

# Fraud, etc.

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# Medicare Billing Fraud

- The collection of Medicare reimbursement under false pretenses
- 2010—almost \$50 billion in fraudulent payments
- [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)

# Types of Medicare Fraud

- Phantom Billing: billing for services not performed, for tests never performed or equipment not used.
- Patient Billing: A patient who is in on the scam and provides his or her Medicare number in exchange for kickbacks.
- Upcoding schemes and unbundling: inflating bills by using the wrong code.

# False Claims Act

- Liability for
  - Knowingly submitting a false claim to the government.
  - Causes another to submit a false claim
  - Conspires to violate the FCA.

# False Claims Act

- Knowledge defined
  - Actual knowledge
  - Deliberate ignorance of the truth or falsity of the information
  - Reckless disregard of the truth or falsity of the information.

# Penalties for Medicare Fraud

- Civil Monetary Penalties Law (CMPL)
  - \$50,000 Fine per violation
  - Assessments of up to three times the amount claimed for each item or service

# Penalties for Medicare Fraud

- Criminal Health Care Fraud Statute
  - Fines
  - Imprisonment
  - Both

# Examples of Anesthesia Fraud Cases

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- University of California, Irvine
  - Anesthesiologists billing for supervision of CRNAs and Residents without being present or available
  - Settled for \$1.2 million

# Examples of Anesthesia Fraud Cases

- Sutter Hospital System charges (not professional services charges)
- Sutter charged twice for the same services
  - Covered under OR charges
  - Additional billing
  - Normal fees from other hospitals for general anesthesia
    - \$1610 for 1st half hour, \$457.50 for each subsequent 15 minutes
  - Sutter charges with similar case—\$3000-\$5000
- Civil fine of \$46 million

# Examples of Anesthesia Fraud Cases

- Physicians Surgical Group (PSG), a Medical Billing Company
  - Owned by 2 Chiropractors and one MD Anesthesiologist
  - Chiropractic Manipulation Under Anesthesia
  - Claims
    - false diagnoses
    - false billing
    - waived deductibles

# Company Model

- ASC owners form a company to provide anesthesia services
- Hires or contracts with anesthesia professionals
- Company charges a management fee to third party
- Common practice by gastroenterologists

# Anti-Kickback Laws

- Criminal offense to knowingly and willfully offer, pay, solicit or receive any remuneration to induce or reward referrals of items or services that are reimbursable by a federal health care program

# Gastroenterologists and Greed

- They realized that CRNAs who directly billed could make more money per case than GI
- Gastroenterology News November, 2010

- Could be a violation of anti-kickback laws
- Company model should be set up to assure there is not kickback on fees and that its purpose is to provide management services
- <https://oig.hhs.gov/fraud/docs/advisoryopinions/2012/AdvOpn12-06.pdf>