

# **How not to be a Deceiver: A Brief Introduction to Healthcare Fraud**

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## **Introduction:**

Efforts to fight healthcare fraud were consolidated under public law 104-191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA). This required the establishment of a national Health Care Fraud and Abuse Control Program (HCFAC). The HCFAC role is to coordinate federal, state, and local law enforcement activities with respect to healthcare fraud and abuse.

## **Definition of Healthcare Fraud:**

The deliberate deception or misrepresentation by an individual or an entity with the knowledge that the deception will lead to some unlawful benefit.

## **Burden on Healthcare System:**

Tens of billions of dollars are lost each year to healthcare fraud as it leads to:

- Higher premiums.
- Higher out-of-pocket expenses for consumers.
- Reduced benefits or coverage.
- Increased cost of providing insurance benefits to employees.
- Increased overall cost of doing business.
- Harming patients.

## **Examples of Healthcare Fraud:**

- Intentionally billing for services and/or supplies not provided.
- Intentionally ordering medically unnecessary items or services for patients.
- Paying for referrals.
- Billing for appointments for which a patient failed to show up.
- Exposing patients' sensitive personal/health information to medical identity theft and hackers.

## Consequences of Committing Healthcare Fraud:

Committing fraud exposes individuals or entities to potential criminal, civil, and administrative liability. It may also lead to imprisonment, fines, and penalties.

Major laws utilized to prosecute healthcare fraud:

- Federal False Claims Act: Providers who breach federally funded healthcare contracts and programs with false or fraudulent claims, face civil liability under this law. This is the major law used for healthcare fraud by the federal government.
- Anti-Kickback Statute: It is a felony for a healthcare provider to solicit or receive, or to offer or pay, any remuneration directly or indirectly, overtly or covertly, in cash or in kind, in return for referral of a patient or for purchasing, leasing, ordering, arranging for, or recommending items or services paid for in whole or in part under a federally funded or state health program.
- Physician Self-Referral Law (Stark Law): When a physician refers to a medical entity in which he/she has a financial interest. Self-referral is considered a conflict of interest.

## Tips to Avoid Committing Healthcare Fraud:

1. Staying up-to-date with the medical coding system.
2. Being familiar with federal and state regulations and laws that dictates healthcare conducts and practices.
3. Establishing a compliance program and designating a compliance officer to:
  - a. Conduct internal monitoring and auditing.
  - b. Implement compliance and practice standards.
  - c. Conduct appropriate training and education.
  - d. Respond appropriately to detected offenses and develop corrective actions.
  - e. Develop open lines of communication with employees.
  - f. Enforce disciplinary standards through guidelines.

## Example Cases of Healthcare Fraud:

1. A Texas gastroenterologist was fined \$1,575,000.00 in a whistleblower lawsuit brought by his former endoscopy nurse, alleging 7.5 years of Medicare fraud for violating the False Claims Act. The claim involved his failure to take the necessary amount of time to fully complete colonoscopies, sometimes spending less than 2 minutes on a procedure, and not following proper sanitation guidelines to save money.
2. A New Jersey gastroenterologist pleaded guilty for receiving cash payments from a diagnostic radiology facility for referring patients for testing. In exchange for patients referred for MRI and CT scans, the gastroenterologist received cash payments on a per patient referred basis. He received cash for the referrals. This violated the Anti-Kickback Statute (AKS). AKS carries a maximum penalty of 5 years in prison and a maximum fine of \$250,000.00, or twice the gain or loss caused by the offense.

## Resources:

1. Medicare Fraud & Abuse: Prevent, Detect, Report-CMS.gov
2. US Department of Health and human Services-Office of Inspector General. Oig.hhs.gov
3. Moses RE, Jones DS. Health Care Fraud and the Essentials to Avoid Problems. *Am J gastroenterology* (2018) 113:1277-1279
4. Moses RE, Chaitt MM, Jones DS. Overview of Health Care Fraud Laws. *Health Care Compliance Association* (2012). [www.hcca-info.org](http://www.hcca-info.org)
5. Moses RE, Jones DS. Health Care Fraud: Developing a Basic Compliance Plan for Your Practice. *Am J Gastroenterol* 2019;114:1020-1021.