VULNERABLE ADULT LAW AND INVESTIGATIONS

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MEDICAID FRAUD CONTROL UNIT

• WHO WE ARE
• WHAT WE DO
and
• HOW WE DO IT

MEDICAID PROGRAM

• Established in 1965 as a jointly funded cooperative venture between federal and state governments to assist states to provide adequate medical care to eligible needy persons
• Part of Title XIX of the Social Security Act
• Largest program providing medical care to eligible needy persons
• Expanded significantly in 1977 to $19 billion per year

EACH STATE

• Establishes its own eligibility criteria
• Determines type, amount, duration, and scope of services
• Sets the rate of payment for services
• Administers its own program
1977 – ENACTMENT OF THE MEDICARE AND MEDICAID ANTI-FRAUD AND ABUSE AMENDMENTS

- Fraud and abuse cost $653 million per year
- Authorized the establishment of federal funding for the state Medicaid fraud units
- Office of the Inspector General has oversight for Medicare program, with federal oversight from then DHHS, now CMS
- Medicaid Fraud Control Unit (MFCU) has oversight for Medicaid program
- AG Office has original jurisdiction to prosecute offenses involving theft from the program.

1977 – ENACTMENT (CONT.)

- 75% federal funding, 25% state funding for MFCUs
- 49 states and the district of Columbia have operating units
- Minnesota unit established in 1983
- FBI involved in health care fraud (1995 Operation Restore Trust)

MFCU MUST MEET CERTAIN REQUIREMENTS

- Must be an entity of state government
- Must have one or more attorneys
- Must have one or more experienced auditors
- Must have a senior investigator – may also wear supervisory hat
- Must submit an annual report for reappropriation of budget

MISSION / GRANT CRITERIA

- Investigate and prosecute provider fraud
- Investigate and prosecute incidents of patient abuse, neglect, and financial exploitation of Medicaid recipients or those residing in Medicaid funded facilities
  - Jurisdiction expanded in 1999 to cover residents in non-Medicaid funded board and lodging homes and assisted living in the community
- Investigations are about 50/50
MINNESOTA MFCU

Staff consists of:

- 4 Attorneys (one manager)
- 5 Investigators
- 1 Paralegal
- 2 Support Staff

ROLE OF SINGLE STATE AGENCY

• Department of Human Services
  Surveillance and Integrity Review
  Section (DHS-SIRS):
  - Reviews claims through MMIS,
    EIS, systems and edits
  - Identifies fraudulent providers
  - Makes administrative recovery
    and/or refers to MFCU for
    investigation/prosecution

OTHER REFERRAL SOURCES

- Prepaid Medical Assistance Program
  health plans (i.e. Medica, BCBS, Health
  Partners, etc.)
- Other providers or related staff persons
- Medicaid recipients
- Interested health care providers
- Other state MFCUs

COMMON FRAUD SCHEMES

- Billing for phantom patient visits
- Billing for goods and services not provided
- Upcoding of services to receive greater
  payment
- Billing for the work of someone else who is
  not eligible to be paid by the program
- Billing for more than 24 hours in one day
  and/or billing for ancillary services
  (interpreter, special transportation) provided
  in conjunction with health care appointments
  on weekends and holidays
COMMON FRAUD SCHEMES (CONT.)

- Billing for goods and services that are not medically necessary
- Double billing
- Submitting bills for uncovered recipients under covered recipients' numbers
- Billing for old goods as though they were new or providing used equipment
- Falsifying provider credentials
- Paying kickbacks in exchange for referrals or services (not yet state law)

MEDICAID FRAUD CASE EXAMPLES

Peter Igwacho
- Operated a medical transportation company where he billed the state for trips with no corresponding medical services.

Sofia Litovsky
- PCA who billed for client services while she was on a cruise. False time cards for hours she didn’t work, proved through FBI surveillance.

Daniel Sarpong/Rainbow
- PCA agency billing for PCA hours not worked, no background studies.

POSSIBLE OUTCOMES

- Criminal or civil prosecution
  - Medicaid fraud
  - Forgery
  - False Claims
  - Theft by false representation
  - Theft by swindle

POSSIBLE OUTCOMES (CONT.)

- Fines
- Jail time/probation
- Restitution
- OIG civil money penalty $10,000 per ITEM claims, also treble damages
  - Unique exclusion authority – excluded from receiving income from any federal program for a minimum of five years (cannot obtain Medicare or Medicaid funds or work in a facility that accepts Medicaid or Medicare funds), includes those who interfere with investigation
- Loss of license
VULNERABLE ADULT INVESTIGATIONS

MFCU ROLE

• Minnesota MFCU is the only law enforcement agency specifically charged with investigating patient abuse and neglect
• MFCU a law enforcement entity – not a regulatory or oversight agency
• MFCU responds to allegations for the sole purpose of investigation and prosecution – we do not issue tags or citations or fines

WHO IS A VULNERABLE ADULT?

• 18 years of age or older
• Receives services from a facility, including a licensed home care provider or personal care assistant (categorical)
• Has a physical, mental, or emotional infirmity which impairs their ability to provide for his or her basic care without assistance, and as a result of the infirmity and the dependency, has an impaired ability to protect him/herself from maltreatment (functional)

MFCU ROLE (CONT.)

• Need county attorney or city attorney referral to file criminal abuse, neglect, or financial exploitation charges – do not have original jurisdiction
• Assist law enforcement and prosecutors who are conducting their own investigation & prosecution

MFCU REFERRAL SOURCES

• OHFC and DHS investigative reports reviewed. (approximately 900 per year)
• Law enforcement inquiries
• County and city prosecutors
• Citizen contact
REFERRAL PROCESS

• Adult Protection Worker
  ➢ Refer to Local Law Enforcement

• Local Law Enforcement
  ➢ Refer to County Attorney

• County Attorney
  ➢ Refer to Attorney General’s Office

Unless Medicaid/Medicare fraud

Can give us a call & we will provide assistance

TYPES OF INVESTIGATIONS

• Abuse
  ➢ Assault
  ➢ Disorderly Conduct
  ➢ Rough treatment
  ➢ Inappropriate use of restraint
  ➢ Sexual assault

ABUSE

Robert Feucht

➢ Assisted Living Aide
➢ 76 Year Old Victim
➢ Removed From Residence
➢ Assaulted – bruised, partially undressed
➢ Abandoned road

TYPES OF INVESTIGATIONS (CONT.)

• Neglect
  ➢ Withholding of treatment or care
  ➢ Pressure sores or other skin maladies
  ➢ Dehydration and malnutrition
  ➢ Inappropriate transfers
  ➢ Failure to seek timely medical treatment
  ➢ Failure to adequately supervise
NEGLECT

Kristal Oachs

- Nurse Aide at nursing home
- 96 Year old victim
- Moved without transfer belt
- Broken Leg
- Failed to get treatment for 2 days

TYPES OF INVESTIGATIONS (CONT.)

- Corporate Neglect
  - Withholding of funds for operations
  - Knowingly permitting conditions to exist
  - Failure to staff appropriately
  - Not abiding by admission/discharge criteria
  - Misrepresenting services available
  - Altering records/forging documents

CORPORATE NEGLECT--CRIMINAL

Criminal

Epoch
Assisted living residence advertising for residents with special care needs, failing to provide needed care.

Valley Country Care
Assisted living residence failing to supervise vulnerable woman who was taken from facility by an assisted living aid and assaulted.

Compassionate
Home care agency allowed the PCA to move the vulnerable adult into a tent in her back yard for 3 weeks.

CORPORATE NEGLECT--CIVIL

Civil:

Concordia Nursing Home
Nursing home that accepted sexual perpetrators and co-mingled them with a vulnerable population.
CRIMES AGAINST THE ELDERLY

Misuse of Assets/Financial Exploitation

- Perpetrated by someone the elderly person knows and trusts
  - Family members
  - Caretakers
  - Other fiduciaries
- ATM withdrawals / Debit Cards
- Checks
- Loans
- Property transfers

TYPES OF INVESTIGATIONS

- Financial Exploitation
  - Breach of Fiduciary Obligation
    - Engage in unauthorized use of VA’s funds; defendant can be a family member or friend who has Power of Attorney
    - Fail to use funds for VA’s needs

POWER OF ATTORNEY / ATTORNEY-IN-FACT

Power of attorney allows someone to “handle or share in handling the financial matters of another person”

- Powers are broad, no oversight
- Should have the interests of the principal utmost in mind
- No requirement to file with the court
- May be that no lawyer is involved in drafting document.

POWER OF ATTORNEY / ATTORNEY-IN-FACT (CONT)

Case examples:

- **Janet Danielson** - POA used elderly victims money for trips, loans to friends and family and to pay bills.
- **Helen Devereaux** - Used POA to make gifts to her family, transfer ownership on Series EE bonds.
- **Brenda Belland** - POA who wrote checks for blind man, used money for personal benefit.
**FINANCIAL EXPLOITATION**

- In absence of legal authority:
  - Use or withhold VA's funds or property
  - Obtain services for wrongful profit or advantage to VA's detriment
  - Acquire possession or control of funds or property through undue influence, harassment, duress, deception or fraud
  - Force service for profit or advantage of another

**CARETAKER EXPLOITATION WITHOUT POWER OF ATTORNEY**

- Caretaker, family member pressure
- Confine to home,
- Access to bank accounts, property
- Take items from home, money, credit cards

**Case Examples:**

- **Percy Persons**
  - Door-to-door living trust salesman who convinced elderly woman to "loan" him over $200,000.

- **Julie Nyquist**
  - PCA, used V.A. credit card for personal benefit

**ATTORNEY GENERAL INVESTIGATIVE PROCESS**

- Administrative subpoenas
- Search warrants
- Examination of records
- Interviews of witnesses and victims (can build case without the VA)
- Create investigative reports
- Conduct financial analysis/claims analysis
- Bank records search warrant

**VULNERABLE ADULT PROTECTION WORKER INVESTIGATIVE SUGGESTIONS**

- Worksheets
- Bank Records
  - Applications, monthly statements and cancelled checks for:
    - Checking accounts
    - Savings accounts
    - Credit cards and/or debit cards
FOLLOW THE MONEY

Titles
- Home
- Vehicles

Other Assets
- Stocks
- Bonds
- Annuities

Creating Excel Spreadsheets of each account

Time to talk to County Attorney for prosecution or referral

LEGAL PROCESS

• Review investigation
• Choose compelling evidence
• Determine charges
• Create and file complaint (criminal)
• Injunctions and lawsuits (civil)
• Perpetrator receives summons
• Court appearance and arraignment (booked and fingerprinted)
• Trial or settlement conference

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