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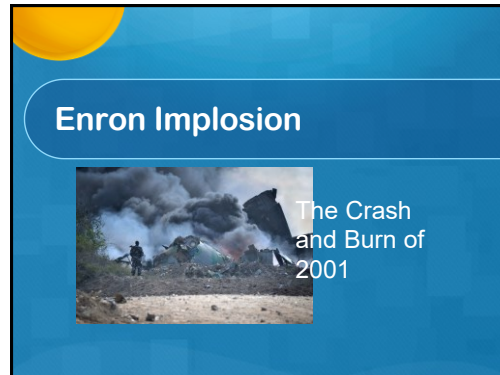
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...When it finally collapsed on December 2, 2001 it destroyed over \$60 billion (120 billion in today's dollars) in market value.

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**Of Character and Competence...**

○ "The big headline about Enron is that before fraud, there was terminal incompetence. As a matter of fact, if you look at a lot of the fraud cases, before fraud there was terminal incompetence..."

-Malcolm S. Salter, Professor of Business Administration Emeritus at Harvard Business School.

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**Of Character and Competence...**

○ "...You can have great values, but if you don't have the competence [to implement them], forget it. You need both character and competence. If you don't have the competence, you're going to get yourself in real deep trouble."

-Malcolm S. Salter, Professor of Business Administration Emeritus at Harvard Business School.

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Predicated by the fall of Enron, one piece of legislation, the **Sarbanes-Oxley Act**, expanded repercussions for destroying, altering, or fabricating records in federal investigations or for attempting to defraud shareholders. The act also increased the accountability of auditing firms to remain unbiased and independent of their clients.

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## Principle/Rule Ethics

Previously, most corporations operated under a set of principles established by its leadership and sustained through the establishment of cultural norms.

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## Principle/Rule Ethics

New legislation creates a host of “rules” by which businesses must adhere as a means of maintaining minimum standards of ethical practices.

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## Business Ethics & Social Responsibility

- **Business Ethics:** The principles and standards that define acceptable conduct in business
- **Social Responsibility:** A business's obligation to maximize its positive impact and minimize its negative impact on society

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## Recognizing an Ethical Issue

An ethical issue is an identifiable problem, situation, or opportunity that requires a person to choose from among several actions that may be evaluated as right or wrong, ethical or unethical.

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## Recognizing an Ethical Issue

**Did You Know?** The most common types of observed misconduct are lying, withholding information, and abusive/ intimidating behavior.

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## Top 5 Reasons For Not Reporting Observed Misconduct

5. Didn't know who to contact
4. Thought someone else would report the misconduct
3. Feared they wouldn't remain anonymous

Source: 2005 Ethics Resource Center- National Business Ethics Survey Report, p. 29

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## Top 5 Reasons For Not Reporting Observed Misconduct

2. Feared retribution or retaliation from supervisor or management
1. Didn't believe corrective action would be taken

Source: 2005 Ethics Resource Center- National Business Ethics Survey Report, p. 29

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## Ethical Issue Categories

**Conflict of interest**

**Fairness and honesty**

**Communications**

**Business relationships**

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### Conflict of Interest

Occurs when a person must choose whether to advance their own personal interest or those of others.

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### Fairness and Honesty

The heart of business ethics - General values of decision makers.

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### Communications

False and misleading advertising and deceptive personal-selling tactics anger customers and may cause a business to fail.

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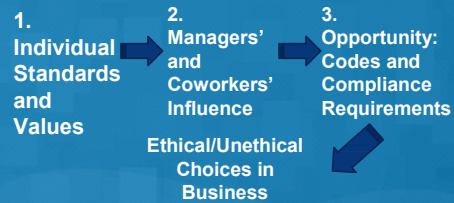
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## Business Relationships

Businesspeople must be ethical toward their customers, suppliers, and others in their workplace..

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## Three Factors that Influence Business Ethics



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## The Facts on Business Ethics Today

### • Of employees surveyed:

86% reported that their organizations have written standards of conduct

69% reported that their organizations offer mandatory ethics training

65% reported that their organizations have a place where they can seek ethics advice.

Source: 2005 Ethics Resource Center- National Business Ethics Survey: How Employees Perceive Ethics at Work, p.12-14.

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## The Nature of Social Responsibility

**Four Dimensions:**

- Economic** – earn profits or excess revenue
- Legal** – comply with the law
- Ethical** - *Not just "for profit" only*
- Voluntary & Philanthropic** - Promote human welfare and goodwill

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## The Pyramid of Social Responsibility

**VOLUNTARY**  
Good "corporate citizenship"

**ETHICAL**  
Doing what is right, just and fair, avoiding harm.

**LEGAL**  
Obeying the law (social codification of right/wrong).

**ECONOMIC**  
operating with sound fiscal principles that support mission

Source: Adapted from Aronson, B. Carroll, "The Pyramid of Corporate Social Responsibility: Toward the Work Management of Organizational Stakeholders," Business Horizons 44 (May/June 2001): 32

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## The Medicare Fraud Strike Force

Since their inception in March 2007, Strike Force operations in nine locations have charged more than 1,140 defendants who collectively have falsely billed the Medicare program for more than \$2.9 billion. In addition, the HHS Centers for Medicare and Medicaid Services, working in conjunction with the HHS-OIG, are taking steps to increase accountability and decrease the presence of fraudulent providers.

*(Sept. 2011)*

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The Ethicist  
In-Flight Entertainment

By **ARIEL KAMINER**  
Published: New York Times Magazine, October 21, 2011

**Q: On a recent flight, my colleague was seated next to an employee of our major competitor. My colleague realized this when the fellow began writing e-mails about possible problems with a significant new product.** - B.C., NEW JERSEY

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**Is it ethical for us to capitalize on this fellow's stupidity?**

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**Legal vs Ethical**

According to Susan J. Kohlmann, a partner at Jenner & Block L.L.P. who specializes in intellectual property law, it doesn't count as a trade secret if it's left out in the open. "The law would say one cannot put the burden on someone who happens on the information inadvertently," she explains. You can't sue someone for overhearing what you say in a crowded elevator.

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## What makes Ethical Decision-Making so Difficult?

"It seems the world was divided into good and bad people. The good ones slept better while the bad ones seemed to enjoy the waking hours much more." *Woody Allen*



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## Corporate Reactions to Ethical Crises

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### Corporate Reactions to Ethical Crises

#### Obstructive - Fight All the Way

Deny all responsibility

Claim that evidence of wrongdoing is misleading or distorted

Place obstacles to delay investigation

Tends to occur in firms whose actions are based on economic considerations.

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### Corporate Reactions to Ethical Crises

#### Defensive - Do Only What is Legally Required

Company admits to some errors of omission or commission  
 Defends itself but is not obstructive  
 Tend to work within the letter of the law.

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### Corporate Reactions to Ethical Crises

#### Accommodative - Accept Ethical Responsibility

Accepts social responsibility for actions  
 Try to meet economic, legal, and ethical responsibilities  
 Curtail ethically questionable activities.

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### Corporate Reactions to Ethical Crises

#### Proactive -Take Social Initiatives

- Take the lead in social issues
- Learn what is in the public interest and respond without pressure from stakeholders
- Use discretionary responsibilities to enhance community welfare.

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## Waste, Fraud, Abuse

### Administrators as Stewards of Resources

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## Waste, Fraud, Abuse

### Waste:

the over-  
services (not caused by  
criminally negligent  
actions) and the misuse  
of resources.



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## Waste, Fraud, Abuse

### Fraud:

an intentional act of  
deception,  
misrepresentation, or  
concealment in order to  
gain something of value.



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## Waste, Fraud, Abuse

### Abuse

excessive or improper use of services or actions that are inconsistent with acceptable business or medical practice. Refers to incidents that, although not fraudulent, may directly or indirectly cause financial loss.

Misrepresenting services resulting in unnecessary cost to the Medicare program, improper payments, or overpayments.

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## Waste, Fraud, Abuse

Examples include:

- ☐ Charging in excess for services or supplies.
- ☐ Providing medically unnecessary services.
- ☐ Billing for items or services that should not be paid for by Medicaid/Medicare.
- ☐ Billing for services that were never rendered.
- ☐ Billing for services at a higher rate than is justified.

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### Hot Business

In 2009 the FBI reported that Medicare fraud had become so lucrative that a number of cocaine dealers in Florida and California had switched from illicit drug trade to Medicare fraud.

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## March 2010...

President Obama announced a new effort to recoup taxpayer dollars through the use of payment recapture audits.

These are payments made in the wrong amounts, to the wrong person, or for the wrong reason. In 2009, improper payments totaled \$98 billion, with \$54 billion stemming from Medicare and Medicaid.

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## American Recovery and Reinvestment Act of 2009 ("ARRA")

ARRA was an element of the stimulus package, **it also contained sweeping whistleblower provisions** for people who report suspected misuse or gross mismanagement of stimulus funds, a large portion of which are allocated to health care projects.

41

## Fraud Enforcement and Recovery Act of 2009 ("FERA")

- FERA substantially amended the False Claims Act by expanding liability to indirect recipients of federal funds, establishing liability for the willful retention of identified overpayments (even where there is no underlying false claim), adding a broadly defined materiality requirement, expanding protections for whistleblowers and providing access to documents obtained by the government.

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Health Care Fraud Prevention and Enforcement Action Team (“HEAT”)

○ The HEAT initiative is a joint effort between the Department of Justice (“DOJ”) and the Department of Health and Human Services (“HHS”) under which increased resources are deployed “to reduce skyrocketing health care costs and improve the quality of care by ridding the system of perpetrators who are preying on Medicare and Medicaid beneficiaries.”

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2021

Across the behavioral health-related entity and provider types, the Medicaid funding recovered by the Medicaid Fraud Control Units splits at exactly two-thirds (\$65.7 million) in criminal recoveries and one-third (\$32.7 million) for civil recoveries.

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2021

The three provider types that saw the largest amount of Medicaid fraud were:

- **nonresidential mental health facilities** (\$36.1 million),
- **substance abuse treatment centers** (\$25.1 million)
- **nonresidential developmental disability facilities** (\$21.5 million).

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2021

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- **substance abuse treatment centers** (\$25.1 million)
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2021

In 2015, South Carolina Medicaid sought to audit Wrights Care Services (behavioral health child services), and members of the company met in Columbia at a “note party” to forge signatures and falsify records to support the audit. During the course of the scheme, Wrights Care and its affiliated franchises submitted bills to Medicaid in the amount of \$6,657,810.43.

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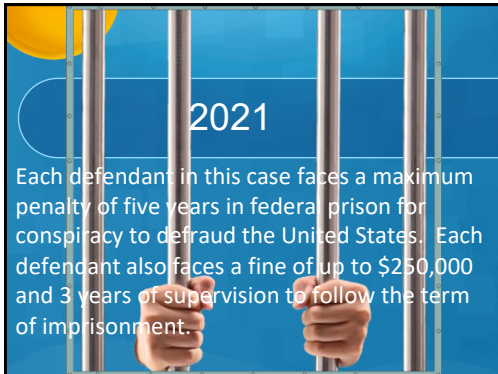
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2021

Each defendant in this case faces a maximum penalty of five years in federal prison for conspiracy to defraud the United States. Each defendant also faces a fine of up to \$250,000 and 3 years of supervision to follow the term of imprisonment.

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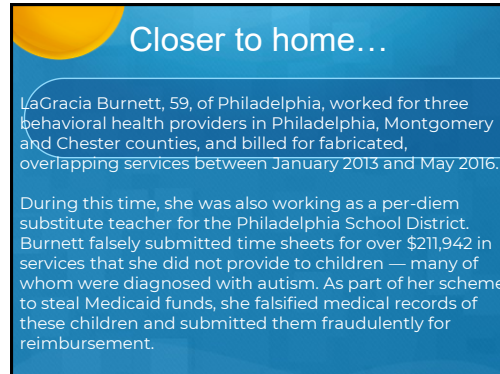
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### Closer to home...

LaGracia Burnett, 59, of Philadelphia, worked for three behavioral health providers in Philadelphia, Montgomery and Chester counties, and billed for fabricated, overlapping services between January 2013 and May 2016.

During this time, she was also working as a per-diem substitute teacher for the Philadelphia School District. Burnett falsely submitted time sheets for over \$211,942 in services that she did not provide to children — many of whom were diagnosed with autism. As part of her scheme to steal Medicaid funds, she falsified medical records of these children and submitted them fraudulently for reimbursement.

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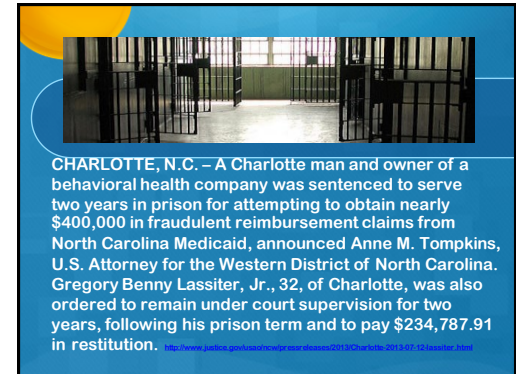
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**CHARLOTTE, N.C. – A Charlotte man and owner of a behavioral health company was sentenced to serve two years in prison for attempting to obtain nearly \$400,000 in fraudulent reimbursement claims from North Carolina Medicaid, announced Anne M. Tompkins, U.S. Attorney for the Western District of North Carolina. Gregory Benny Lassiter, Jr., 32, of Charlotte, was also ordered to remain under court supervision for two years, following his prison term and to pay \$234,787.91 in restitution.** <http://www.justice.gov/usdojcrd/news/2019/Charlotte-2019-07-10/assess.html>

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## Predictive Modeling

- The Lewin Group conservatively estimates that a comprehensive application of predictive modeling can save Medicare \$65 billion.
- Another analysis of TerraMedica, a healthcare technology firm, finds between \$18.6 billion and \$42.2 billion in annual suspicious claims that could be subject to fraud, abuse or overutilization patterns.

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## Possible Administrative Sanctions

- Denial or revocation of Medicare provider number application.
- Suspension of provider payments.
- Addition to the OIG List of Excluded Individuals/Entities (LEIE).
- License suspension or revocation.

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## Questions to Consider in Determining Whether an Action is Ethical

Are there any potential legal restrictions or violations that could result from the action?

**Question:** If I do this will it break any laws?

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Questions to Consider in Determining  
Whether an Action is Ethical

Does your company have a specific  
code of ethics or a policy on the  
action?

If I do this will I go against the  
employee handbook?

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Questions to Consider in Determining  
Whether an Action is Ethical

Is this activity customary in your  
industry?

Are there any industry trade groups that  
provide guidelines or codes of conduct  
that address this issue? **Question:** If I do  
this will I violate any trade practices?

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Questions to Consider in Determining  
Whether an Action is Ethical

Would this activity be accepted by your  
coworkers?

Will your decision or action withstand open  
discussion with coworkers and managers and  
survive untarnished? **Question:** Will my  
action cause peer acceptance or rejection, or  
any peer pressure?

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### Questions to Consider in Determining Whether an Action is Ethical

How does this activity fit with your own beliefs and values?

Will your action violate any personal ethics, religious beliefs, or social values?

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### The Compliance Process



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### Core Elements of Compliance

#### 1. A Compliance Plan

- This starts with a review of applicable rules and regulatory policies first and aligning these with the requirements stipulated by the company's policies or industry standards

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## Core Elements of Compliance

### ○ 2. Written Policies

- There should be written policies outlining the compliance program expectations. These policies ought to be approved by the organization's governing body and not just one individual.

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## Core Elements of Compliance

### ○ 3. A Code of Conduct

- A code of conduct should be consistently reviewed with staff & recognized as a signed contract.

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## Core Elements of Compliance

### ○ 4. A Compliance officer

- Generally, a compliance officer is responsible for both external and internal compliance. They ensure that the organization complies fully with government and industrial regulations and equally ensure that employees follow internal compliance policies.

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## Core Elements of Compliance

### 5. Monitoring and Investigating

- It is not enough to simply set up and implement a corporate compliance training program. You should equally take steps to monitor and track the progress of the program.

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## Core Elements of Compliance

### 6. Annual Reporting

- An annual report and risk assessment should be taken in order to identify new trends, problem areas, and make adjustments when necessary. This way, you can rest assured that your compliance program is effective and progressive, rather than regressive.

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## Core Elements of Compliance

### 8. Disciplinary policies

Despite the extensive measures taken to implement corporate compliance training programs, it can be hard to ensure full compliance from employees. This is why it is important to set disciplinary policies in place.

Employees who are caught taking unethical or unlawful actions should face penalties commensurate to the offense.

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## Core Elements of Compliance

### 9. Non-retaliation policies

Organizations and employers ought to ensure that non-retaliation policies are firmly set in place and implemented. A great way to start is by communicating to all employees that grave disciplinary actions will follow any act of retaliation or intimidation.

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## Whistle Blowing

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### Whistleblower Receives \$130,000 for Reporting Behavioral Health Fraud

May 12, 2022. The United States Department of Justice settled a case against a California-based behavioral health provider. Under the terms of the settlement, Prism Behavioral Solutions paid \$650,000 to resolve allegations of submitting false claims to state and federal healthcare programs. The whistleblower, a former employee, filed suit under the qui tam provisions of the federal False Claims Act and will receive \$130,000 of the government's recovery.

Prism Behavioral Solutions provides therapy services for children diagnosed with autism. According to the allegations, the behavioral solutions provider billed Medi-Cal for services that were never rendered, including for cancelled appointments, over a period of three years.

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## WHISTLEBLOWER PROTECTION

**Federal False Claims Act (31 U.S.C. § 3730(h))**  
 The FCA provides protection to relators who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA, 31 U.S.C. § 3730(h). Remedies include reinstatement with comparable seniority as the relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

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## Fraud, Waste, and Abuse Resources

- ◊ Federal government web sites are sources of information regarding detection, correction, and prevention of fraud, waste, and abuse:
- ◊ Department of Health and Human Services Office of Inspector General: <http://oig.hhs.gov/fraud/hotline/>
- ◊ Centers for Medicare and Medicaid Services (CMS): <http://www.cms.hhs.gov/FraudAbuseforProfs/>
- ◊ CMS Information about the Physician Self Referral Law: [www.cms.hhs.gov/PhysicianSelfReferral](http://www.cms.hhs.gov/PhysicianSelfReferral)
- ◊ CMS' Prescription Drug Benefit Manual [https://www.cms.hhs.gov/PrescriptionDrugCovControl/downloads/PDBManual\\_Chapter9\\_FWA.pdf](https://www.cms.hhs.gov/PrescriptionDrugCovControl/downloads/PDBManual_Chapter9_FWA.pdf)
- ◊ Medicare Learning Network (MLN) Fraud & Abuse Job Aid [http://www.cms.hhs.gov/MLNProducts/downloads/081606\\_Medicare\\_Fraud\\_and\\_Abuse\\_brochure.pdf](http://www.cms.hhs.gov/MLNProducts/downloads/081606_Medicare_Fraud_and_Abuse_brochure.pdf)
- ◊ [2021 COVID Fraud Cases](#)

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