



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