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Compliance and Privacy Officer



ELIMINATING FRAUD, WASTE AND ABUSE IN MEDICAID

TONHC False Claim Training – 02.18.2020

Those of us who manage the public's
dollars will be held to account...

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- Fmr. President Barack Obama

AGENDA

Deficit Reduction Act (DRA)

Medicaid Fraud

False Claims Act (FCA)

Arizona Revised Statutes (ARS)

Reporting and Responsibility



DRA

DEFICIT REDUCTION ACT

Public Law 109-171

Required employee training/information established by
Public Law (PL) 109-171 Section 6032.

Background

- The Deficit Reduction Act of 2005 (DRA) was signed into law on February 8, 2006.
- This legislation affects many aspects of domestic entitlement programs, including both Medicare and Medicaid.
- It has transformed the nature of compliance programs from voluntary to mandatory for those institutions receiving \$5 million or more in Medicaid reimbursement.
- The government has been granted additional resources to combat fraud and abuse in both the Medicare and Medicaid programs.
- Compliance aspects of the DRA came into effect January 1st, 2007.



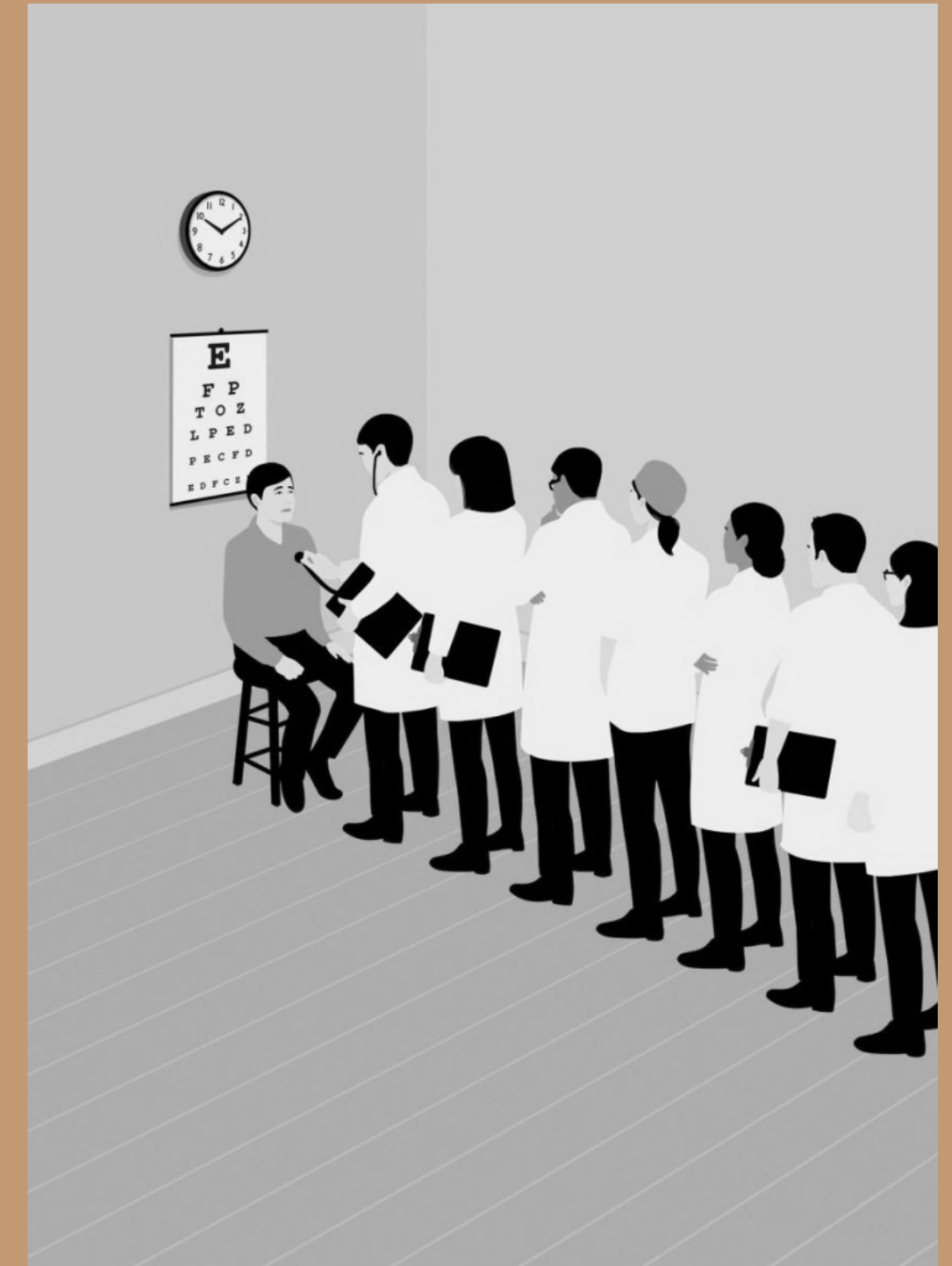
Focus on Medicaid

MEDICAID FRAUD

- Medicaid is the largest health insurance program in the US.
- It is jointly funded by Federal and state governments.

Examples of Medicaid Fraud

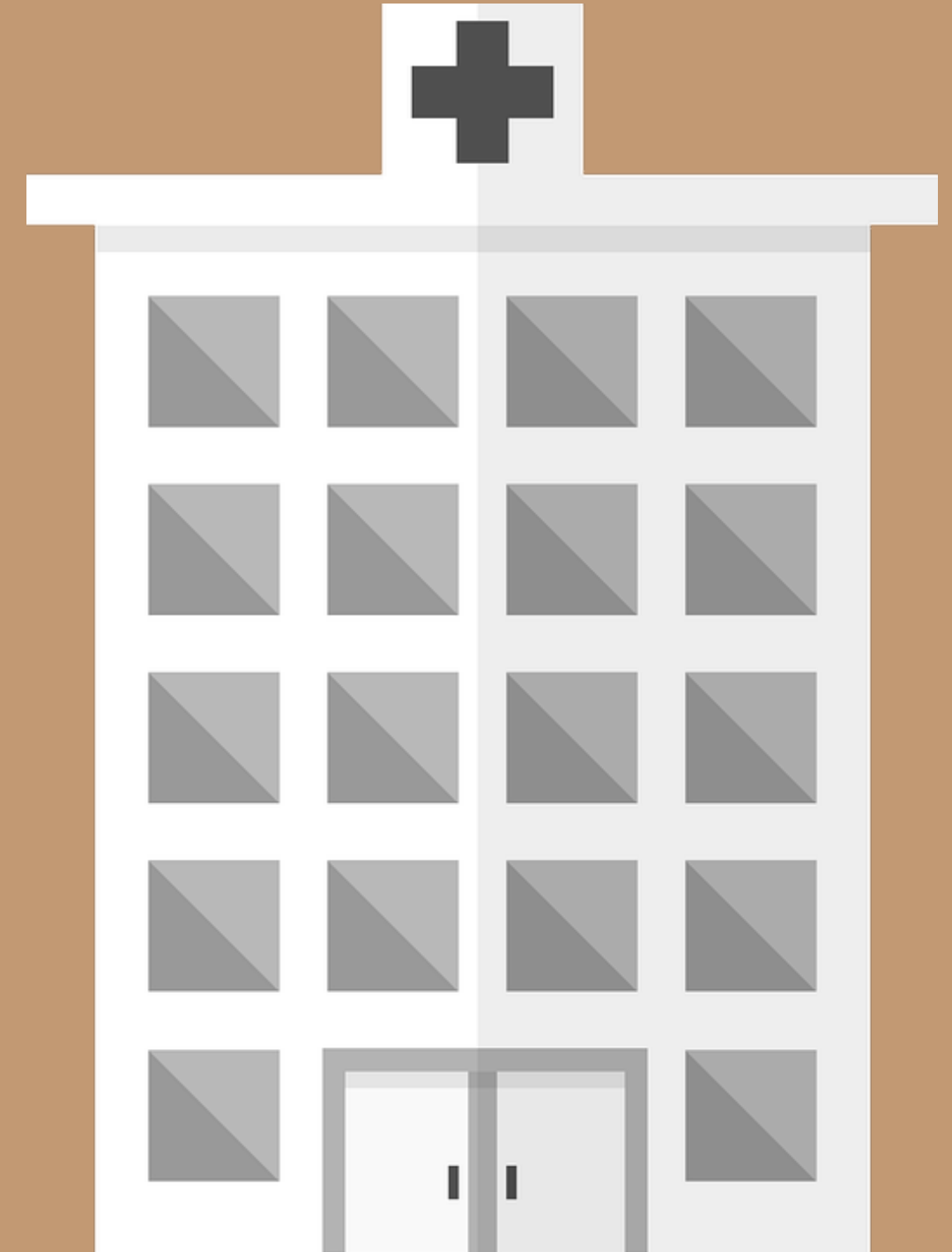
- Billing for services not rendered.
- Billing for undocumented services.
- Double billing for items or services.
- Making false statements.
- Participating in kickbacks.
- Including improper entries on cost reports.
- Billing for medically unnecessary services.
- Assigning incorrect codes to secure higher reimbursement.



Affected Entities

According to the DRA's third provision: As of January 1st, 2007, any entity that receives or makes annual Medicaid payments, under the state plan, of at least \$5 Million shall establish the following:

- Written Policies - See Tohono O'odham Nation Health Care's Compliance Plan
- All employees and management to include contractors and agents must receive written information regarding the False Claims Act





FCA

FALSE CLAIMS ACT

United States Code Title 31 § 3729-3733

Background

- The False Claims Act (FCA), also known as the "Lincoln Law," dates to the Civil War.
- The original law included *qui tam* provisions that allowed private persons to sue those who defrauded the Government and receive a percentage of any recovery from the defendant.
- The phrase "qui tam" is an abbreviation for "qui tam pro domino rege quam pro se ipso in hac parte sequitur," which, when translated, means "[He] who brings the action for the King as well as for himself." *

* https://www.fletc.gov/sites/default/files/imported_files/training/programs/legal-division/downloads-articles-and-faqs/research-by-subject/civil-actions/quitam.pdf

Activities Covered by the FCA

- Knowingly presenting (or causing to be presented) to the Federal Government a false or fraudulent claim for payment
- Knowingly using (or causing to be used) a false record or statement to get a claim paid by the Federal Government



Activities Covered by the FCA

- Conspiring with others to get a false or fraudulent claim paid by the Federal Government.
- Knowingly using (or causing to be used) a false record or statement to conceal, avoid or decrease an obligation to pay money or transmit property to the Federal Government.
- In general, the False Claims Act covers fraud involving any federally funded contract or program, with the exception of tax fraud.



Liability for violating the FCA

Effective August 1st, 2016, three times the dollar amount that the Federal or State Government is defrauded (i.e. treble damages) and civil penalties from \$10,781.40 (minimum) to \$21,562.80 (maximum) PER CLAIM.



Whistleblowing under the FCA

- You must file a qui tam lawsuit. Merely informing the Government about a False Claims Act violation is not enough.
- The whistleblower that files a False Claims Act suit receives an award only if, and after, the Government recovers money from the defendant as a result of the lawsuit.



Qui Tam Lawsuit Awards

- Generally, the court may award between 15-30% of the total recovery from the defendant, whether through a favorable judgment or settlement.
- The amount of the award depends, in part, upon:
 - If the government participates in the suit
 - The extent to which the person substantially contributed to the prosecution of the action



FCA Whistle Blower Protections

Under Section 3730(h) of the False Claims Act, any employee who is discharged, demoted, harassed or otherwise discriminated against because of lawful acts by the employee in furtherance of an action under the Act is entitled to *any relief necessary* to make the employee whole.



TONHC Policy Against Retaliation

TONHC Compliance Plan: protects reporting misconduct and prohibits retaliation

- To extent allowed by law, reasonable efforts are made to protect confidentiality of relators.
- Prohibits and has sanctions against any type of retaliation against those who report concerns.
- Works in conjunction with the Federal False Claims Act and the AZ Medicaid (AHCCCS) False Claims Act in protecting relators.





ARS

ARIZONA REVISED STATUTES

Arizona Revised Statutes

- ARS 13-1802: Theft
- ARS 13-2002: Forgery
- ARS 13-2310: Fraudulent schemes and artifices
- ARS 13-2311: Fraudulent schemes and practices; willful concealment
- ARS 36-2918: Prohibited acts



Ethics

REPORTING AND RESPONSIBILITY

How to Report

- Contact your immediate supervisor
- TONHC Compliance Officer: (520) 383-7420
- AHCCCS OIG Fraud Reporting: (602) 417-4193 or online at <https://www.azahcccs.gov/Fraud/ReportFraud/onlineform.asp>
- Office of Inspector General (OIG):
 - U.S. Department of Health & Human Services - Office of Inspector General
Attn: OIG Hotline Operators
P.O. Box 23489
Washington, DC 20026
 - Online: <https://OIG.HHS.GOV/Report-Fraud>
 - Hotlines:
(800) HHS-TIPS [447-8477] / TTY: (800) 377-4950 / Fax: (800) 223-8164

REPORTING AND RESPONSIBILITY

YOUR Responsibility

- Everyone must have a completed DRA Agreement:
 - Original to Supervisor; copy to Compliance Officer
 - Supervisors/ Employees should review this every 2 years
- Read the Compliance Plan:
 - Share with your staff (new employees automatically get a copy of this)
 - Make sure their updated agreement is signed and dated



Those who have the privilege to
know have the duty to act.

- *Albert Einstein*

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QUESTIONS?

Please complete the form labeled DRA Employee Agreement. Keep a copy for your records and please submit the original document to your direct supervisor.

CONTACT



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