

Who Defines “Fraud, Waste, and Abuse”?

This document contains a sample of the various definitions of the terms “Fraud, Waste, and Abuse” from government agencies and health plans. There are more. The lack of a concrete definition in law should give pause as cost containment initiatives increase. Here are a few questions to consider:

- Who decides what definition to use for these terms?
- What will the definitions mean for patient care?
- What procedures will be defined as fraud, as waste, as abuse – and for whom?
- Who will define those terms?
- What will the impact be for patients caught in the crosshairs between government and health plan cost cutting by definition and medical treatment decisions?
- How will the 15-member unelected Independent Payment Advisory Board (IPAB) use these words to make decisions about paying for care?
- How will the Patient-Centered Outcomes Research Institute (PCORI) evaluate the “comparative effectiveness” of various treatment options based on their interpretations of the terms “fraud, waste and abuse”?

BACKGROUND:

“Lots of Talk, Little Action on Medicare Fraud,” George LeMieux, The Wall Street Journal, November 28, 2012: <http://online.wsj.com/article/SB10001424052970204349404578099243454411484.html>

“Examining Options to Combat Health Care Waste, Fraud and Abuse,” Energy and Commerce Health Subcommittee, 10:00 a.m. Hearing, 2123 Rayburn, November 28, 2012: <http://energycommerce.house.gov/hearing/examining-options-combat-health-care-waste-fraud-and-abuse>

2011 Testimony on “Fraud Waste and Abuse in Medicare and Medicaid,” Daniel R. Levinson, Inspector General, U.S. Department of Health and Human Services: <http://www.finance.senate.gov/imo/media/doc/030211DL1.pdf>

"Health Care Fraud: Types of Providers Involved in Medicare Cases and CMS Efforts to Reduce Fraud," Testimony by Kathleen M. King, Director, Health Care, U.S. Government Accountability Office, November 28, 2012. <http://www.gao.gov/assets/660/650341.pdf>

ABUSE

- Abuse – An excessive or improper use of services or actions that are inconsistent with acceptable business or medical practice. This refers to incidents that, although not fraudulent, may directly or indirectly cause financial loss. Examples include:
 - Charging in excess for services or supplies
 - Providing medically unnecessary services
 - Billing for items or services that should not be – [Humana Compliance Policy, November 2011](#)

- **Abuse** – involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances. Abuse also includes misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate. Abuse does not necessarily involve fraud, violation of laws, regulations, or provisions of a contract or grant agreement. – [Department of Defense, OIG](#)
- **Abuse**
Providing information or documentation for a health care claim in a manner that improperly uses program resources for personal gain or benefit, yet without sufficient evidence to prove criminal intent. – [SC BCBS](#)
- **ABUSE (WASTE)**: Incidents or practices of physicians, other providers, service and equipment suppliers, or other suppliers that are inconsistent with accepted, sound medical, business, or fiscal practices. Examples:
 - A provider billing for unnecessary or excessive services.
 - A provider performing laboratory tests on large numbers of patients when the provider knows only a few tests should have been performed. – [UPMC Health Plan](#) (2009)
- **Fraud, Waste, and Abuse Definitions**
The Government Accountability Office’s definitions for waste and abuse are: [...] Abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances. Abuse also includes misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate. Abuse does not necessarily involve fraud, violation of laws, regulations or provisions of a contract or grant agreement. ... Payment of incentive and award fees in circumstances where the contractor’s performance in terms of cost, schedule and quality outcomes does not justify the fees is an example of contracting waste. In comparison, an example of contracting abuse would include making procurement or vendor selections that are contrary to existing policies or unnecessarily extravagant or expensive. It is important for contracting professionals to be alert to the presence of fraud, waste, and abuse when conducting their work. – [Defense AT&L](#), March/April 2009
- **Abuse** - Practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost or reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. - [BCBS of Michigan](#) (Aug 2012)
- Abuse is defined as practices that are inconsistent with professional standards of care; medical necessity; or sound fiscal, business, or medical practices. Intent is the key distinction between Fraud and Abuse. An allegation of waste and abuse can escalate into a fraud investigation if a pattern of intent is determined. – [Essence Health](#)
- **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. 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 Medicare - *FWA presentation, MN Council of Health Plans, 2009.*

- Abuse – providing products or services that are inconsistent with accepted practices or are clearly not reasonable or necessary Example: Billing for a non-covered service-- [Delta Dental FWA Training](#)

FRAUD

- **18 USC § 1347 – Health care fraud**
 - (a) Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice—
 - (1) to defraud any health care benefit program; or
 - (2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program, in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 10 years, or both. If the violation results in serious bodily injury (as defined in section 1365 of this title), such person shall be fined under this title or imprisoned not more than 20 years, or both; and if the violation results in death, such person shall be fined under this title, or imprisoned for any term of years or for life, or both.
 - (b) With respect to violations of this section, a person need not have actual knowledge of this section or specific intent to commit a violation of this section.
- **18 USC 241 – Sec. 24 Definitions relating to Federal health care offense.**

As used in this title, the term “Federal health care offense” means a violation of, or a criminal conspiracy to violate--

 - section 669, 1035, 1347, or 1518 of this title;
 - section 287, 371, 664, 666, 1001, 1027, 1341, 1343, or 1954 of this title, if the violation or conspiracy relates to a health care benefit program.

As used in this title, the term “health care benefit program” means any public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract. ([Health Insurance Portability and Accountability Act of 1996](#))

- Fraud – An intentional act of deception, misrepresentation or concealment in order to gain something of value. Examples include:
 - Billing for services that were never rendered
 - Billing for services at a higher rate than is actually justified. – [Humana Compliance Policy, November 2011](#)
- **Fraud** – has been defined in various ways. Generally Accepted Government Auditing Standards describes fraud as: A type of illegal act involving the obtaining of something of value through willful misrepresentation. Whether an act is, in fact, fraud is a determination to be made through the judicial or other adjudicative system and is beyond the auditor’s professional responsibility. Paraphrasing Black’s Law Dictionary, fraud is described as: A false representation of a material fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives another so that he acts, or fails to act to his detriment. – [Department of Defense, OIG](#)
- **Fraud** - Intentional misuse of information in order to persuade another to part with something of value or to surrender a legal right. It could also be an act of planned deception or misrepresentation. – [SC BCBS](#)

- **Fraud** - An intentional representation that an individual knows to be false or does not believe to be true and makes anyway, knowing that the representation could result in some unauthorized benefit to him/herself or some other person. – [BCBS of Michigan](#) (Aug 2012)
- **FRAUD**: An intentional deception or misrepresentation made by a person, with the knowledge that the deception could result in some unauthorized benefit to himself/herself or some other person. Examples:
 - A provider intentionally billing for services that were not rendered.
 - Unauthorized use of a member's medical identification card or insurance information.
 - Intentionally inflating medical procedure codes to be reimbursed at a higher rate.
 - A member presenting forged or altered prescriptions to pharmacies for drugs. - [UPMC Health Plan](#) (2009)
- **Fraud, Waste, and Abuse Definitions**
Although most people have a general understanding of the term fraud, one of the most widely quoted definitions is found in Black's Law Dictionary: A false representation of a material fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives another so that he acts, or fails to act, to his detriment. – [Defense AT&L](#), March/April 2009
- Fraud is defined as an intentional deception, false statement or misrepresentation made by a person with the knowledge that the deception could result in unauthorized benefit to oneself or another person. It includes any act that constitutes fraud under applicable federal or state law. – [Essence Health](#)
- **Fraud**: an intentional act of deception, misrepresentation or concealment in order to gain something of value. Examples include:
 - billing for services that were never rendered
 - billing for services at a higher rate than is actually justified
 - deliberately misrepresenting services, resulting in unnecessary cost to the Medicare program, improper payments to providers or overpayments - *MN Council of Health Plans, 2009.*
- Fraud – intentional misrepresentation of information for financial gain. Example: Submitting false claims for dental services (e.g., filing claims for services that were not provided or for more complicated services than those provided). - [Delta Dental FWA Training](#)

WASTE

- Waste – Overutilization of services (not caused by criminally negligent actions) and the misuse of resources. – [Humana Compliance Policy, November 2011](#)
- **Waste** – involves the taxpayers not receiving reasonable value for money in connection with any government funded activities due to an inappropriate act or omission by players with control over or access to government resources (e.g., executive, judicial or legislative branch employees, grantees or other recipients). Importantly, waste goes beyond fraud and abuse and most waste does not involve a violation of law. Rather, waste relates primarily to mismanagement, inappropriate actions and inadequate oversight. – [Department of Defense, OIG](#)
- To use, consume, spend or expend thoughtlessly or carelessly. – [SC BCBS](#)

- **Waste** - Activities involving payment or the attempt to obtain reimbursement for items or services where there was no intent to deceive or misrepresent, but the outcome or poor or inefficient billing or treatment methods cause unnecessary costs. - [BCBS of Michigan](#) (Aug 2012)
- **Fraud, Waste, and Abuse Definitions**
The Government Accountability Office's definitions for waste and abuse are: Waste involves the taxpayers not receiving reasonable value for money in connection with any government funded activities due to an inappropriate act or omission by players with control over or access to government resources (e.g. executive, judicial or legislative branch employees, grantees or other recipients). Most waste does not involve a violation of law. Rather, waste relates primarily to mismanagement, inappropriate actions and inadequate oversight. – [Defense AT&L](#), March/April 2009
- Waste is defined as failure to control costs or regulate payments associated with federal program monies. – [Essence Health](#)
- **Waste:** over-utilization of services (not caused by criminally negligent actions) and the misuse of resources - *MN Council of Health Plans, 2009.*

Waste – extravagant, careless or needless expenditure of healthcare benefits or services that results from deficient practices or decisions. Example: Over-utilization of services or misuse of resources – [Delta Dental FWA Training](#)