



Fraud and Abuse Traps in Physician Relationships: Lessons Learned from Recent Government Investigations

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Clay J. Countryman
Breazeale, Sachse & Wilson, L.L.P.
Baton Rouge, LA 70821
clay.countryman@bswllp.com
225-381-8037

Corey R. Amundson
First Assistant United States Attorney
Chief, Criminal Division
United States Attorney's Office
Middle District of Louisiana



Focus of Presentation

- Discuss application of Fraud and Abuse laws to physician and vendor relationships.
- Discuss compliance issues that result in an overpayment or refund obligation, or create potential civil or criminal liability.
- Identify compliance “red flags” and discuss individual and practice liability.
- Compliance “best practices” to minimize the risk of violating a federal or state fraud statute or regulation.



United States Attorney's Office

- U.S. Attorney is appointed by the President and reports to the U.S. Attorney General.
- U.S. Attorney serves as the chief federal law enforcement officer in the district.
- Louisiana has 3 federal districts: Western, Middle and Eastern.
- Middle District of Louisiana covers nine parishes (counties) in South Central Louisiana.



United States Attorney's Office

- Criminal and Civil Divisions
- Criminal Division
 - Fraud and White Collar Criminal Section
 - Strike Force established in 2009
 - One of nine in country; 98.6% conviction rate
 - Convictions involving \$100+ million in fraud



Compliance Risks: What Applies to Your Operations?





Fraud and Abuse Laws

- Civil and Criminal False Claims Statutes
- Federal Anti-Kickback Statute (State AKS)
- Physician Self-Referral Statutes (state level)
- Exclusion Statute
- Civil Monetary Penalties Law



False Claims Act

- Prohibits the ***knowing*** submission of false claims or the use of a false record or statement for payment with government funds
- Covers claims presented to any health care program funded in whole or in part by federal funds
- “Knowing” includes actual knowledge, deliberate ignorance and reckless disregard for the truth or falsity of the information
- Applies to individuals and corporate entities



FEDERAL RESERVE NOTE
HB 624

STOP

STOP

ONE HUNDRED DOLLARS
HB 62411510
Secretary of the Treasury



IN GOD WE TRUST
U.S. CAPITOL



False Claims Act - Penalties

- Monetary penalties of between \$5,500 and \$11,000 per claim, plus 3 times the damages sustained by the government
- Possible exclusion from participation in Federal health care programs and from employment by entities receiving federal health care funds
- Criminal penalties for submitting false claims include imprisonment and criminal fines.



Federal Anti-Kickback Statute

- 42 U.S.C. § 1320a-7b(b)
- Prohibits purposeful payments to get referrals of Federal health care program business
- Criminal statute - intent matters



Federal Anti-Kickback Statute

- Case-by-case approach
- Elements:
 - Remuneration
 - Offered, paid, solicited, received
 - To induce or reward referrals of Federal health care program business
 - Knowingly and willfully
- One purpose test



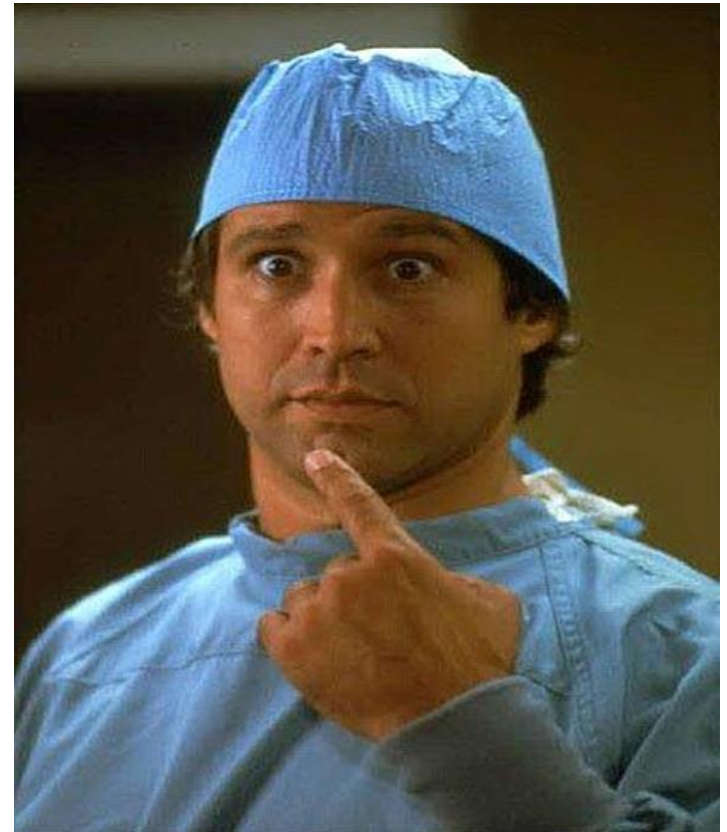
BREAZEALE, SACHSE & WILSON, L.L.P.
ATTORNEYS AT LAW





Federal Anti-Kickback Statute

- Criminal penalties include: jail time, fines, and exclusion.
- Civil Monetary Penalties - \$50,000 per kickback plus 3x the remuneration
- False Claims Act liability





The Stark Law

General Prohibition:

“... If a physician (or an immediate family member of such physician) has a financial relationship with an entity ..., then the physician may not make a referral to the entity for the furnishing of designated health services for which payment otherwise may be made” under Medicare (also applicable to Medicaid).



ACA 60 Day Overpayment Rule

- Affordable Care Act – amended the False Claims Act to require any overpayments made by Medicare and Medicaid to be returned within 60 days of “identification” of the overpayment.
- Failure to do so – false claim liability
- “Identified” – knows or acts in “reckless disregard”
- Inquiries with “all deliberate speed”



Types of Potential Liability for Physician Practices

- Overpayments/Refunds
- Civil
- Criminal
- Individual

Stay Alert!





Liability Scenarios and Compliance Red Flags

- Actions by individual physicians in groups or clinics
- Compliance Audits
 - Handling results and recommendations
- Employee turnover, exit interviews
- Stealing Patient Information



Criminal Exposure

- Practice Administrators Willfully Blind to Employee Violations
- Misprision of Felony
 - Felony Violation
 - Defendant had knowledge
 - Defendant failed to notify authorities
 - Defendant took affirmative steps to cover it up

A close-up photograph of a doctor in a white lab coat, wearing a stethoscope, holding a clipboard. The doctor is standing in front of a white shelving unit filled with numerous medical files. The clipboard is light-colored and has a red circular sticker on the top left corner and a red rectangular sticker on the right side that says "ALLERGIC TO". The text "Common Physician Relationships" is overlaid in the center of the image in a bold, black, sans-serif font.

**Common
Physician
Relationships**



Vendor Relationships and Other Sources of Liability

- Recent focus on physician – Lab vendor relationships
- Relationships with medical device manufacturers
- Reliance on vendor representations – Bad Idea
- Recent focus on physician compensation and medical director agreements
- Altering/changing patient records, and billing under other provider numbers



Questions?

