



# MEDICARE FRAUD

*What To Do When The Government Comes Calling*

A WHITE PAPER PRESENTED BY

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# MEDICARE FRAUD: *What To Do When The Government Comes Calling*

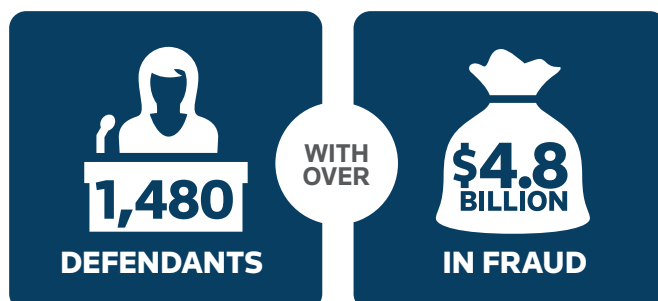
South Florida has a reputation for being a hotbed of Medicare fraud. For years, that reputation has resulted in heightened attention from federal prosecutors. However, in its zeal to prosecute Medicare fraud in Florida, it is no secret that the government can make mistakes.

Frank A. Rubino, ESQ., PA provides this legal alert to help you understand the issues as the federal government continues its aggressive crackdown on Medicare fraud in Florida. We also intend it as a short guide as to what you should do if you have been contacted by the government with respect to a Medicare investigation (or if you anticipate being contacted). If you have an HMO or a health clinic, you especially will want to consider this report carefully. A few simple steps taken from the time the government contacts you (and even before) can make the difference in protecting your rights.

## The Government May Contact You Even Though You Have Done Nothing Wrong

The initial shock of receiving a communication from the government regarding a legal matter greatly concerns most normal people. When that legal matter can result in a conviction for a federal crime (as is the case with Medicare fraud), the concern increases considerably.

**SINCE 2007 PROSECUTORS HAVE CHARGED:<sup>1</sup>**



*A Special Agent in Charge Of investigations Calls Miami The Crown Jewel Of Medicare Fraud.*



Keep in mind, though, if you have indeed received a communication from the government (or even if you anticipate one) that such a communication, by itself, does not mean that you have been convicted or even charged with anything. The government, in fact, often misunderstands how someone might be operating a complicated business. Providing the government with the proper response can often clear up the matter immediately.

Furthermore, it is not unusual for innocent people to be involved in fraud investigations. It is also not uncommon for people who have committed a fraudulent act, not know that they are doing anything wrong.

Frank A. Rubino, ESQ., PA wants you to understand your rights should you be facing a Medicare fraud investigation. To do that, we will first provide you with assessments of two of the many scenarios that could be involved in a Medicare fraud investigation.



IN OUR OPINION, THE TWO MOST COMMON SCENARIOS USUALLY INVOLVE ACCUSATIONS OF:



We hope that an understanding of these two scenarios will help you begin to understand that you are not at the mercy of the government. Regardless of whether you have or have not committed Medicare fraud, you have rights and deserve to be treated fairly.

### Medicare Fraud Often Involves Billing For Services That Were Never Provided

The first of the two common scenarios involves the government accusing you of having billed for services that were never performed or provided to patients. In other words, the government may be accusing you of having charged for services that were never in fact rendered to patients.

Simply being accused of having billed for unperformed services, however, does not mean you do not have rights. We will discuss in more detail below a number of options you can turn to should you be contacted by a government agent in connection with a Medicare fraud investigation.

### Medicare Fraud Also Often Involves Billing For Unnecessary Services That Were Provided

Of the two common scenarios under examination here, billing for unnecessary services provided is currently the more complicated Medicare fraud scenario. The government also might characterize these unnecessary services as the provision of improper treatment. In other words, while a diagnosis may be correct, it does not justify the application of just any kind of medical service.

To better understand a scenario involving unnecessary services, consider the following facts:

A provider renders mental health services to various assisted living facilities (ALFs). The problem? The mental health services are provided to people suffering from maladies involving physical deterioration -- maladies such as Dementia or Alzheimer's.

Unfortunately, the government deems mental health services necessary and proper only for those patients suffering from mental illnesses such as paranoia or schizophrenia. Those mental conditions can be treated by medications prescribed by psychiatrists and by therapy from psychologists.



## The Distinction Between Necessary And Unnecessary Services Is Not Always Clear

It is not, however, always clear as to what constitutes a necessary service or an unnecessary one under the law. Again, simply because the government levels an accusation claiming the existence of unnecessary services does not mean that unnecessary services have indeed been rendered.

Consider, for instance, the case of a surgeon who has been accused of providing too many surgeries. In other words, the surgeon has been accused of providing unnecessary services; i.e., unnecessary surgeries. The surgeon, however, only performs surgeries — no other kind of medicine. Patients, in fact, only come to him to have surgery.

In that case, a clear and immediate distinction is less apparent between necessary and unnecessary. To help identify where your situation falls in the spectrum between clear and less-clear, an experienced attorney, like Frank A. Rubino, ESQ., PA, can provide important insights into how the courts might construe your case.

## Most Important: You Should Contact An Attorney As Soon As Possible

Typically, people will not contact an attorney until after they have been arrested and charged with the federal crime of Medicare fraud. Unfortunately, that approach often limits your ability to preserve and protect your rights during a Medicare fraud investigation.

You need as much time as possible for your own attorney to investigate the matter independently. The attorney also benefits from more time being made available for purposes of developing an effective legal strategy on your behalf. By not allowing for as much time as possible to build your own case, you may be exposing yourself to more serious federal criminal penalties, including significant fines and years of incarceration.



*Criminal defense matters are not all or nothing. There are greater and lesser degrees of penalties. Fines can be minimized. Years can be taken off of a sentence.*

Therefore, in order to give yourself the ability to make maximum use of the protections available to you under the law, you want to take action as soon as you anticipate being contacted by the government. That's right: Whenever possible, you want to act even before you have been contacted by the government.

If you are contacted before you have obtained an attorney, you will then want to take immediate action upon receiving anything from the government indicating that you are the target of an investigation for Medicare fraud.

Many times, these communications come from the FBI. These communications can be a subpoena for books, records and other documents.

Later stages of the investigation can involve grand jury subpoenas, search warrants and even office raids. Contacting an attorney early enough in the investigation process can enable you to avoid these later stages through effective planning and management of the investigation process on your behalf.

Even if you contact an attorney immediately prior to your arrest, an attorney can still provide you with valuable help. For instance, the attorney can negotiate on your behalf with the authorities a surrender at the court house instead of the SWAT team arresting you at home. The attorney also may be able to negotiate a bond in advance.





## What You Can Do Right Now If You Have Been Contacted (Or Anticipate That You Will Be)

Other than contacting an attorney immediately, what else can you do on your own to best protect your rights during the initial stages of a Medicare fraud investigation? Of the many options that may be available to you, we focus here on three other recommended practices.

### HERE ARE THREE THINGS YOU SHOULD DO IF YOU ARE CONTACTED BY AN AGENT

1



#### **TELL THE AUTHORITIES RESPECTFULLY THAT YOU WILL NOT SUBMIT TO AN INTERVIEW.**

You will answer no questions. The more respectfully you can convey this point to any arresting officers, the better you position your credibility for the entire investigation.

2



#### **TELL THE AGENTS YOU WISH TO HAVE AN ATTORNEY.**

On your behalf, your attorney will be able to identify the practices and strategies the agents are using against you.

3



#### **GET THE AGENTS' BUSINESS CARDS.**

What if the agents do not have business cards? Then request their full names and their phone numbers.

Do not make the common mistake of overlooking this seemingly simple point. The contact information of the agents is critical.

Why? Your attorney will want to speak with them as soon as possible to negotiate on your behalf regarding any number of items, not the least of which may be for a peaceful surrender instead of an arrest at home by the SWAT team. Your attorney will also want to speak with the agents to determine if you are the subject of an investigation or if they only want to speak with you as a witness. Without that contact information, finding an anonymous FBI agent wastes time your attorney could instead be using to develop a case that will protect your rights.

## You Do Have Options If You Fear A Medicare Fraud Investigation

Facing charges for Medicare fraud can involve a number of vague and complicated factors. These factors can range from governmental misunderstanding of your business practices to the application of difficult legal rules as to what is or is not a necessary medical service.

For that reason, when you have been contacted by the government with respect to a Medicare fraud investigation, you want to begin the process of preserving your rights immediately. In addition to consulting with an attorney, such as Frank A. Rubino, ESQ., PA, as soon as possible, you can protect yourself by not answering questions and by making sure you have the identity of any federal agents who have contacted you. The Law Firm of Frank A. Rubino, ESQ., PA, is extremely experienced in dealing with Medicare fraud investigations.

*Frank A. Rubino*



### SOURCES:




<sup>1</sup> <http://www.miaminewtimes.com/2013-05-02/news/medicare-fraud-south-florida/full/>

<sup>2</sup> <http://www.miamiherald.com/news/special-reports/watchdog-report/article1929719.html#storylink=cpy>

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