

**Compliance Client News – September 2018**

**Compliance News**

The following summaries of health care compliance enforcement activity are a sample of actions MPA believes are of interest to our clients, and are representative of enforcement activity this month. Enforcement trends include: drug offenses (controlled substance diversion; unlawful prescribing; kickbacks to induce prescribing; over-prescribed opioids; criminal charges against doctors and nurse practitioners for illegally prescribing controlled substances, particularly opioids; and kickback arrangements involving controlled substances); kickback arrangements involving unlawful payments to physicians in exchange for patient referrals; criminal charges against individuals involved in healthcare fraud; criminal abuse charges; falsifying medical records; false claims and fraud in the pharmacy industry; and false claims for services that are not medically necessary and/or do not meet Medicare or Medicaid requirements.

1. **Drugs**

In 2017, the United States Department of Health and Human Services declared the U.S. opioid epidemic a public health emergency, and launched a 5-Point Strategy to Combat the Opioid Crisis: <https://www.hhs.gov/opioids/about-the-epidemic/index.html>. In March 2018, President Donald Trump announced an Initiative to Stop Opioid Abuse and Reduce Drug Supply and Demand: <https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-initiative-stop-opioid-abuse-reduce-drug-supply-demand/>. Among other things, this Initiative gave the DOJ more resources to prosecute opioid fraud and abuse. It is not surprising that we have seen an increase in drug-related settlements, criminal charges and guilty pleas coming from the DOJ – often involving opioids.

* **NP’s controlled substances prescribing leads to 10 year exclusion.** A Tennessee nurse practitioner (NP) agreed to be excluded from federal health care program participation for 10 years. The OIG accused the NP of submitting false claims for controlled substances that were medically unnecessary, substantially exceeded patients’ needs, and fell below professional standards of care. For example, the NP’s prescriptions exceeded a daily dosage of 500 morphine milligram equivalents a day. The NP also prescribed controlled substances without properly documenting treatment plans, history of substances abuse, attempts to identify the etiology of pain, or findings of chronic pain.

Source: <https://oig.hhs.gov/fraud/enforcement/cmp/index.asp>

* **Florida doctor heads to prison.** A Florida physician was sentenced to 78 months in federal prison for his role in a conspiracy to distribute a controlled substance. The physician provided prescriptions for opioids and narcotics in exchange for cash without providing medical consultations.

Source: https://www.justice.gov/opa/pr/south-florida-doctor-sentenced-78-months-prison-participating-conspiracy-illegally-dispense

* **Physician sentenced to 57 months.** A physician pled guilty to conspiracy to distribute controlled substances outside the bounds of professional medical practices; healthcare fraud; and money laundering. The federal government accused the doctor of writing fraudulent prescriptions for oxycodone, which were then sold on the streets for a profit.

Source:<https://www.justice.gov/usao-ndwv/pr/ohio-physician-sentenced-nearly-five-years-fraudulently-distributing-controlled>

* **Pharmacist who billed for samples heads to prison.** An Ohio pharmacist was sentenced to two years in prison and ordered to pay $1.1 restitution for his role in a health care fraud scheme. The pharmacist, who owned a pharmacy, billed Medicare, Medicaid and insurers for sample drugs that cannot be legally sold, and for medications that were never dispensed.

Source:<https://www.justice.gov/usao-sdoh/pr/columbus-pharmacist-sentenced-health-care-fraud-scheme>

* **Prescriptions written by unlicensed individual lead to fraud charges**. A New Hampshire nurse practitioner pled guilty to healthcare fraud and prescription fraud. The NP permitted someone, who is not a medical provider, to conduct patient office visits. The NP then billed Medicare for these visits as if she had completed them. The NP also gave a pre-signed prescription pad to this unlicensed employee, who used the pads to write prescriptions – many for controlled substances. Source: <https://www.justice.gov/usao-nh/pr/windham-nurse-practitioner-pleads-guilty-healthcare-fraud-and-prescription-fraud-charge-0>
* **Nurse steals opioids from patients.** An Illinois nurse who stole opioid patches from terminally ill nursing home residents pled guilty to resident burglary. The nurse, who was off-duty at the time of the theft, faces up to 15 years in prison.

Source: <https://blog.levinperconti.com/drug-theft/>

* **Doctor who administered overseas drugs pays almost $7 million.** A NY doctor entered a $6.9 million false claims settlement to resolve allegations that he “administered certain pharmaceutical products that he had purchased overseas.” These drugs were not FDA approved and were therefore not eligible for Medicare reimbursement.
* Source: https://www.justice.gov/usao-edny/pr/board-certified-ophthalmologist-agrees-civil-fraud-settlement-medicare-fraud
1. **Kickbacks**

The Federal Anti-Kickback Statute makes it a criminal offense to offer, solicit, pay or receive any remuneration to induce or reward referrals of items or services reimbursable by a Federal health care program such as Medicare or Medicaid. “Remuneration” can mean anything of value, such as money, free goods or services, discounts, or cross-referrals. This means it is illegal to give or receive (or attempt to give or receive) anything of value for Federal health care program referrals (i.e. Medicare and Medicaid patients).

* **Lab kickback scheme leads to prison time.**  A Baltimore physician pled guilty and was sentenced to eight years in prison for kickbacks, fraudulent billing, and tax evasion. The physician owned a pain management practice. The pain practice received kickbacks from a lab, in exchange for sending pain management patient urine samples to this lab. The lab split its profits from the urine tests with the physician and co-defendants, amounting to $1,376,000 in kickbacks. The pain management company also fraudulently billed Medicare and insurers for nerve blocks and anesthesia provided by two separate physicians – when in fact, only one physician provided the procedures. Finally, the physician underreported his taxable income when he did not report the kickback payments as income. In a related lawsuit, the lab company’s CEO and marketing representative were also sentenced to federal prison for their roles in the kickback scheme.

Source:<https://www.justice.gov/usao-md/pr/pain-management-physician-sentenced-8-years-federal-prison-central-role-million-dollar>; <https://www.justice.gov/usao-md/pr/ceo-lab-testing-company-and-marketing-representative-sentenced-federal-prison-pain>

* **Excessive physician compensation violates kickback law.** A healthcare system and its subsidiaries entered a $24 million false claims act settlement to resolve allegations that they entered illegal kickback arrangements with physicians. The healthcare system was accused of paying 60 physicians excessive full-time compensation – when many of them worked less than full-time; paying physicians excessive compensation in exchange for patient referrals; and providing below-fair-market-value administrative services to induce patient referrals. This settlement resolves two lawsuits brought by a whistleblower: the former CFO of one of the health system’s physician networks. The whistleblower’s reward is $5,411,521.

Source: https://www.justice.gov/opa/pr/kalispell-regional-healthcare-system-pay-24-million-settle-false-claims-act-allegations

1. **Individual Liability**

The federal government continues to take legal action against individuals involved in healthcare fraud. Charges are typically brought against owners or executives of healthcare companies who deliberately participated in healthcare fraud.

* **Six individuals sentenced for fraud, kickbacks and obstruction.** Four physicians, a biller and an office manager were convicted of varying charges including health care fraud, conspiracy to commit health care fraud and to pay health care kickbacks, and obstruction of a federal audit. The six individuals were charged for billing Medicare for “medically unnecessary home health services for patients who were not homebound.” The individuals received sentences ranging between 12 and 50 months in prison.

Source:<https://www.justice.gov/usao-edla/pr/six-individuals-sentenced-case-charging-health-care-fraud-and-kickback-conspiracies-and>

* **Detroit doctor sentenced to 11+ years in prison.** A Detroit doctor was sentenced to 135 months in prison for her role in a health care fraud scheme. The doctor was accused of posing as a licensed physician (despite not having a license); billing Medicare for services not rendered; falsifying medical records; and paying and receiving kickbacks in exchange for referrals of Medicare patients. The doctor also “fraudulently signed the names of licensed physicians on prescriptions for opioid medications, such as oxycodone, as a means of inducing patient participation in the scheme.”

Source: <https://www.justice.gov/opa/pr/detroit-doctor-sentenced-more-11-years-prison-89-million-health-care-fraud-scheme>

1. **False Claims**
* **$260 million false claims settlement.** Health Management Associates (HMA) entered a $260 million civil and criminal settlement with the United States. The U.S. alleged that HMA “knowingly billed government health care programs for inpatient services that should have been billed as outpatient or observation services, paid remuneration to physicians in return for patient referrals, and submitted inflated claims for emergency department facility fees.” HMA was also accused of providing physicians kickbacks in exchange for patient referrals. The allegations against HMA were brought by multiple whistleblowers, including two doctors and their company, which provided emergency department doctors to HMA at two hospitals. These whistleblowers claimed that when they objected to the false claims, their contract was awarded to a competitor.

Source: <https://www.justice.gov/usao-wdnc/pr/two-charlotte-area-hospitals-among-260-million-global-settlement-between-hospital-chain>; <https://www.justice.gov/usao-edpa/pr/national-hospital-chain-will-pay-over-260-million-resolve>

* **Physician falsifies office visits.** A Florida doctor pled guilty to health care fraud surrounding activities of her pain management clinic. The physician billed Medicare for face-to-face office visits for patients who never visited her office. Patient family members went to the physician’s office, and the physician provided them with prescriptions – including prescriptions for oxycodone – to the family members for the patients. The physician also falsified medical records to make it appear that she saw the patient in her office.

Source: <https://www.justice.gov/usao-mdfl/pr/clearwater-doctor-pleads-guilty-health-care-fraud>

* **Clinic sold medical orders.** A doctor and two clinic owners/operators were found guilty of Medicare fraud after they sold medical orders to home health agencies. The agencies then used this paperwork to bill Medicare for services that were not medically necessary, or were never provided.

Source:<https://www.justice.gov/opa/pr/physician-and-two-clinic-operators-found-guilty-their-roles-17-million-medicare-fraud-scheme>

* **Overpayment Settlement.** Virginia Commonwealth University Health System Authority (VCU), entered a $3,994,151 settlement with the DOJ to resolve allegations that it billed overpayments to Medicare, Tricare and FEHB. VCU identified through a routine audit that it had overbilled federal payors for radiation oncology. VCU corrected the billing errors responsible for the overpayments, and voluntarily disclosed the overpayments to the federal government.

Source: <https://www.justice.gov/usao-edva/pr/vcu-health-system-authority-agrees-4-million-settlement>

1. **False Statements**
* **Physician falsifies medical records and drug tests.** A pain management physician was convicted of conspiring to falsify patient medical records. The physician falsified patient encounter notes by documenting face-to-face encounters that did not occur. Electronic signatures and timestamps were also falsified. In addition, the physician falsified the dates on urine drug test results.

Source:<https://www.justice.gov/usao-ma/pr/physician-convicted-false-billing-scheme>

1. **Resident Rights & Abuse**
* **Nursing home resident can sue nursing home for failing to stop bullying.** A resident of an Illinois nursing home claims she was bullied because she is homosexual. The bullying included physical assaults, spitting, and homophobic slurs. The woman sued, alleging that the nursing home did not respond to her complaints. The resident’s original lawsuit was dismissed. But, on appeal, judges allowed her case to move forward, using a landlord-tenant theory: tenants can hold landlords accountable if they don’t respond to discrimination against tenants who are part of a protected class.

Source: <https://www.mcknights.com/news/appeals-court-rules-that-facility-may-be-liable-for-residents-alleged-abuse-of-gay-fellow-resident/article/791885/>

* **Kentucky caregivers indicted for abuse.** The Kentucky Attorney General and the Kentucky Office of Medicaid Fraud and Abuse indicted four hospital caregivers for knowingly abusing or neglecting an adult (a Class C felony). The indictment accused three of the four individuals of improperly restraining a patient when they put a therapy bag on a patient to restrict the patient’s mobility. The fourth individual allegedly saw the incident and did nothing to stop it.

Source:<https://kentucky.gov/Pages/Activity-stream.aspx?n=AttorneyGeneral&prId=640>

* **Nursing home personnel plead guilty to resident endangerment.** The NY Attorney General announced that the former owner and the former high managerial agent of a NY nursing home pled guilty to endangering an incompetent or physically disabled resident by failing to provide sufficient staffing and care. These individuals, and the nursing home company, will pay $1,000,000 as part of the plea. The NY AG found that these individuals “cut staff payroll and other necessary services and supplies needed to provide safe and adequate care and sufficient staffing levels….” In addition, the individuals were charged with endangering a 94 year old resident: the resident was left in the common living room for 41 hours; CNAs did not provide care according to the care plan, such as continence care, turning, repositioning, food/drink, assistance with ADLs, or medication administration and ordered neurological checks.

Source: <https://ag.ny.gov/press-release/ag-underwood-announces-guilty-pleas-former-focus-otsego-nursing-home-operators>

* **Nursing home abuse leads to jail time**. Two former employees of an Ohio nursing home pled guilty to forgery and gross patient neglect. Prosecutors asserted that a patient with dementia and Alzheimer’s disease wandered outside during sub-zero temperatures – and was found eight hours later. The two nursing home employees falsified records to make it appear they had checked on the resident when they had not. The resident froze to death. Both employees were sentenced to sixty days in jail.

Source: http://www.wtol.com/story/39198626/2-ex-nursing-home-workers-get-jail-for-elderly-womans-death

OIG Work Plan Updates

## In September, the OIG added two items to its Work Plan:



<https://oig.hhs.gov/reports-and-publications/workplan/updates.asp>

MPA recommends reviewing all Recently Added Items to see if any apply to other programs you might operate. MPA also recommends that the Compliance Officer keep a record of OIG Work Plan Update reviews.

**HIPAA News**

## $990,000 HIPAA Settlement

**Boston Medical Center, Brigham and Women’s Hospital, and Massachusetts General Hospital** entered a $990,000 settlement with the OCR. These hospitals permitted ABC to film patients for the TV show Boston Med without obtaining patient authorizations. Source: <https://www.hhs.gov/about/news/2018/09/20/unauthorized-disclosure-patients-protected-health-information-during-abc-filming.html>

This is not the first time the OCR has entered a settlement involving television filming. In 2017, NY Presbyterian Hospital paid $2.2 million after it allowed TV show NY Med to film patients in its emergency department and broadcast the footage on national television. The filming deal was touted by PR for its publicity power. As always, providers should make sure staff involved in PR or marketing are on the Compliance Committee and aware of HIPAA risks. <https://www.hhs.gov/about/news/2017/05/10/texas-health-system-settles-potential-hipaa-disclosure-violations.html>

The OCR previously published an FAQ addressing film and media as it relates to HIPAA. You can read the FAQ here: <https://www.hhs.gov/hipaa/for-professionals/faq/2023/film-and-media/index.html>

1. **Attorneys General are Enforcing HIPAA**

So far in 2018, five healthcare organizations have settled HIPAA violations with attorneys general:

* UMass Memorial Health Care (MA, $230,000)
* The Arc of Erie County (NY, $200,000)
* EmblemHealth (NY, $575,000)
* Aetna (NY, $1,150,000)
* Virtua Medical Group (NJ, $417,816)

These settlements are a reminder that OCR enforcement and private lawsuits are not the only high stakes of HIPAA violations: State attorneys general can also bring lawsuits and assess penalties for violations of state laws that mirror, and sometimes are even more stringent than, HIPAA.

Source: <https://www.hipaajournal.com/umass-memorial-health-care-pays-230000-to-resolve-alleged-hipaa-violations/>

1. **Hospital cited for violating patient privacy rights**

CMS found that a Minnesota hospital violated patient rights when it videotaped patient psychiatric evaluations without patients’ knowledge. The hospital began recording psychiatric evaluations because it saw an increase in violent behavior from patients. However, the hospital did not post notices advising the patients of the recording. While the hospital does obtain treatment consent forms that mention the possibility of videotaping for medical education, the patient at issue did not sign the form.

Source: <https://www.beckershospitalreview.com/quality/cms-cites-2nd-minnesota-hospital-for-violating-patient-rights.html>; https://healthitsecurity.com/news/cms-finds-minnesota-hospital-violated-patient-privacy-rights

**Features**

*The following article appeared on MPA’s Compliance Blog:* [*www.healthcareperformance.com*](http://www.healthcareperformance.com)

## [Will your staff call the HIPAA Security Officer?](http://www.healthcareperformance.com/blog/will-your-staff-call-the-hipaa-security-officer)

By Margaret Scavotto, JD, CHC



Compliance and HIPAA officers routinely train staff on how to respond to a potential security incident. Often, instructions look something like this:

* If you receive an email that appears to be from an impostor, stop and call the Security Officer immediately.
* If you get an email with suspicious links, stop and call the Security Officer immediately.
* If a window pops up on your screen and prompts you to click a button, stop and call the Security Officer immediately.

These are excellent precautions for employees to follow when they encounter potential spam, phishing attempts, spear phishing, or ransomware attacks.

But… how likely are your employees to call your Security Officer? Hopefully, staff are familiar with the Security Officer and would not hesitate to pick up the phone. If you aren’t sure how comfortable staff are reaching out to the Security Officer, **it’s worth an inquiry**. Here are some items to consider:

* Where is the Security Officer’s office? Does it get a lot of foot traffic? Would employees know how to find the Security Officer in an emergency? Or, is his or her office housed with separate corporate offices, which have less visibility? If so, you might need to take some extra steps to make sure staff know how to find this person.
* How often does the Security Officer interact with staff? Does the Security Officer lead HIPAA Security training – or is this training done online, without Security Officer interaction? Does the Security Officer participate in new employee orientation? Attend regular staff meetings? Walk the halls and make conversation? Send out friendly security reminder emails?

Or, is your organization one of the **47% that do not have an appointed Security Officer**? (If so, it’s time to appoint one).

Staff are more likely to contact the Security Officer in an emergency if they have already interacted with this person – preferably more than once. Make sure outreach is an integral part of the Security Officer’s role – it could be just as effective in preventing a HIPAA breach as a firewall.

Sources: <https://www.nuemd.com/hipaa/survey/2016/>

*The following article appeared on MPA’s Compliance Blog:* [*www.healthcareperformance.com*](http://www.healthcareperformance.com)

## [Compliance Report Card: How is the Compliance Officer’s relationship with the board doing?](http://www.healthcareperformance.com/blog/compliance-report-card-how-is-the-compliance-officers-relationship-with-the-board-doing)

By Margaret Scavotto, JD, CHC



In April 2018, the Society of Corporate Compliance and Ethics and the Health Care Compliance Association released a report: **The Relationship between the Board of Directors and the Compliance and Ethics Officer.**

This report includes (among others) the following compliance officer survey findings:

* About half of compliance officers report to the board
* 46% of compliance officers believe the board “values compliance a great deal”

I don’t know if the boards that receive regular compliance reports are the same boards that value compliance a great deal. - that wasn't part of this survey. But it’s a good guess that they are. Do the boards who receive **regular compliance report**s value compliance more? Maybe. I’ll go out on a limb and opine that it’s highly likely.

How can a board **value compliance** if it isn’t aware of compliance activity?

How can a board appreciate the role of compliance if it doesn’t hear about compliance successes?

How can a board lead and be responsible for a compliance program if it isn’t **informed on compliance**?

It can’t.

Is your organization part of the 50% where compliance doesn’t report to the board – or the 50% that does?

If the compliance officer does report to the board, how often? According to the HCCA & SCCE report, 35% of compliance officers report to the board four times a year, and another 29% report five or more times a year. If reporting is new in your organization, quarterly reports will bring you in line with many others in the industry.

Source: <https://www.corporatecompliance.org/Portals/1/PDF/Resources/Surveys/2018-compliance-board-relationship-survey-report.pdf>

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