

# Behavioral Health Fraud: Compliance Through Deterrence

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## Who is the MFCU?

- ▶ In all 50 States as well as the US Virgin Islands and Puerto Rico
- ▶ In most States, the MFCU is housed within the Attorney General's Office
- ▶ Multiple Staff Disciplines:
  - ▶ Criminal and Civil Prosecutors
  - ▶ Sworn Criminal Investigators with police powers
  - ▶ Compliance Investigators
  - ▶ Analysts
  - ▶ Support Staff
- ▶ The MFCU is NOT Medicaid



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## **The Role of the MFCU**

- ▶ The Medicaid Fraud Control Unit (MFCU) investigates and prosecutes instances where providers submit false claims to Medicaid for reimbursement
- ▶ The MFCU can also enter into civil settlements with providers to address issues where improper payments were made and a provider received an overpayment
- ▶ The MFCU also must police the Medicaid system if fraud is happening within Medicaid
- ▶ The MFCU is not part of Medicaid and only handles allegations of provider fraud, not Medicaid recipient fraud

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## **Behavioral Health Fraud**

- ▶ The issues facing our country regarding access to and obtaining mental and behavioral health have grown in recent years
- ▶ As part of the expansion for the need for these types of services, there has also been a rise in the allegations of fraud against the Medicaid system involving behavioral/mental health types of services
- ▶ In Nevada, rules and regulations for providing and submitting claims to Medicaid for reimbursable behavioral health services can be found in Chapter 400 of the Medicaid Services Manual (<https://dhcfnv.gov/Resources/AdminSupport/Manuals/MSM/MSMHome/>)

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## **Behavioral Health Investigation**

- **When a referral is opened involving behavioral health fraud, several steps are taken during the initial stages of the investigation. These steps could include:**
  - **Identify claims at issue and try to establish a time frame of possible exposure based on information obtained in the referral**
  - **Identify high volume billing associated with recipients and/or individual servicing providers**
  - **Check with Medicaid to see if the provider has been previously educated by Medicaid on issues that could include billing, record keeping, qualification or providers, etc.**

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## **Behavioral Health Investigation Cont.**

- **After doing some initial claim analysis the investigation could involve additional steps including:**
  - **Interviewing the complainant to obtain additional information on the referral**
  - **Interview Medicaid recipients to confirm services received**
  - **Interview Medicaid providers to confirm services provided**
  - **Request records and upon obtaining records, compare those records to the claims**
  - **Interview target/suspect regarding findings of the investigation**

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## **Behavioral Health Investigation Cont.**

- ▶ **Items found during the investigation that could lead to a criminal complaint or civil settlement include:**
  - ▶ **Services not provided or not provided as billed to Medicaid**
  - ▶ **Unqualified servicing providers**
  - ▶ **Unqualified owners of the Behavioral Health company (usually based on criminal history issues)**
  - ▶ **Inadequate documentation including:**
    - ▶ **Missing documents**
    - ▶ **Documents missing key information such as date, start/stop time, signatures**
    - ▶ **Documents signed by providers that are not the providers listed in claims.**

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## **Behavioral Health Fraud Schemes**

- ▶ **Max Billing**
  - ▶ **Billing maximum allowable services per policy or Prior Authorization Request (PAR) although fewer services were provided**
  - ▶ **In these types of cases, we often see billing grids, spreadsheets, or client lists without service specifics being used to do the billing in lieu of service records or other documentation that identifies what services, if any, were provided**
- ▶ **Conflicts**
  - ▶ **Billing for services while a provider or recipient is on vacation, incarcerated, at another provider, at secondary employment or otherwise unable to receive the services**
  - ▶ **These cases are generally supported by documentation showing that the provider or recipient was elsewhere and unable to receive the services**
  - ▶ **Must take telehealth into consideration**

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## **Behavioral Health Fraud Schemes**

- ▶ **Consulting Companies**
  - ▶ Ringleaders familiar with Medicaid system assist/consult other individuals and help them start their own provider companies
  - ▶ Ringleaders usually:
    - ▶ Ask for a percentage of billing in violation of Medicaid policy
    - ▶ Keep their names off of all documentation when possible
    - ▶ Insulate themselves with multiple layers of staff
    - ▶ Require access to any billing software/Medicaid portal be provided to them
  - ▶ Just because ringleaders are involved and orchestrating the scheme that does not mean that the individual company owners are not culpable as more often than not they also benefitted extensively and were aware of the scheme

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## **Behavioral Health Prosecution**

- ▶ Upon being presented the evidence, the prosecutor in the case will need to make key decisions including:
  - ▶ Identifying if the fraud occurred at the individual servicing provider level or if there is systematic fraud happening within the entire company
  - ▶ Strength of witnesses
  - ▶ Prior education of the provider by Medicaid on issues present in the case
  - ▶ Confirmation from Medicaid regarding items at issue in the case that could include Medicaid's interpretation of billing codes, policy, prior education, etc.

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## **Behavioral Health Civil Settlement**

- ▶ Upon being presented the evidence, the attorney working a civil case will need to make key decisions including:
  - ▶ If it is a False Claim Act (FCA) case, working with relator's counsel to obtain information from the relator and possibly going back to the relator to review documents to help advance the case
  - ▶ Working with the relator's counsel and the Court to ensure we are maintaining the Court seal in the case until the time the government has made the decision to intervene or decline intervention in the case
  - ▶ If a RATSTATS or random sample were used, ensure understanding of the sample size, confidence levels, and error rates to advance the strongest argument to obtain a settlement using extrapolated data

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## **Consequences and Deterrence**

- ▶ Criminal charges ranging from misdemeanors to felonies
- ▶ Prison/probation/community service
- ▶ Fines/penalties/restitution/enforcement costs
- ▶ Court ordered rehabilitation
- ▶ Negative press
- ▶ Civil lawsuits
- ▶ Loss of provider contract
- ▶ Professional license sanction or revocation
- ▶ HHS-OIG and State Medicaid Exclusion Lists

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## **Defending a Behavioral Health Investigation**

- ▶ **“Knowledge is power. Information is liberating.”**

- Kofi Annan

- ▶ **“To know what you know and what you do not know, that is true knowledge.”**

- Confucius

**Tips for Defending a Behavioral Health Investigation or,  
The Importance of Knowledge.**

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## **Defending a Behavioral Health Investigation**

- ▶ **Know your adversary**

- ▶ **Civil vs. Criminal authority**

- ▶ **Self-funded enforcement authority**

- ▶ **Importance of personal relationships**

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## **Defending a Behavioral Health Investigation**

### **► Know your client**

- **What is the service at issue (“I wore a beanie and watched movies”)**
  - **How should damages be measured for a civil resolution**
- **How are the services documented / what do the billing records show**
- **How is the practice structured**
  - **Who provides the services**
  - **Most importantly, who is responsible for billing**

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## **Defending a Behavioral Health Prosecution**

### **► Know your witnesses**

- **Who appear(s) to be the complaining witness(es) / “whistleblower”**
- **What is the age and acuity of the witnesses receiving treatment**
- **Can we proactively identify witnesses favorable to our client**

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## Questions / Comments



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## Contact Info for Presenters

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