Who depends on MFCU?
Over 5 million Medicaid recipients, &
1,000’s of honest providers who play by the rules
Over 105,000 residents in 600 nursing homes, & residents of board and care facilities Statewide

... and their families and friends
Everyone. NY State needs a functioning Medicaid program, as a safety net for the vulnerable.
MFCU Mission:
- Investigate Medicaid Provider Fraud, and Abuse and Neglect in Residential Care Facilities
- Achieve Justice through Criminal Prosecutions, Civil Actions and Settlements
- Protect Medicaid Program Integrity
The MFCU Way

- We are Mission-driven
- We Work with Other State and Federal agencies to investigate Medicaid provider fraud, and patient abuse and neglect in health care facilities
- We do Justice -- stop fraud, abuse and neglect, hold wrongdoers accountable, get fraudsters out of the Medicaid program, and return wrongfully taken taxpayer money to Medicaid
What Is MFCU?

- MFCU is part of the Attorney General's Office - Criminal Justice Division
- Team approach for fighting fraud & abuse
  - 56 Attorneys
  - 91 Forensic Auditors
  - 78 Investigators
  - 7 Registered Nurse Analysts
  - 21 Informational Technology Specialists
  - + Finance, Admin, Paralegals, Support
COMMUNICATION AND TEAMWORK

"THE WHOLE IS ≥ THE SUM OF ITS PARTS."
MFCU Attorneys
• Expertise in Investigating and Prosecuting Abuse, Neglect and Fraud.

MFCU Investigators
• All MFCU Investigators are Police Officers.
• Trained in abuse, neglect & fraud investigations.
• Experienced Special Victims Unit detectives.
• Have expertise in conducting “hidden camera investigations.”
Nurse Experts

• Experience includes Directors of Nursing, Compliance, Risk Management, Unit Supervisors.
• Worked in Hospitals, Nursing Homes, Drug and Alcohol clinics, Home Healthcare.
• Review Medical Records, Staffing Records.
• Conduct Interviews.
• Define Standards of care.
• Review Hidden Camera Recordings.
Teamwork with Federal, State & Local Agencies

- DOH
- OMIG
- US Attorneys’ Office
- US Dep’t of Justice
- Justice Center for the Protection of People with Special Needs
- OPWDD – Office for People with Developmental Disabilities
- County DA’s Offices
- NYC DOI
- NYC HRA
Medicaid Fraud Control Unit

• Separate and Distinct from Dept of Health

• Main NYS Agency Counterpart: Office of Medicaid Inspector General (OMIG)

• MFCU Also Works Closely with Dept of Health on Medicaid Program Integrity and Nursing Home Abuse and Neglect Investigations
MFCU ≠ OMIG

Different agencies.

Different authority/powers.
<table>
<thead>
<tr>
<th>MFCU</th>
<th>≠</th>
<th>OMIG</th>
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</thead>
<tbody>
<tr>
<td><strong>Amy Held</strong></td>
<td>Dennis Rosen</td>
<td>NYS Governor</td>
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<tr>
<td><strong>Director</strong></td>
<td>Medicaid Inspector General</td>
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<td><strong>NYS Attorney General</strong></td>
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<td><strong>NYS Governor</strong></td>
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<tr>
<td><strong>Est. 1975</strong></td>
<td><strong>Est. 2006</strong></td>
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<tr>
<td><strong>Criminal enforcement</strong></td>
<td><strong>Solely administrative enforcement</strong></td>
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<td><strong>Civil enforcement</strong></td>
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<tr>
<td>May request withholds</td>
<td>Withhold imposition</td>
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<tr>
<td>No provider admin. sanctions</td>
<td>Provider sanctions</td>
<td></td>
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<tr>
<td>Complaint driven &amp; Data Mining</td>
<td>Data mining (Complaint not required)</td>
<td></td>
</tr>
<tr>
<td>Investigates DOH &amp; OMIG Referrals</td>
<td>Required to make referrals to MFCU in cases of fraud</td>
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</tbody>
</table>
MFCU Jurisdiction – Financial Fraud & Patient Protection

Financial Fraud – MFCU conducts investigations, and prosecutions of enrolled providers who defraud Medicaid, and those who conspire with them.

Patient Protection – MFCU investigates and prosecutes abuse and neglect in residential care facilities, to protect patients from abuse, neglect, mistreatment and theft.
MFCU also works to:

- Identify & collect overpayments to providers

- Investigate and prosecute Medicare fraud where there is a Medicaid nexus
Sources of MFCU Investigations

- Referrals from DOH/OMIG
- Referrals from local, state or federal agencies
- Whistleblowers / Informants

{ Undercover Activity
- Self-generated Fraud Detection Programs
- Complaints from the Public, including Recipients
- Spin-offs from referred cases
By enrolling in the Medicaid Program, providers agree to:

- Keep for a period of 6 years from the date of service all records necessary to disclose to MFCU the nature and extent of services furnished and all information regarding claims submitted therefor.

18 NYCRR § 504.3(a)
Provider Obligations:

By enrolling in the Medicaid Program, providers agree to:

- Permit audits by MFCU of all books and records relating to the services furnished and payments received, including patient histories, case files, and patient specific data.

18 NYCRR § 504.3(g)
MFCU Regulatory Authority

HIPAA

- Covered health care providers are permitted to disclose protected information to “health oversight agencies.”

  45 CFR 164.512(d)(1)

- **MFCU is a “health oversight agency.”**

  45 CFR 164.501(6)(v)
Any entity that fails to grant immediate access upon reasonable request to a State MFCU for the purpose of conducting its activities may be excluded from any federal health care programs, including Medicaid and Medicare.

42 U.S.C. § 1320a-7(b)(12)
What Are MFCU’s Tools?

- **Criminal Prosecutions**
  - Penal Law
    - Provider Fraud
  - Public Health Law § 2803
    - Patient abuse and neglect
  - Social Services Law §366-d, f
    - Kickback arrangements
  - Education Law § 6512(1)
    - Unauthorized practice

- **Civil Enforcement**
  - False Claims Act -- State Finance Law §189, 190
    - Social Services Law §145-b
    - Executive Law §63(12)
    - Executive Law §63-c
    - Asset Forfeiture CPLR Art 13-A
  - Common law claims: unjust enrichment, payment by mistake
Crimes in Medicaid Fraud Cases

Grand Larceny
Health Care Fraud
Forgery
Falsifying Business Records
Offering a False Instrument for Filing
Drug Diversion
Conspiracy
Enterprise Corruption
Illegal Kickbacks
Unauthorized Practice
Common Fraudulent Schemes

- Falsifying records of services allegedly provided
- Double-Billing for services included with provider rate
- Illegal Kickback arrangements for referrals
- Upcoding
MFCU Results

2015
• 113 convictions
• $144M ordered recoveries

2016
• 115 convictions
• $149M ordered recoveries
MFCU Conviction Rate 2016

98% Overall Conviction Rate

- 100% for Fraud Cases
- 95% for Patient Abuse/Neglect
MFCU Audit – Fraud Investigation

• Complaint / Allegation

• Investigation
  - Surveillance
  - Undercover Operations
  - Record Review
  - Interviews

• Audit
  - Random Sample or Focused
  - Audit Period
AG can file action against defendant that:

- Knowingly presents a false or fraudulent claim for payment;
- Knowingly makes, uses or causes to be used a false record of statement materials to a false or fraudulent claims; or
- Conspires to commit a violation of [the FCA];
- Is liable for Reverse False Claims (sec. H)
“Knowingly” Presenting a False Claim:

- Has actual knowledge;

- Acts in **deliberate ignorance** of the truth or falsity of the information; or

- Acts in **reckless disregard** of the truth or falsity of the information

State Fin. Law §188(3)
MFCU Recent Trends: Services for Individuals With Developmental Disabilities
Provider Ineligible for Reimbursement

Akin Ross (MSC) / Continuing Developmental Services Monarch

Medicaid regulations required Associate’s degree or R.N. for Medicaid Service Coordinator position;

Ross supplied phony college diploma of B.S. degree;

Result: Ross prosecuted for GL3; pled to Petite Larceny, restitution for $14,000 of salary;
Provider employer returned $24,000 to Medicaid for services Ross was not qualified to perform
Billing fraud: Services not provided

Tina Gabel/Eric Brandt

Fraudulent billing scheme for Community Habilitation Services that were not provided to Gabel’s disabled child;

Gabel filed false claims for reimbursement for Brandt’s no-show job

Result: Gabel prosecuted for GL3; pled to Petit Larceny; $60,000 restitution
Brandt prosecuted for GL4 felony; pled to Petit Larceny; $30,000 restitution
EIHAB Human Services, Inc.

FCA claims alleged false claims for Day Habilitation services allegedly provided to recipients on days in which provider’s records reflected they were absent;

Result: Civil settlement of FCA claims for $90,000
Prosecution for Theft from Residents

People v. Kimberly Breault

MFCU charged former employee of provider who supervised residents’ funds with stealing $3,000 from residents with developmental disabilities

Result: Conviction for Falsifying Business Records and Petit Larceny
Individual Prosecutions Achieve Justice for the Victims.

And Deter Crime.

95 year old resident, smiling after the return of $1,300 stolen from her
Prosecutions and civil actions that address systemic causes of abuse and neglect improved care for hundreds residents at facilities.
Provider Tools
NYS Attorney General’s MFCU Website

http://www.ag.ny.gov/medicaid-fraud/resource-center
List of Excluded Individuals / Entities (LEIE)

- [http://oig.hhs.gov/exclusions/authorities.asp](http://oig.hhs.gov/exclusions/authorities.asp)

- [http://www.omig.state.ny.us/data/content/view/72/52](http://www.omig.state.ny.us/data/content/view/72/52)
License / Certificate Verification

• http://www.op.nysed.gov/opsearches.htm

• https://prometric.com/registry/public
Self-Disclosure to MFCU: Why do it?

- Held in Abeyance List
- OMIG required to Refer Cases involving Fraud to MFCU
- Reputational Benefits
Self-Disclosure to MFCU: Why do it? (cont’d)

- Resolution through single agency
- Potential time savings
- Facilitate more effective criminal investigation to bring employee(s) committing fraud to justice
- Zero interest rate settlement
- MFCU may be able to recover for wages paid to the employee who committed fraud
Self-Disclosure to MFCU: Who to contact?
# MFCU Regional Offices by County

<table>
<thead>
<tr>
<th>Region</th>
<th>ALBANY</th>
<th>BUFFALO</th>
<th>ROCHESTER</th>
<th>SYRACUSE</th>
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<tbody>
<tr>
<td>Counties Included:</td>
<td>Albany</td>
<td>Allegany</td>
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<td>Washington</td>
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<table>
<thead>
<tr>
<th>Contact</th>
<th>Kathleen Boland, Regional Director</th>
<th>Gary Baldauf, Regional Director</th>
<th>Catherine Wagner, Regional Director</th>
<th>Ralph Tortora, Regional Director</th>
</tr>
</thead>
<tbody>
<tr>
<td>46</td>
<td>(518) 553 - 6011</td>
<td>(716) 853 - 8500</td>
<td>(585) 262 - 2860</td>
<td>(315) 423 - 1104</td>
</tr>
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</table>
### MFCU Regional Offices by County

<table>
<thead>
<tr>
<th>Region:</th>
<th>NYC</th>
<th>HAUPPAUGE</th>
<th>PEARL RIVER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Counties Included:</td>
<td>Bronx, Kings, New York, Queens</td>
<td>Nassau, Suffolk</td>
<td>Dutchess, Orange, Putnam, Sullivan, Ulster, Westchester</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contact:</th>
<th>Christopher Shaw, Regional Director</th>
<th>Jane Zwirn-Turkin, Regional Director</th>
<th>Anne Jardine, Regional Director</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(212) 417 – 5339</td>
<td>(631) 952 - 6966</td>
<td>(845) 732 – 7535</td>
</tr>
</tbody>
</table>
Self-Disclosure to MFCU: What to expect?

- If fraud is involved,
  - MFCU may conduct undercover / surveillance operation to gather evidence for a criminal prosecution.
  - If evidence is sufficient, person(s) who committed crime(s) will be prosecuted.
  - Provider will repay Medicaid for loss, no interest or added damages unless knowing filing of false claims.
  - Upon conviction, criminal defendant may be required to make restitution to provider for wages paid.
Self-Disclosure to MFCU: What to expect?

- If no fraud is involved,
  - Provider may consult with MFCU before conducting internal audit-investigation (may be in person, by telephone, or in-writing)
  - Provider should present internal findings to MFCU
  - MFCU will review provider findings to verify that there is no fraud
  - Provider will repay Medicaid loss, no interest or added damages unless knowing filing of false claims.
Self-Disclosure to MFCU: Settlement Agreement

• Self-disclosure
• Covered conduct
• Audit period
• Restitution amount
• Terms of repayment
• State release as to restitution, and FCA liability if applicable
• AG release regarding criminal prosecution
Patient Abuse Is One of the Most Underreported Crimes in the Nation
Why?

- Victims might not recall the abuse.
- Victims are often vulnerable and may fear retaliation from caregivers.
- Witnesses, if any, may be reluctant to report the abuse.
Everyone has the right to feel safe at home.

We respect for the very difficult work that caregivers in residential care facilities do. We appreciate the patience, dedication, and tolerance required for the job.

Mistakes, accidents, or errors in professional judgment happen.

The criminal law focuses on those who knowingly violate the law and physically abuse, neglect or mistreat a resident within their care.
WILFUL RESIDENT ABUSE IS A CRIME

“ANY person who commits an act of:

- Physical abuse,
- Neglect,
- Mistreatment, or
- Who fails to report such an act

is punishable by imprisonment not exceeding one year, or by a fine not exceeding ten thousand dollars or by both”.

Public Health Law §§ 2803(d)(7) and 12-b(2)
Mandatory Reporting

- Who must report under PHL 2803-d(3)?
  - Any employee of a health care facility

- When you must report?
  - Reasonable cause to believe

- Failing to report can lead to criminal prosecution

- Just because you report an incident does not mean that someone is getting arrested.
How do you report abuse, neglect or mistreatment?

- NYS Department of Health:
  - 1-888-201-4563

- Justice Center for the Protection of People with Special Needs
  - Toll Free 1-855-373-2122

- NYS Attorney General Medicaid Fraud Control Unit:
  - [www.ag.ny.gov](http://www.ag.ny.gov)
  - Toll Free Hotline: 1-866-697-3444
  - NYC Office: 212-417-5300
Charting and Record Keeping

- We review charts to see if the resident is getting proper care, and to investigate incidents.

- Incomplete charts make it look as if a resident is not being provided with services and care.

- Help us close out cases where there really is no incident of abuse, neglect or mistreatment.
Omitting to make a true entry in the business records of an enterprise in violation of a duty to do so with the “intent to defraud” is a felony.

Every health care facility is an “enterprise” and every nursing note, progress note, chart, report etc. is a business record.

FALSIFYING records or a material OMISSION in an attempt to cover up a patient abuse or fraud could result in a felony arrest.
Recent MFCU Prosecutions for Abuse: Prosecution for Endangering Health Care Facility Resident

Direct Service Assistant at Long Island group home; Convicted of Endangering the Welfare of an Incompetent or Physically Disabled Person in the 1st degree, a class E felony;

Violently punched resident in the face.

Allexy Chambers pled guilt to Endangering the Welfare of an Incompetent or Physically Disabled Person in the 2d degree, a class A misdemeanor.
Crimes by Caregivers Using Social Media

MFCU has prosecuted 7 nursing home employees since 2013 for recording humiliating images of residents for the employees’ amusement.

Some images were also posted on the internet via Facebook and Snapchat.
Crimes by Caregivers Using Social Media

- Aides of 2 Oswego nursing homes convicted of violating the Public Health Law & residents’ rights to a dignified existence and privacy in treatment and care;

- Took and shared cell phone photos and videos of residents being teased or shown in a vulnerable state.

- Defendants pled guilty to 1 count of Willful Violation of the Public Health Laws and were sentenced to serve 4 weekends in jail.
Takeaways

- Fill out your reports truthfully.
- Fill out your charts accurately.
- Abuse, Neglect or Mistreatment MUST be reported.
- If an accident or incident happens, DO NOT cover it up – report it. Failure to report is not worth losing your livelihood and possibly being prosecuted.
- Reporting an incident or accident does not automatically lead to prosecution.
Drug Diversion in Health Care Facilities Is Dangerous

- I-STOP
- Theft of narcotics in a medical facility is dangerous to the caregiver and patient.
- Many thefts involve falsifying a residents chart to indicate that a drug was administered.
  - Falsifying a patient chart to cover-up the theft of narcotics is a felony.
    - Falsifying Business Records in the 1st Degree
    - Endangering the Welfare of an Incompetent of Physically Disabled Person
    - Heightened narcotics felony charges based on weight
Get Help Before It’s Too Late - Confidential Programs

- Statewide Peer Assistance for Nurses (SPAN)
  - Hotline – 1-800-457-7261
  - Peer Assistance / Support Groups

- 1199 SEIU Member Assistance Program
  - 646-473-6900
To Report Medicaid Fraud or Patient Abuse/Neglect at Health Care Facility, call MFCU

1 800 771 -7755
QUESTIONS?