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Legal Issues with Eligibility and Fraud Audits

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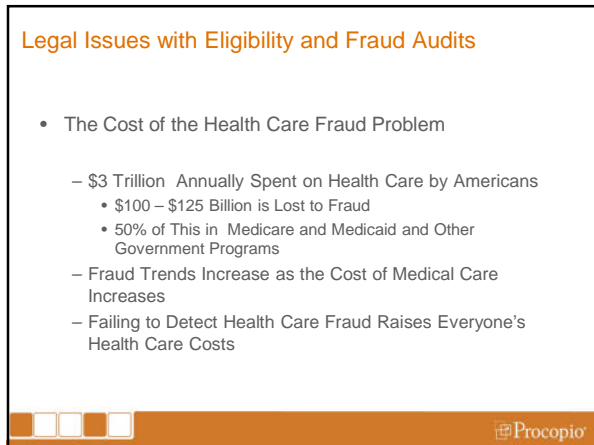
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Legal Issues with Eligibility and Fraud Audits

- The Cost of the Health Care Fraud Problem
  - \$3 Trillion Annually Spent on Health Care by Americans
    - \$100 – \$125 Billion is Lost to Fraud
    - 50% of This in Medicare and Medicaid and Other Government Programs
  - Fraud Trends Increase as the Cost of Medical Care Increases
  - Failing to Detect Health Care Fraud Raises Everyone's Health Care Costs

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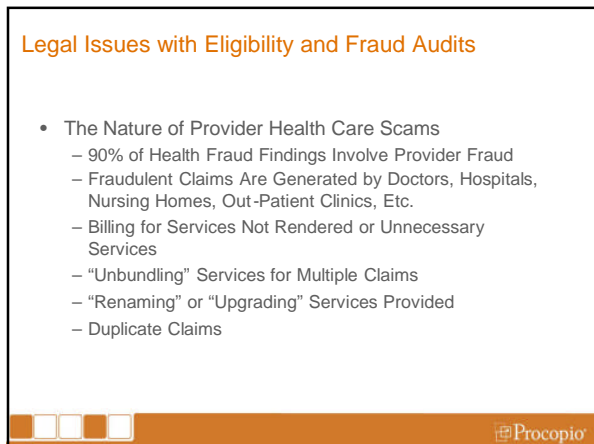
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Legal Issues with Eligibility and Fraud Audits

- The Nature of Provider Health Care Scams
  - 90% of Health Fraud Findings Involve Provider Fraud
  - Fraudulent Claims Are Generated by Doctors, Hospitals, Nursing Homes, Out-Patient Clinics, Etc.
  - Billing for Services Not Rendered or Unnecessary Services
  - "Unbundling" Services for Multiple Claims
  - "Renaming" or "Upgrading" Services Provided
  - Duplicate Claims

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Legal Issues with Eligibility and Fraud Audits

- The Nature of Participant Health Care Scams
  - Use of Another Person’s Coverage
  - Falsification of Employee or Dependent Status
  - Submission of False Claims
  - Many Individuals Feel That There is Nothing Wrong with “Soft Fraud”



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Legal Issues with Eligibility and Fraud Audits

- Statutory Remedies for Health Plan Fraud
  - Federal Agencies Actively Prosecute Fraud Perpetrators for Crimes Against Federal Programs
  - Federal Enforcement by FBI/FDA/HHS/OIG/DOL/DOD/DEA/FTC/IRS/VA
  - California Also Considers Health Care Fraud to be a Crime
  - However Most Recourse for Fraud Against Health Plans is Civil
  - Remedies are Available Against Participating Employees, Employers, Unions and Benefit Plans that Participate in or Tolerate Fraud



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Legal Issues with Eligibility and Fraud Audits

- California’s Laws Provide Options to Insurers Victimized by Health Fraud
  - An Insurer May Void an Insurance Policy for Material Misrepresentation
  - If an Application for Insurance was Fraudulent, the Policy is Void “*Ab Initio*” – Rescission is Possible
  - If Fraud is Rampant, the Entire Policy May be Rescinded
  - A Defrauded Insurer May also Sue for Damages Resulting From Misrepresentation



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Legal Issues with Eligibility and Fraud Audits

- Insurer Remedies May Be Pursued Against All Perpetrators of the Fraud
  - Participating Employees and Dependent's Face Loss of Coverage and Damage Claims for Reimbursement
  - Complicity in False Claims Exposes Unions and School Districts to Liability Exposure
  - Potential Damages Include Amounts Paid to Ineligible Persons
  - In Addition, Fraud Claims are Possible Against Unions or School Districts Enabling Fraud Which Provide for Double Damages



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Legal Issues with Eligibility and Fraud Audits

- What Can Benefit Managers Do To Prevent Fraud and Limit Exposure
  - Utilize an Experienced Third Party Administrator
  - Understand the Policy Requirements of the Plan's Insurers re: Employee and Dependent Eligibility
  - Be Familiar with the Insurers' Fraud Prevention Policies and Procedures
  - Assure Accuracy of Enrollment Information
  - Adopt an Effective Fraud Prevention Policy and Publicize It
  - Diligently and Systematically Audit Participant and Dependent Eligibility



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Legal Issues with Eligibility and Fraud Audits

- An Effective Participant Eligibility Audit Procedure Will:
  - Determine Whether Ineligible Persons Are Currently Covered
  - Work in Conjunction with the Fraud Prevention Programs of the Plan's Insurers
  - Involve the Assistance and Vigilance of the Collective Bargaining Parties
  - Educate Employees of the Costs of Fraud
  - Reduce Costs and Risk Exposure to the Plan
  - Reduce Costs to Covered Employees



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### Legal Issues with Eligibility and Fraud Audits

- An Effective Participant Eligibility Audit Program Will Also:
  - Be Supervised by the Plan's TPA Under Trustee Direction
  - Provide for Recourse Against Fraud Perpetrators in Appropriate Cases
  - Shift Costs to Offending Parties
  - Result in Clarified Bargaining Agreement Language



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