Physician Self-Referral Law

- The Physician Self-Referral Law, also known as the Stark Law, prohibits physicians from referring patients to an entity with which they have a financial relationship if the health service to be received is a so-called "designated health service(s)," or DHS. DHS are a category of health care services and treatments covered by Medicare. CMS maintains a list of DHS, found on their "Physician Self Referral Page." DHS include outpatient prescription drug services.

- The Stark Law was designed to prevent patient abuse by prohibiting referring providers from profiting from their own referrals. In this manner, there is some overlap with the Anti-Kickback Statute. Like the AKS, there are a few limited exceptions described in CMS documentation.

- Penalties for violating the Stark Law include possible fines of up to $25,000 and up to 5 years in prison.

- **Here's a real-life example:** Dr. J is a cardiologist at a private practice. He is also a financial stakeholder at a local independent pharmacy. Dr. J makes sure to tell all his patients that the pharmacists there completed residencies in a cardiology department, and he strongly recommends their services. This conflict of interest is a clear violation of the Stark Law.

Broader Federal Laws

- The Social Security Act is a comprehensive work of legislation that creates the U.S. Social Security system that provides benefits to older adults. Contained within it are the two following sections covering penalties administered by the Office of Inspector General, or OIG.

Exclusion Statute

- When an entity is found to have abused, defrauded, or otherwise violated Federal regulations, OIG has the right to dismiss that provider's eligibility for reimbursement. Offending providers are put on the Federal health care programs "Exclusion List" and cannot submit reimbursement claims for services provided to beneficiaries of any Federal health care program, including Medicare and Medicaid. Providers may apply to be reinstated following the sentenced exclusion duration. The exclusion list is public for all patients and providers to view.

Civil Monetary Penalties Law (CMPL)

- The Civil Monetary Penalties Law provides a mechanism for the Federal Government to seek monetary penalties up to three times the value of each instance of illegal payments or remunerations. Annually, civil monetary penalties claw back billions of dollars in stolen money.

United States Criminal Code

- The U.S. Criminal Code is the comprehensive list of federal laws, and it stipulates criminal liabilities and penalties for violations. Health care fraud can carry both civil and criminal liability. In addition to fines, prison sentences can be lengthy.

ONE DOOR ALABAMA
ONE DOOR. ONE GOAL.
1-800-243-5463

SMP
Senior Medicare Patrol
Preventing Medicare Fraud

Preventing Medicare and Medicaid Fraud: What You Need to Know

Presented by C.A.R.E.S. Pharmacy Network

https://www.alpharmacycares.org

To report Medicare or Medicaid fraud, call the OIG Hotline:
1-800-HHS-TIPS (800-447-8477)

This project was supported in part by grant #90MPPG0032-04-00 from the U.S. Administration for Community Living, Department of Health and Human Services, Washington, D.C., 20201 and the Alabama Department of Senior Services.

Disclaimer: This brochure is strictly informational. It is not exhaustive, nor does it constitute legal advice.

Introduction

The Centers for Medicare & Medicaid Services (CMS) oversees the administration of Medicare and Medicaid. In addition to ensuring that beneficiaries have access to needed health care supplies and services, they also oversee payments and investigate cases of possible misconduct or fraud.

The Centers for Medicare & Medicaid Services states that fraud usually includes the following elements:

- "Knowingly submitting, or causing to be submitted, false claims or making misrepresentations of fact to obtain a Federal health care payment for which no entitlement would otherwise exist."
- "Knowingly soliciting, receiving, offering, or paying remuneration (e.g., kickbacks, bribes) to induce or reward referrals for items or services reimbursed by Federal health care programs."
- "Making prohibited referrals for certain designated health services." (Providers cannot, in certain cases, refer patients to receive health care services from an entity with whom they are financially involved).

What are the relevant laws?

- False Claims Act (FCA)
- Anti-Kickback Statute (AKS)
- Physician Self-Referral Law (Stark Law)
- Social Security Act, including the Exclusion Statute and Civil Monetary Penalties Law (CMPL)
- United States Criminal Code (USC)

The next sections will examine each of these laws and discuss their content, consequences for noncompliance, and a helpful real-life example of the law in action. Please note, honest one-time accidental violations are typically not punished. However, habitual accidental violations may be construed as intentional.

False Claims Act

- The False Claims Act (FCA) provides the Federal Government the ability to prosecute individuals or entities that knowingly submit, or cause to be submitted, false claims to the government for reimbursement.
- Examples of false claims include billing for services that were never rendered, billing multiple times for the same service, or billing for a more expensive service than what was actually rendered.
- The FCA was originally created to address rampant fraud by government defense contractors during and following the Civil War years. Today, health care fraud is a major focus of FCA suits. Of the 10 largest FCA settlements, 9 involved biopharmaceutical or health care entities. The FCA allows for recovery of up to three times the original monetary damages.
- **Real-life example:** Dr. G sees a 67-year old Medicare beneficiary with persistent respiratory illness. After testing, Dr. G diagnoses walking (atypical) pneumonia and prescribes an antibiotic. Afterward, Dr. G instructs his billing staff to add charges for testing, diagnosis, and treatment of various nutritional deficiencies -- conditions the patient has a history of, but was not seen for. By intentionally charging Medicare for services not rendered, Dr. G is committing fraud as defined by the FCA. If his billing staff were aware that the added charges were not correct, they may be considered co-conspirators in Dr. G's fraud scheme.

Anti-Kickback Statute

- The Anti-Kickback Statute (AKS) states that knowingly offering, soliciting, paying, or receiving remuneration (defined below) in exchange for patient referrals or means to create federally reimbursable claims is prohibited.
- The AKS 's applicability is contingent on providing or receiving "remuneration," which includes virtually anything of value. Remuneration can take the form of cash, free event tickets, significantly reduced rent, or free products.
- The AKS has some exceptions -- all subject to stringent requirements -- and these can be viewed on the CMS website (https://www.cms.gov). Given that exceptions are few and narrow, one should assume any form of remuneration is impermissible unless explicitly stated.
- Penalties for violating the AKS include fines of up to $50,000 per instance, as well as three times the value of remuneration.
- **Real-life example:** A pharmacist, Dr. A, and a physician, Dr. B, are good friends. Dr. B mentions that some of his patients don't have a regular pharmacy and offers to refer them to the Dr. A's pharmacy if Dr. A will recommend pharmacy patients back to Dr. B's practice. What seems like an informal agreement between friends is, according to the AKS, illegal.