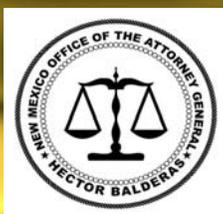


# Office of the Attorney General

## Medicaid Fraud Control Division



### Mission

- It is the mission of the New Mexico Office of the Attorney General to protect New Mexicans in order to make our communities safe and prosperous.
- We prosecute criminal and civil offenses, advocate for consumers and those without a voice, empower the public by proactively educating it and connecting the public with beneficial resources. We serve as legal counsel for the State and its agents.

### Vision

- We aspire to be an innovative leader in New Mexico, recognized for proactively finding solutions and responding to evolving needs by building partnerships with individuals, community organizations, government agencies and businesses.

## Presenters

- Michelle Varela, Nurse Investigator
- Santiago Baca, Special Agent in Charge



## Who Are We?

- Federally authorized Medicaid Fraud Control Unit
- Authority to investigate and prosecute criminal and civil cases statewide
- Two Primary Functions:
  - Investigation and prosecution of Medicaid Provider Fraud
  - Investigation and prosecution of Abuse, Neglect, and Exploitation in care facilities
- Located in Albuquerque and Las Cruces



## Our Team

- Attorneys
- Financial Auditors
- Information Systems Specialists
- Legal and support staff
- Medical Care Investigators
- Special Agents



## The Law

- Fraud Against Taxpayers Act (§ 44-9-1 NMSA)
- Resident Abuse & Neglect Act (§ 30-47-1 NMSA)
- Medicaid Fraud Act (§ 30-44-1 NMSA)
- Administrative Code governing provider (NMAC)
- NM Common Law, Criminal Statutes



## What Are We Looking For?

- There must be evidence of intent.
- Whether criminal or civil, fraud is not a mistake.



## What Is Medicaid Fraud?

- Paying, soliciting, offering or receiving a kickback, bribe, rebate, etc.
- Billing for treatment not ordered or that is substantially inadequate
- Presenting or causing a false, fraudulent, excessive, multiple or incomplete claim
- Executing (or conspiring) to execute a plan to defraud or obtain by false (or fraudulent) representation
- Falsifying a timesheet
- Failing to maintain or destroying records



## Examples Of Services

- Home-based care
- Personal Care Options
- Case Management
- School-Based Services Program
- Occupational, physical, and speech therapies
- Nursing services
- Dental
- Behavioral Health
- Nutritional assessments and counseling
- Pharmacy
- Physician
- Vision services
- Audiology
- Transportation

## Common Types Of Investigations

- Billing for services not provided
  - Other employment
- Caretaker Timesheet Investigations
- Billing for services by or for deceased, incarcerated, or nonexistent individuals
- Falsification or failure to retain documentation
- Double billing for services

## Common Types Of Investigations

- Up-coding: billing for a higher level of service than what was provided
- Services that are essentially worthless or substantially inadequate care
- Bribes in connection with the furnishing of treatment, services or goods for which payment was made
- Whistleblower actions brought by an individual on behalf of the government



## Sources Of Evidence

- Witness statements and interviews
- Photos, videos, and audio recordings
- Medical and business records
- Billing records
- Bank statements
- Police reports
- Medical examiner report



## Criminal Penalties

- Per instance 4<sup>th</sup> degree felony
- 4<sup>th</sup> degree felony: over \$250 up to \$2,500
- 3<sup>rd</sup> degree felony: \$2,500 up to \$20,000
- 2<sup>nd</sup> degree felony: value is over \$20,000
- Harm: 4<sup>th</sup> degree felony
- Great Harm: 3<sup>rd</sup> degree felony
- Death: 2<sup>nd</sup> degree felony



## Impact Of Medicaid Fraud

- Access to and quality of care
- Independence and community access
- Impact on public safety
- Quality of life



## Abuse, Neglect, Exploitation Investigations

- Abuse or neglect of residents
- Financial exploitation of residents



## Who Is A Resident?

- "Resident" means any person who resides in a care facility or who receives treatment from a care facility.



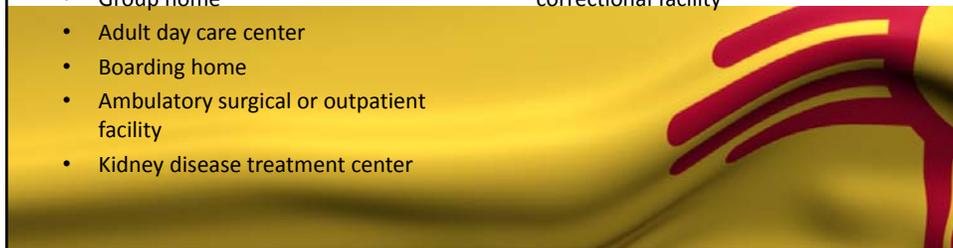
## What Is A Care Facility?

- Long-Term Care
- Inpatient rehabilitation
- Any residential facility, including: juvenile, DD Waiver, group home, behavioral health, etc.



## Examples Of Care Facilities

- Hospital
- Skilled nursing facility
- Intermediate care facility
- Care facility for intellectually disabled
- Psychiatric facility
- Rehabilitation facility
- Home health agency
- Home for the aged or disabled
- Group home
- Adult day care center
- Boarding home
- Ambulatory surgical or outpatient facility
- Kidney disease treatment center
- Adult foster care home
- Private residence that provides personal care, sheltered care or nursing care for one or more persons
- Adult residential shelter care home
- Any other health or resident care related facility or home, but does not include a care facility located at or performing services for any correctional facility



## Who Is A Caregiver?

- "Caregiver" is a person whose employment or contractual service with a care provider includes direct care or routine and unsupervised physical or financial access to any care recipient served by that provider
- Any Direct Care Staff
- Personal Care attendant
- RN
- LPN
- CNA / CMA
- Administrator
- Dietary Manager

## Importance Of Failure Of Care Cases

- Reports say that many long-term care providers provide seriously deficient care for which they bill the U.S.
- Cases usually involve harm, suffering and sometimes death for frail residents
- Abuse/neglect cost government programs billions

## What Is Abuse?

- Knowingly, intentionally, and without justifiable cause inflicting physical pain, injury, or mental anguish
- The intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person
- Sexual abuse, including criminal sexual contact, incest and criminal sexual penetration
- Inappropriate use of a physical or chemical restraint or isolation



### Do you know the signs of abuse?

- Bruises, cuts, burns
- Dehydration or malnutrition
- Overly medicated or sedated
- Personality changes
- Shame, fear, embarrassment
- STD, UTIs

### Examples of Abuse:

- Hitting, slapping, burning
- Tying the resident to a bed or chair
- Inappropriate touching or sexual contact
- Threatening a resident



## What Is Neglect?

- Failure of the caregiver to provide basic needs of a person, such as clothing, food, shelter, supervision, and care for the physical and mental health of that person
- Failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a resident
- Failure to carry out a duty to supervise properly or control the provision of any treatment, care, good, service, or medication necessary to maintain the health or safety of a resident



## Examples Of Neglect

- Failure to provide food, clothing, shelter
- Failure to provide medication
- Allowing resident to wander from the facility
- Failure to put seatbelt on resident in a vehicle
- Failure to contact doctor for the resident



## Signs Of Neglect

- Pressure sores
- Malnutrition, dehydration, unexplained weight loss
- Poor hygiene, inappropriate clothing, urine or feces odors
- Non-adherence to medication regimen
- Lack of assistive devices
- Wandering from a facility
- Delirium with or without worsening of related behavioral problems



## Criminal Penalties

- Physical harm or great psychological harm to the resident is guilty of a fourth degree felony
- Great physical harm to the resident is guilty of a third degree felony
- Death of the resident is guilty of a second degree felony



## What Is Exploitation?

- Exploitation of a resident's property consists of the act or process, performed intentionally, knowingly or recklessly, of using a resident's property for another person's profit, advantage or benefit without legal entitlement to do so



## Criminal Penalties

- 4<sup>th</sup> degree felony: over \$500 up to \$2,500
- 3<sup>rd</sup> degree felony: \$2,500 up to \$20,000
- 2<sup>nd</sup> degree felony: value is over \$20,000



## What Can You Do?

- Do the Right Thing and Report
- Do your best
- Treat others the way you want to be treated
- Remember: Your loved one is important!



## Failure To Report Is A Crime

- Any person paid in whole or part for providing to a resident any treatment, care, good, service or medication who has reasonable cause to believe that the resident has been abused, neglected or exploited shall report the abuse, neglect or exploitation in accordance with the provisions of Section 27-7-30 NMSA 1978.
- Any person required to make a report pursuant to Subsection A of this section who fails to do so is guilty of a misdemeanor



## Failure To Report Is A Crime

- Any other person will make a report if the person has reasonable cause to believe that a patient or resident of a facility has been abused, neglected or exploited.
- Any person making a report will not be liable in any civil or criminal action based on the report if it was made in good faith.
- No facility will, without just cause, discharge or in any manner discriminate or retaliate against any person who in good faith makes a report required or permitted by the Resident Abuse and Neglect Act [30-47-1 NMSA 1978], or testifies, or is about to testify, in any proceeding about the abuse, neglect or exploitation of a resident in that facility.

## How To Report



**Attorney General  
Hector Balderas**

- Submit a Complaint online: [www.nmag.gov](http://www.nmag.gov)
- Call: 505-717-3500
  - Select option 3
- Fax: 1-505-318-1006
- Email: [report.mfcd@nmag.gov](mailto:report.mfcd@nmag.gov)
- New Mexico Office of the Attorney General  
Attn: Medicaid Fraud Control Division  
201 Third St. NW, Suite 300 Albuquerque, NM 87102