



**ANDREW BAILEY**  
MISSOURI ATTORNEY GENERAL

# Medicaid Fraud Control Unit

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# Who We Are and What We Do

## MFCU's Unit Structure

- Chief Counsel/Director
- 5 Attorneys
- 14 Investigators and Investigative Auditors
  - 1 Chief Investigator
  - 1 Chief Auditor
- 2 Nurse Investigators
- 1 Paralegal – Evidence and Litigation
- 1 Data Analyst
- 1 Admin Support

## MFCU's Duties

### Investigate and Prosecute:

- Medicaid Provider Fraud
- Fraud/Abuse within the Medicaid State Agency
- Abuse of patients in Board and Care Facilities
  - *Including recipients living at home*
- Abuse of anyone receiving Medicaid or Medicare
  - *Includes any state licensed facility that receives federal healthcare dollars*

### Assist:

- Local Law Enforcement
- Local Prosecutors
- Federal Prosecutors and Investigators

Multi-State Civil and Criminal Fraud Investigations

# What is Medicaid Fraud

- Medicaid fraud occurs when a provider knowingly misrepresents the services rendered and thereby causes a false claim for payment to be submitted to Missouri Medicaid (“MO HealthNet”)
- Knowingly is:
  - “Knowing” and “knowingly”, that a person, with respect to information:
    - (a) Has actual knowledge of the information;
    - (b) Acts in deliberate ignorance of the truth or falsity of the information; or
    - (c) Acts in reckless disregard of the truth or falsity of the information.
- Use of the terms knowing or knowingly shall be construed to include the term “intentionally”, which means that a person, with respect to information, intended to act in violation of the law;

# Source of Cases

## Referrals

- Referrals from MMAC
- Referrals from licensing boards
- Referrals from other state agencies
- Federal and State Law Enforcement

## MFCU Hotline

- Whistleblowers
- Concerned Citizens
- Self-Generated Referrals
- Data Mining

We are also often asked to co-investigative allegations with other states, as well as NAMFCU



# Medicaid Fraud Statute

Section 191.905, RSMo:

1. No health care provider shall knowingly make or cause to be made a false statement or false representation of a material fact in order to receive a health care payment.

- Bill for services not provided
- Bill for more services than actually provided
- Bill for medically unnecessary services
- Lie and/or omit statements to MMAC during provider enrollment periods that would have otherwise excluded provider from participation in the program.

A person who **knowingly** submits or causes to be submitted a false claim is guilty of a class D felony upon his or her first conviction, and shall be guilty of a class B felony upon his or her second and subsequent convictions.

Punishment for a class D felony is up to 7 years Department of Corrections or up to 1 year county jail.



# Medicaid Fraud Statute Cont.

§ 191.905, RSMo – Other Crimes:

2. No person shall knowingly solicit or receive any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in case or in kind in return for...

- Bribe
- Kickback
- Providing a recipient something free in return for using your services
- Agreeing not to charge a co-pay
- Inducing another healthcare provider to refer patients to you for services

A person who **knowingly** submits or causes to be submitted a false claim is guilty of a class D felony upon his or her first conviction, and shall be guilty of a class B felony upon his or her second and subsequent convictions.

# Medicaid Fraud Statute Cont.

§ 191.905, RSMo – Other Crimes:

6. No person shall knowingly abuse a person receiving health care.
  - “Abuse”, the infliction of physical, sexual or emotional harm or injury. “Abuse” includes the taking, obtaining, using, transferring, concealing, appropriating or taking possession of property of another person without such person’s consent;
  - Financial exploitation: a person obtains control over the property of an elderly or disabled person with the intent to permanently deprive the elderly or disabled person of it thereby benefiting the offender or detrimentally affecting the victim.

A person who **abuses** a Medicaid Recipient shall be guilty of a class D felony, unless the act involves no physical, sexual or emotional harm or injury and the value of the property involved is less than five hundred dollars, in which event a violation of subsection 6 of this section is a class A misdemeanor.

# Medicaid Fraud Statute Cont.

§ 191.905, RSMo – Other Crimes:

8. Any natural person who willfully prevents, obstructs, misleads, delays, or attempts to prevent, obstruct, mislead, or delay the communication of information or records relating to a violation of sections 191.900 to 191.910 is guilty of a class E felony.

Providers are most commonly prosecuted for obstruction for altering patient records.

Examples Include:

- Creating records in response to a subpoena
- Altering EVV records to reflect inflated billings

Punishment for a class E felony is up to 4 years Department of Corrections or up to 1 year county jail.

# Medicaid Fraud Statute Cont.

## § 191.905, RSMo – Monetary Penalties

If the criminal penalties mentioned earlier weren't enough, monetary penalties are also applied to Medicaid Fraud cases.

- Shall pay restitution for the funds determined to fraudulent
- A person shall be liable for a civil penalty of not less than five thousand dollars and not more than ten thousand dollars for **each separate act** in violation of such subsections, plus **three times the amount of damages.**

# Monetary Penalties- Example

Mandatory Restitution, Damages & Penalties for Knowingly Submitting False Claim  
Add Up Fast

*State v. Spilton*, 315 S.W.3d 350 (Mo. 2010) Decided by Missouri Supreme Court 8-0 (a.k.a., unanimous decision): Example: Restitution = \$1,022.74 for personal care services not provided

- Treble damages = \$3,068.22; and
- A penalty of \$5,000-\$10,000 for each false claim
  - Defendant submitted false claims for 26 days
  - 26 false claims x \$5,000.00 = \$130,000.00 or 26 x \$10,000.00 = \$260,000.00 total penalties
- Plus investigation and prosecution costs

**Restitution + Damages + Penalty + Costs = Total Liability**

Defendant faces a potential liability at trial between \$134,090.96 and \$264,090.96  
+ Investigation/prosecution costs

# Mandatory Restitution, Damages for Unintentional False Claim

Civil Action against any person who shall receive a health care payment as a result of a false statement...The person shall be liable for up to double the amount of all payments received by that person based upon the false statement and the reasonable costs attributable to the prosecution of the civil action.

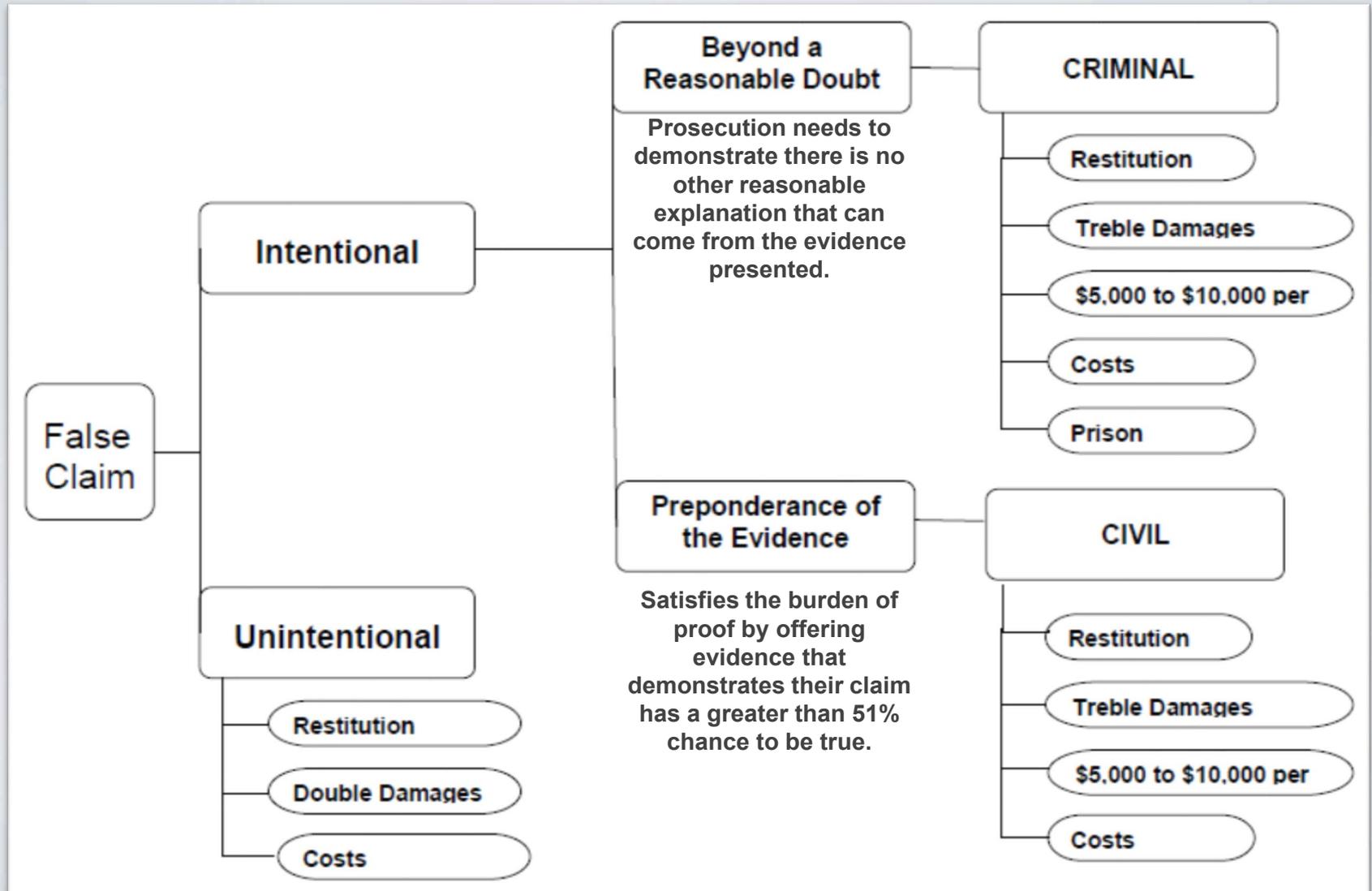
*State v. Spilton*, 315 S.W.3d 350 (Mo. 2010) Decided by Missouri Supreme Court 8-0 (a.k.a., unanimous decision): Restitution = \$1,022.74 for personal care services not provided

- Double damages = \$2,045.48; and
- Costs of the investigation and prosecution

Restitution + Damages + Costs = Total Liability

Total can be \$3,068.25 + investigation/prosecution costs

# Medicaid Fraud Case Progression



# Other Charges Filed in Medicaid Fraud Cases

191.905 is not the only charge MFCU has jurisdiction to investigate. Below is a list of other charges commonly filed in conjunction with Medicaid Fraud:

## Criminal

- Medicaid Fraud
- Forgery
- Stealing by Deceit
- Abuse of a person receiving health care
- Financial Exploitation

## Civil

- Medicaid Fraud
- Breach of Contract
- Unjust Enrichment
- Fraudulent Misrepresentation
- Consumer Fraud

# Other Consequences of a Fraud Conviction

Individuals and entities can be excluded from federally funded and state health care programs by the OIG

- OIG maintains an online exclusion list
  - Mandatory – Conviction: Medicare, Medicaid or Health Care Fraud; Resident abuse or substance abuse
  - Permissive – Discretionary for a variety of licensure actions and misdemeanor convictions
  - Exclusion for denial of immediate access by MFCU
  - MFCUs are required to report convictions to OIG
  - Many OIG exclusions are based on MFCU convictions

## Other Consequences

- Discipline from licensing board
- Loss of professional license
- Placement on the Employee Disqualification List (EDL)
- Suspension from Medicaid
- Exclusion from Medicaid and other federal programs

# When In Doubt, Report It.

Section 191.905, RSMo:

15. Any person who discovers a violation by himself or herself or such person's organization and who reports such information voluntarily before such information is public or known to the attorney general shall not be prosecuted for a criminal violation.

You cannot “discover” fraud that you created.

# 2023 Results

January 1, 2023 to September 30, 2023

## Criminal Cases

48 Fraud indictments

4 Abuse/Neglect complaint

14 Criminal convictions with ordered restitution of \$210,954.78

## Civil Cases

12 Civil settlements with \$11,280,993.88 in settlement payments



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# Questions?

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