



Partnering and Communication with Federal Law Enforcement

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Overview of Presentation

- Survey of Federal authorities and theories used to address quality of care issues
- Application to cases of deficient care
- Developments and trends
- Questions



Federal authorities used to promote quality of care

- Criminal
- Civil
- Civil Rights
- Administrative

Potential Criminal Statutes

- 18 USC § 286, 287 (false certification to the federal gov't)
- 18 USC § 371 (conspiracy)
- 18 USC § 1001 (false statement)
- 18 USC § 1035 (false stmt re: health care matters)
- 18 USC § 1341 (mail fraud)
- 18 USC § 1343 (wire fraud)
- 18 USC § 1347 (health care fraud)
- 18 USC § 1510 (obstruction of a federal investigation)
- 18 USC § 1516 (obstruction of a federal audit)
- 18 USC § 1518 (obstruction of criminal. HC investigation)
- 42 USC § 1320a-7b (false stmt relating to federal health pgm)

Civil Statutes: Civil False Claims Act

- “Anyone who knowingly presents a false claim for payment to the federal government”
- “...shall be liable for treble damages and civil penalties from \$5,500 to \$11,000 per false claim.” 31 U.S.C. 3729, *et seq.*

False Claims Act: “Qui Tam” cases

- Complaint filed by relator on behalf of the government
- Complaint filed under seal
- Government has 60 days to “intervene” and take over the case or “decline” and let the relator proceed
- Court often grants an extension of 60 day period

False Claims Act: “Failure of Care” cases

- When a defendant knowingly bills for health care (goods or services) that was:
 - Not rendered,
 - Medically worthless, or
 - Violated a statutory, regulatory or contractual provision with a nexus to payment

“Worthless service” theory

- Civil War and the False Claims Act
 - Food that was rotten, guns that would not shoot, lame mules provided instead of horses
- Case law on “worthless or nonexistent” services
 - An entity may not bill the government for nonexistent, worthless, or grossly substandard services
 - Health care provider may not knowingly bill Medicare/Medicaid for worthless care



When does a “failure of care” equal a worthless service?

- Evidence of especially egregious care.
- Systemic or widespread problems
- Often evidence of harm to residents.

What does this mean in plain English?

- Providers that knowingly render grossly substandard care or no care at all,
- Which harms or kills patients, (not a required element, but usually present) and
- Bills Medicare or Medicaid for the alleged care,
- Can be pursued under the False Claims Act.

Civil Statutes: C.R.I.P.A.

- Civil Rights of Institutionalized Persons Act
 - investigations and litigation relating to conditions of confinement in state or locally operated institutions
 - the statute does not cover private facilities
- Some cases jointly pursued with FCA case
 - City of Philadelphia



Administrative Sanctions: OIG “Quality of Care” Authorities

Mandatory exclusion based on conviction related
to patient abuse or neglect

Permissive exclusions

Civil Money Penalties



Purpose of Exclusion

- To protect Federal health care programs and their beneficiaries
- Remedial
- Not punitive



Effect of Exclusion

- No payment will be made
 - For any item or service
 - Furnished or ordered
 - By an excluded individual or entity



“No Payment Will Be Made”

- By any Federal health care program
- To anyone (not just excluded person)
- Does not prohibit treatment of beneficiaries (as long as no payment sought)

Application of authorities to the health care system

Long-term Care Providers

LTC residents need protection

- Frail/vulnerable populations (physical and capacity)
- Fastest growing age group; number of older people will double as boomers age
- Inadequate reporting by victims and others
- Financial incentives to cut corners on care
- Many known problems in system

What happens when care systems break down?

- Malnutrition, starvation, dehydration
- Pressure sores
- Wound Care - Insect infestations
- Contractures
- Fractures and lacerations
- Physical and sexual abuse
- Depression, unnecessary suffering
- Chronic staff shortages
- Excessive medication errors

Signs of a Quality Problem

- Financially, rather than clinically, motivated decision-making
 - Admissions decisions
 - Bonuses and compensation decisions
 - Focus on census
- Lack of staff competency
- Lack of management focus on quality improvement

Government Enforcement

- DOJ wants to know about cases where:
 - Evidence of especially egregious care.
 - Systemic or widespread problems.
 - Usually evidence of harm to residents.



OIG and CMS Interplay

- CMS regulates care in Medicare and Medicaid nursing facilities.
 - State and federal surveys
 - CMS enforcement remedies
- OIG performs program oversight
 - Audit, evaluations, inspections
 - Criminal, civil, administrative enforcement



OIG and CMS Interplay

- When does enforcement step in?
 - CMS remedies are insufficient/ineffective
 - Corporate or multi-facility problems
 - Individual facilities with history of “yo-yo” compliance



Case Examples

CRIMINAL PROSECUTIONS

- **American Healthcare Management**
 - Failure of care and abuse of elderly residents
 - Missouri nursing home management company, CEO, and three facilities, pleaded guilty to felony charges
 - \$1.2m. civil settlement under FCA
 - Exclusion of company and individuals

Criminal Prosecutions

- **Ronald Reagan Atrium Nursing and Rehab**
 - Failure to provide care to residents and falsification of records
 - Facility convicted of health care fraud and false statements
 - Exclusion
 - Administrator convicted of health care fraud and false statements
 - 60 months imprisonment and exclusion

CIVIL SETTLEMENTS

- **Life Care Centers of America, Inc.**
 - Operator of a Georgia-based skilled nursing facility known as Life Care Centers of Laurenceville
 - Allegations
 - services were deficient or not rendered.
 - Settled for \$2.5 million and CIA

Life Care cont.

Poor Care Examples

- Resident died of toxic poisoning - facility failed to check blood levels of coumadin
- Resident allegedly fell four times in four-months - fractured and refractured hip
- Resident died of maggot larvae infestation - Facility failed to provide basic oral hygiene care

Grant Park Nursing Center

- \$2 million settlement
- Whistleblower case
- Large DC nursing home managed by Centennial Health Care

Facts of Grant Park

- Centennial routinely reduced staffing levels
- Services were either not rendered or were of a quality that failed to meet professionally recognized standards
- Residents suffered from dehydration, malnutrition and increased infections
- Residents were left alone for extended periods of time without cleaning or bathing, and often contracted preventable pressure sores

Key Role of Advocates in GP case

- Whistleblower facts told part of story
- Based on Ombudsman and Resident Council, government was able to have current facts about ongoing failures and resident neglect

Civil Settlements

- **Vencor Inc.**
 - Allegations
 - Inadequate staffing
 - Improper care of decubitus ulcers
 - Failed to meet residents' dietary needs
 - Settled for \$104.5 million
 - (\$20m attributable to failure of care issues)
 - CIA with quality monitor

Civil Settlements

Ciena Healthcare Management

- Michigan nursing home chain (30+ facilities)
 - Allegations
 - resident-on-resident abuse,
 - excessive pressure sores, inadequate pain management, excessive contractures, etc.
- Settled for \$1.25 million
- 5-year CIA
 - Quality of care provisions including independent monitor selected by OIG, role of medical director

Quality of Care Exclusions

- OIG excluded 3425 individuals and entities in FY2006
- 2000 of those exclusions were for:
 - convictions relating to patient abuse and neglect
 - loss of medical license



Corporate Integrity Agreement Purposes

- CIA does not replace or duplicate CMS and state survey agency functions.
- Focus on systemic issues, not individual problems.
- Focus on provider's internal system of quality assurance and improvement.
- Cross state boundaries with chain-wide perspective.

Some current chain-wide CIAs

- ABS Management (IL)
- Green Acres Healthcare (MD, PA, DE)
- Integrated Health Services (Nationwide-esp. in SE states)
- Ciena Healthcare Management (Michigan)
- Athena Health Care (Northeast US)



CIA Monitor

- Key provision in all quality of care CIAs.
- Provider pays for an outside monitor appointed by the OIG.
- Monitor has extensive powers of access to facilities, residents, staff, corporate management, and records.
- Monitor plays consultative role.



Monitoring Activities

- Facility visits
- Corporate & regional office visits
- Meetings with corporate boards
- Periodic reports to the OIG and provider

Comments from Nursing Homes under CIAs

- CEOs of nursing home chains under Quality of Care CIAs have reported to the OIG that providing good quality:
 - Improved reputation
 - Decreased exposure to liability
 - Increase staff retention

Resources Available from OIG

www.oig.hhs.gov

- OIG Audit and Evaluation Reports
- OIG Annual Work Plans
- FAQs re: exclusion
- OIG Self-disclosure protocol

More Resources Available from OIG

- Reports on HCCA/OIG Roundtables
- Compliance Program Guidances
- “Corporate Responsibility and Health Care Quality: A Resource for Health Care Boards of Directors”

Other Resources and Info

- National Institute of Justice (NIJ) website – www.ojp.gov/nij/topics/crime/elder-abuse/welcome
- Office for Victims of Crime (OVC) website: www.ojp.gov/ovc/publications/infores/elder/welcome
 - Fatality Review Teams
 - Training curricula and DVDs/videos

Emerging Issues

- Chain-wide issues
- Up-coding therapy codes
- ??



Questions?