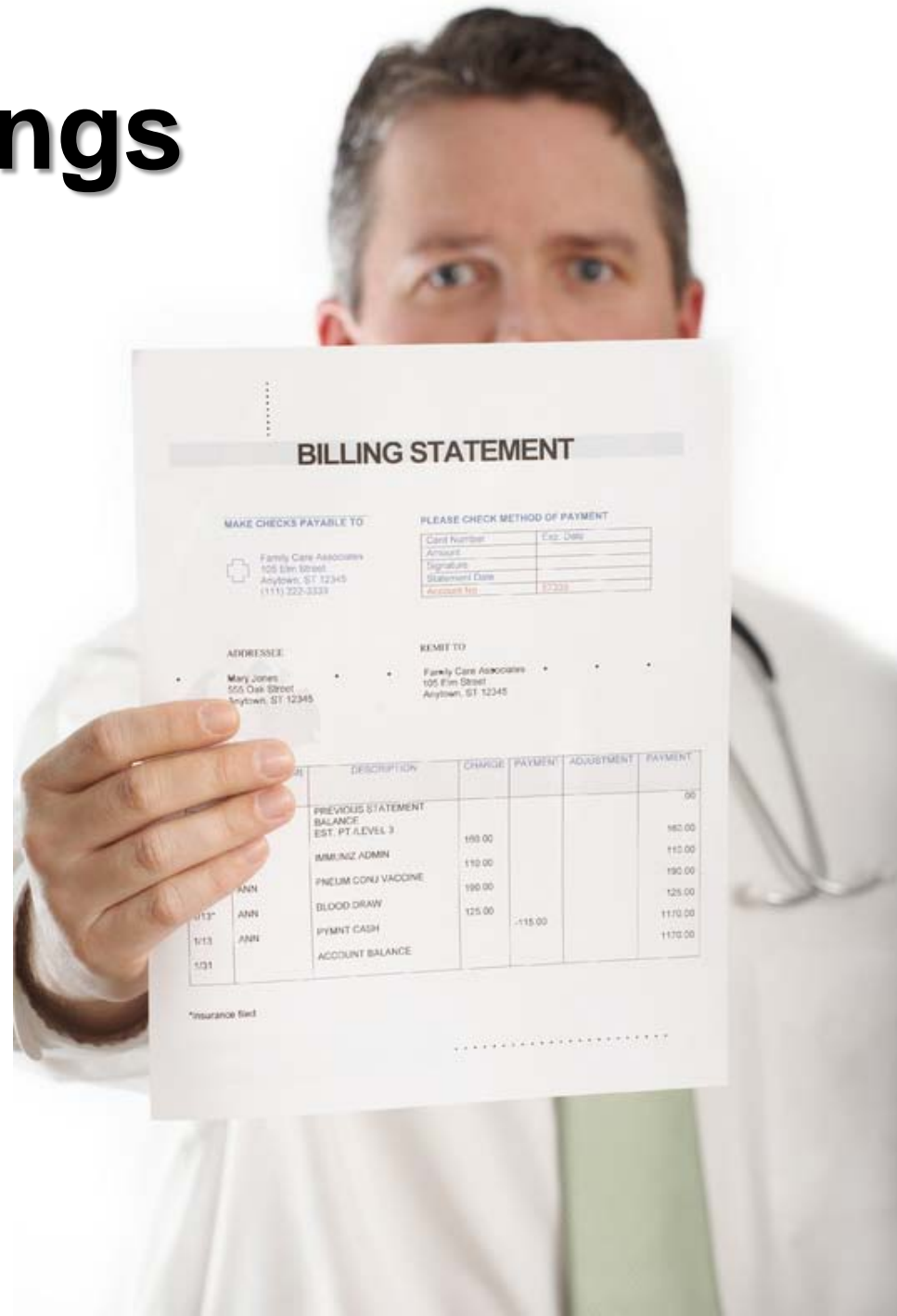
- Payers
- Physicians/Providers
- Vendors

# Physicians Relationships With Payers

- The U.S. health care system relies heavily on third-party payers. Third-party payers include commercial insurers and the Federal and State governments.
- When the Federal Government covers items or services rendered to Medicare and Medicaid beneficiaries, the Federal fraud and abuse laws apply.
- Many States also have adopted similar laws that apply to your provision of care under State-financed programs and to private-pay patients.



# Fraudulent Billings Result in Stiff Penalties



## BILLING STATEMENT

### MAKE CHECKS PAYABLE TO

Family Care Associates  
105 Elm Street  
Anytown, ST 12345  
(111) 222-3333

### PLEASE CHECK METHOD OF PAYMENT

Card Number	Exp. Date
Amount	
Signature	
Statement Date	
Account No.	87233

### ADDRESSEE

Mary Jones  
555 Oak Street  
Anytown, ST 12345

### REMIT TO

Family Care Associates  
105 Elm Street  
Anytown, ST 12345

		DESCRIPTION	CHARGE	PAYMENT	ADJUSTMENT	PAYMENT
		PREVIOUS STATEMENT BALANCE				00
		EST. PT LEVEL 3	150.00			150.00
		IMMUNIZ ADMIN	110.00			110.00
		PNEUM CONJ VACCINE	190.00			190.00
	ANN					125.00
1/13	ANN	BLOOD DRAW	125.00			1170.00
1/13	ANN	PYMT CASH		-115.00		1170.00
1/31		ACCOUNT BALANCE				

\*Insurance Bill



# Accurate coding and billing are important!

was billed, they will pay you if covered. You are responsible to pay us

[illegible]

# Submitting Claims

- When you submit a claim for services performed for a Medicare or Medicaid beneficiary, you are filing a bill with the Federal Government and certifying that you have earned the payment requested and complied with the billing requirements.
- If you knew or should have known that the submitted claim was false, then the attempt to collect unearned money constitutes a violation.
- A common type of false claim is “upcoding,” which refers to using billing codes that reflect a more severe illness than actually existed or a more expensive treatment than was provided.
- If you do not know how to code a service, ask someone you trust.



# Upcoding

- Medicare pays for many physician services using Evaluation and Management (commonly referred to as “E&M”) codes. New patient visits generally require more time than follow-up visits for established patients, and therefore E&M codes for new patients command higher reimbursement rates than E&M codes for established patients. An example of upcoding is an instance when you provide a follow-up office visit or follow-up inpatient consultation but bill using a higher level E&M code as if you had provided a comprehensive new patient office visit or an initial inpatient Consultation.

# Physician Documentation

- Accurate medical records are critical
- Physicians should ensure that the claims they submit for payment are supported by the documentation.
- Good documentation practice helps ensure that your patients receive appropriate care from you and other providers who may rely on your records for patients' past medical histories. It also helps you address challenges raised against the integrity of your bills. If you didn't document it, it's the same as if you didn't do it.
- For more information on physician documentation, see CMS's Documentation Guidelines for Evaluation and Management Services available at [http://www.cms.gov/MLNEdWebGuide/25\\_EMDOC.asp](http://www.cms.gov/MLNEdWebGuide/25_EMDOC.asp).





# Assignment Issues in Medicare Reimbursement

## **1. Participating Providers:**

- Each year, Medicare promulgates a fee schedule setting the reimbursement for each physician service.
- Accepting assignments means that the physician accepts the Medicare payment plus any copayment or deductible Medicare requires the patient to pay as the full payment for the physician's services and that the physician will not seek any extra payment.
- May not overcharge Medicare beneficiaries.
- May not sell the same service twice.



# Assignment Issues in Medicare Reimbursement (cont.)

## 2. Non-Participating Providers:

- Bill directly to patients
- Patients reimbursed by Medicare
- Not subject to the assignment rules
- It is illegal to charge more than 15% above the Medicare rate
- ***Excluded providers may NOT receive Medicare payment either as participating or non-participation providers.***



# Physicians Relationships With Fellow Providers: Physicians, Hospitals, Nursing Home, Etc.

- Any time a health care business offers something to you for free or at below fair market value, you always should ask yourself, “Why?” For example, if a laboratory offers to decorate your patient waiting room, you should suspect that it is trying to induce you to send your lab business its way.
- For more information on physician relationships with:
  - **Fellow providers**, see OIG’s “Compliance Program Guidance for Individual and Small Group Physician Practices” available at <http://oig.hhs.gov/authorities/docs/physician.pdf>
  - **Hospitals**, see OIG’s “Supplemental Compliance Program Guidance for Hospitals” available at <http://oig.hhs.gov/fraud/docs/complianceguidance/012705HospSupplementalGuidance.pdf>
  - **Nursing homes**, see OIG’s “Supplemental Compliance Program Guidance for Nursing Facilities” available at [http://oig.hhs.gov/fraud/docs/complianceguidance/nhg\\_fr.pdf](http://oig.hhs.gov/fraud/docs/complianceguidance/nhg_fr.pdf)

# **Physician Investments in Health Care Business Ventures**

- These business relationships can sometimes unduly influence or distort physician decision making and result in the improper steering of a patient to a particular therapy or source of services in which a physician has a financial interest.
- Excessive and medically unnecessary referrals waste Government and beneficiary money and can expose beneficiaries to harm from unnecessary services.

# Physician Recruitment

- **Recruitment offers can cross the line**
  - Hospitals may provide relocation assistance and practice support under a properly structured recruitment arrangement.
  - A hospital may pay you fair market value salary as an employee or pay fair market value for specific services you render to the hospitals as an independent contractor.
  - The hospital may not offer you money, provide you free or below-market rent for your medical office, or engage in similar activities designed to influence your referral decisions.
  - You should admit patients to the hospital that best serves their medical needs.





# Tips for Medical Directors

- ***Medical directors should exercise substantive responsibility by:***
  - actively overseeing clinical care in the facility
  - leading the medical staff to meet the standard of care
  - ensuring proper training, education, and oversight for physicians, nurses, and other staff members
  - identifying and addressing quality problems



# Interactions with Companies



# Free Samples

- Many drug and biologic companies provide physicians with free samples that the physicians may give to patients free of charge.
- It is legal to give these samples to your patients for free, but it is **ILLEGAL** to sell samples.
- The Government has prosecuted physicians for billing Medicare for free samples.



# Relationships with Pharmaceutical and Medical Device Industries

- *Scrutinize promotional speaking or consulting opportunities.*
  - For every financial relationship offered to you, evaluate the link between the services you can provide and the compensation you will receive.
  - **If the contribution is your ability to prescribe a drug or use a medical device or refer your patients for particular services or supplies, the proposed consulting arrangement likely is one you should avoid as it could violate fraud and abuse laws.**





# Transparency in Physician-Industry Relationships

- **Gift Reporting Requirements**

- The Patient Protection and Affordable Care Act of 2010 requires drug, device, and biologic companies to publicly report nearly all gifts or payments they make to physicians beginning in 2013.
- Both the pharmaceutical industry (through PhRMA) and the medical device industry (through AdvaMed) have adopted codes of ethics for their respective industries regarding relationships with health care professionals. Both codes are available online.



# Compliance Programs Keep you on Track

- Establishing and following a compliance program will help physicians avoid fraudulent activities and ensure that they are submitting true and accurate claims.
- With the passage of the Patient Protection and Affordable Care Act of 2010, physicians who treat Medicare and Medicaid beneficiaries will be required to establish a compliance program.





# What To Do When you Need Help

- Contact experienced health care lawyers
- Contact the Bar Association in your State
- Contact your specialty society
- CMS's local contractor medical directors. The contact information for local contractors is available at:  
[http://www.cms.gov/MLNGenInfo/30\\_contactus.asp](http://www.cms.gov/MLNGenInfo/30_contactus.asp)
- A Resource for Residents, Practicing Physicians, and Other Health Care Professionals” available at:  
<http://www.cms.gov/MLNProducts/downloads/physicianguide.pdf>

# What To Do When you Need Help (cont.)

- The OIG's Web site, available at: <http://oig.hhs.gov>
- OIG issues Compliance Program Guidance documents. Available at:  
<http://oig.hhs.gov/fraud/complianceguidance.asp>
- OIG issues advisory opinions to parties who seek advice on the application of the AKS, CMPL, and Exclusion Authorities are available at:  
<http://oig.hhs.gov/fraud/advisoryopinions.asp>
- CMS issues advisory opinions to parties who seek advice on the Stark law. Available at:  
[http://www.cms.gov/PhysicianSelfReferral/95\\_advisory\\_opinions.asp](http://www.cms.gov/PhysicianSelfReferral/95_advisory_opinions.asp)



# What to Do if You Think You Have a Problem

- If you are engaged in a relationship you think is problematic or have been following billing practices you now realize were wrong:
  - Immediately cease filing the problematic bills.
  - Seek knowledgeable legal counsel.
  - Determine what money you collected in error from your patients and from the Federal health care programs and report and return overpayments.
  - Unwind the problematic investment.
  - Disentangle yourself from the suspicious relationship.
  - Consider using OIG's or CMS's self-disclosure protocols.

# What To Do If You Have Information About Fraud and Abuse Against Federal Health Care Programs

**Phone:** 1-800-HHS-TIPS (1-800-447-8477)

**Fax:** 1-800-223-8164

**Email:** HHSTIPS@oig.hhs.gov

**TTY:** 1-800-377-4950

**Mail:**

Office of Inspector General  
Department of Health & Human  
Services

Attn: HOTLINE

P.O. Box 23489

Washington, DC 20026

For additional information about the Hotline, visit the OIG Web site at

<http://oig.hhs.gov/fraud/hotline/>

# **Questions?**

## **We Are Here to Help!**

**Office of Compliance Programs**  
**433 Bolivar St.**  
**Suite 807**  
**New Orleans, LA. 70112**  
**568-2350**