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**FEDERAL PROSECUTIONS OF
WORKERS' COMPENSATION CLINICS**



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INTRODUCTION

The U.S. government has launched a massive campaign against workers' compensation providers, business owners, and rehabilitation centers. Purpose of this brief article—co-written by former healthcare prosecutors from the Department of Justice and experienced healthcare fraud defense attorneys— is to provide an overview of recent investigations and to address the controversial issue to what extent chiropractors and unlicensed aides are permitted to treat DOL-patients.

ABOUT THE AUTHORS

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has successfully defended physicians, rehab centers, pharmacies, laboratories, healthcare business owners and executives against allegations of fraud, false claims, and kickbacks before the Department of Justice, the FBI, CMS, OIG, DEA, and other federal agencies.

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is a former Assistant United States Attorney (AUSA). In that capacity as a federal prosecutor, Ms. Byrd prosecuted a great variety of healthcare matters on behalf of the United States including healthcare providers and business owners in complex civil and criminal healthcare investigations.

FECA Restrictions for Chiropractors and Aides

Who is allowed to provide physical therapy to DOL patients? What constitutes an unlicensed aide under the Federal Employees Compensation Act (FECA)? And what are the consequences for violating the rules and regulations in the context of (federal) workers' compensation? These were the questions in the recent trial and conviction of several operators of workers' compensation rehabilitation clinics in California and Texas.

Are Chiropractors Allowed to Treat DOL Patients?

Many clinics are unaware of the limited scope of services chiropractors may provide when it comes to injured federal workers. Because the pertinent regulations are governed by federal law, they apply throughout the country and trump the more lenient state chiropractic rules. Under FECA, there are only two instances in which chiropractors are allowed to participate in DOL care. First, pursuant to 20 CFR 10.311(a), "[t]he services of chiropractors that may be reimbursed are limited by the FECA to treatment to correct a spinal subluxation." The spinal subluxation must be "demonstrated by x-ray to exist" and documented in the chiropractor's report which must be "available for submittal [to the Office of Worker's Compensation Program] on request." 20 CFR 10.311(b), (c). Second, chiropractors can participate in physical therapy treatment of FECA patients, but only in a carefully limited role. Pursuant to 20 CFR 10.311(d), "[a] chiropractor may also provide services in the nature of physical therapy under the direction of, and as prescribed by, a qualified physician." Billing for chiropractic DOL-services beyond those two narrow exceptions, as the federal trial in Texas demonstrated, may constitute federal healthcare fraud, mail fraud, and wire fraud, among other offenses.

Who Is a Physical Therapy Aide?

FECA also imposes severe limitations on the use of physical therapy aides. While it may not be uncommon for rehab clinics to use unlicensed aides in the care of state workers' compensation patients, such practice is heavily restricted when it comes to DOL patients. For example, 20 CFR 10.801(d) states that "[b]y submitting a bill and/or accepting payment, the provider signifies that the service for which reimbursement is sought was performed as described, necessary, appropriate and properly billed in accordance with industry standards...[A]ccepted industry standards preclude ... charging for the services of a professional when a paraprofessional or aide performed the service."

The Government May Use Under-Cover Agents at Your Clinic

Recent cases revealed that the government is increasingly using under-cover agents that present themselves as injured workers to investigate and reveal healthcare fraud schemes. In the Houston case, for example, agents from the U.S. Postal Service posed as federal patients to document their treatment by chiropractors and unlicensed aides. Other cases from California and Texas have revealed how agents testified at court describing a lack of attention, organization, and medical treatment when attending workers' compensation pain programs.

OTHER AREAS OF DOL-PROSECUTIONS

While recent DOL investigations have focused particularly on physical therapy services, all FECA providers should take important lessons from those actions and make necessary changes to their operations.

- **Healthcare Marketing** – It constitutes a federal felony to pay healthcare marketers a commission for recruiting federal patients. The U.S. Attorney’s Office has significantly increased the number of criminal prosecutions of healthcare marketers that have received a percentage for their marketing efforts with respect to Department of Labor, Medicare, Medicaid, or Tricare patients. Similarly, federal law prohibits paying patients– anything– for attending or pursuing medical treatment.
- **Union Members Relationship** – Recent convictions in federal courts demonstrate how fatal it may be to entertain a business relationship with claims adjusters, supervisors, and other representatives of the federal workers’ compensation government. Attempts to pay for, generously reimburse, or otherwise compensate government representatives– of any level– with the intent to gain advantages in claims processing or referrals have been charged as bribery, a federal felony, and resulted in lengthy prison sentences.
- **Ancillary Services Providers** – Business relationships between DOL providers and ancillary services providers have sparked government attention. Of particular interest are relationships between referring physicians and toxicology laboratories and (compound) pharmacies between 2012 and 2016.
- **Billing Policies** – Regardless of whether billing functions are performed in-house or externally, the U.S. government has launched a massive campaign to scrutinize healthcare billing records of workers’ compensation providers. Each wrongfully billed claim presents a potential False Claims Act violation and may trigger civil and criminal prosecution. It is of critical importance to maintain a written canon of acceptable billing policies at all times.

THIS IS WHAT PROVIDERS AND BUSINESS OWNERS SHOULD DO

Workers' compensation providers and clinic owners must be on alert. In a climate of aggressive investigations, it is of paramount importance to be able to build effective defense mechanisms in case your clinic is on the government's radar. Our two main recommendations are:

1

Conduct an Internal Audit

We recommend that a law firm conduct an internal audit to identify potential problems in the areas of regulatory compliance, marketing, billing, claims submissions, and medical supervision.

2

Implement a Professional Compliance Program

We recommend immediately establishing a corporate compliance program to defeat any allegations of criminal intent. In case of an investigation (or a complaint by a former employee), evidence of compliance training, a code of ethics, an employee manual, and similar essential documents will be persuasive to argue that any potential error occurred unintentionally.

FORMER DOJ PROSECUTORS & DEFENSE ATTORNEYS CAN HELP

The attorneys of Oberheiden & McMurrey include the former Chief for Criminal Healthcare Fraud at the U.S. Attorney's Office, the former Head and Team Leader of the elite Medicare Fraud Strike Force, former federal law enforcement agents, and experienced defense attorneys that offer their experience for a free and confidential consultation, including on weekends.

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