Vermont Medical Society Presentation
The Vermont False Claims Act

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Background

• Vermont False Claims Act, 32 V.S.A. sec. 630-642; effective May 2015
• Largely follows federal law
• Allows State to keep an additional 10% of recoveries
• Enforced primarily by Attorney General’s office, Medicaid Fraud and Residential Abuse Unit or a qui tam relator
  – Unit investigates and prosecutes violation of VT Medicaid fraud laws, $583,610 recouped SFY2015/2016
What is a false claim?

• *Knowingly* presenting or causing to be presented, a false or fraudulent *claim* for payment
  – *Claim* includes Medicaid claims
• *Knowingly* making, using, causing to be made or used, a false record or statement of material to a claim
• Keeping an overpayment from a claim that is later discovered to be false for more than 120 days
What is knowing?

• Knowing or knowingly, does not require intent to defraud, but includes:
  – Actual knowledge of the information
  – Acts in deliberate falsity of the information; and
  – Acts in reckless disregard for the truth or falsity of the information
What claims?

• As of March 2016, the VT FCA has applied retroactively to all claims filed on or after March 14, 2000
  – May be further back if could not have reasonably been discovered
Consequences

• If liability is found after adjudication:
  – Civil penalty not less than $5500 and not more than $11,000 *per false claim*
  – Treble the damages the State suffered
  – Costs of investigation and prosecution

• Can settle amicably with lesser penalties, State is in a strong position

• For self reporters, reduce penalties to twice the State’s damages and no civil penalties
Contact from MFRAU

• Records request
  – Ask for copies of charts, permissible under HIPAA
  – This can be initial or it can be after AG has gathered information from other sources
    • E.g. qui tam relator tells AG of improper office practices, AG does informal investigation & interviews

• Criminal Inquest
  – From AG
  – Superior Court, closed proceeding
  – Testimony or documents related to investigation

• Civil Investigative Demand
  – Can only come from the AG
  – Broad authority for anything related to investigation – documents, written questions, testimony
Qui Tam

• Private citizen can sue in the name of the State
  – Must be the original source of the information
  – File suit under seal and AG decides whether to intervene after receiving all material information from the relator
  – Relator can go forward without AG

• Relator receives 15%-25% of recovery if AG intervenes, 25%-30% if AG does not intervene + attorneys fees and expenses from defendant
Settlements

• Mousetrap Pediatrics (Nov. 2016)
  – Claims related to after hours charges, changed hours and billed after hours although not after hours enhanced fee under regs – no intentional fraudulent behavior
    • $51,553.65 over payment + $15,000 civil penalty

• Dr. Madsen (Dec. 2016) (federal)
  – Claims related to trigger point injections of saline, no approved therapeutic agent; not medically necessary - $76,000
Pre-Seminar Question

• PERM Audits
  – Federal origin delegate to each state to arrive at federal error rate for Medicaid
  – VT rotation claims between 10/15 and 9/16, auditing through fall 2017
  – Records request through PERM Review Contractor
  – May request additional information
Pre-Seminar Question

• PERM Audits
  – Appeal through State process
  • Provider Manual Section 16.4
    – Round 1 – within 30 days file reconsideration form, list all reasons for appeal – http://dvha.vermont.gov/for-providers/forms-1
      » DVHA 30 days to respond, may request a meeting
    – Round 2 – Program Integrity Appeal – within 30 days of Round 1 decision, list all reasons for appeal, use form at site above
      » $15,000 or less at issue decided by CMO who may ask for meeting
      » $15,000 or more decided by Commissioner who may ask for a hearing
      » 14 days to decide, may offset after
Pre-Seminar Question

• PERM Audits
  – Will be required to pay back claims paid in error
  – Must also think about whether a larger issue is revealed and evaluate under the standard for knowing retention of an overpayment for False Claims purposes
    • Evaluate a self report