

EUROPEAN HEALTHCARE FRAUD AND CORRUPTION NETWORK

Fraud Prevention in Germany

**Why is the Government still amending the
Wording of Law ?**

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- Expenditures & Fraud in Germany**
- Predominant Areas of Fraud**
- Lessons Learned**
- Opportunities for Corrupt Misbehavior**
- Corrupt Arrangements**
- Legal Relationships**
- Compliance Programs**
- German Legislation**
- What Needs To Be Done ?**
- Bibliography**

Health Care Expenditures 2010

€ 278 Billion

The incidence of Health Care Fraud in Germany remains at alarmingly high levels despite attention in recent years from the Government and Law Enforcement.

EHFCN estimates Losses caused by Fraud and Corruption between

5 – 8% of total Health Care Expenditures in Germany.

€ 5 – 18 Billion p.a. lost because of:

Billing for services that were never rendered.

Providing unnecessary treatments or tests.

Upcoding (billing for a more expensive diagnosis or procedure).

Falsifying or exaggerating the severity of the medical illness to justify coding.

Accepting and / or providing kickbacks for referral.

Providing incentives to actual or potential referral sources.

Counterfeit Drugs



1. Fraud control is more complex and difficult than is usually appreciated.
2. The degree of trust society places in health care providers.
3. Oblivious to the magnitude of the problem, prosecutors, tax authorities and insurance companies underinvest in fraud control.
4. Existing fraud control arrangements appear to be ineffective in detecting criminal fraud.
5. The huge claims processing mechanisms (transactions), with electronic submission and electronic payment, presents dangers for fraud control.

Expenditures = Revenues



Existing Legal Relationship

Outpatient Physician & Provider



Referral Beneficiary

- 

Medication & Drugs
€ 30.2 Billion
- 

Physical Therapy
€ 4.6 Billion
- 

Durable Medical Equipment & Orthotics
€ 6.0 Billion
- 

Inpatient Hospital Services
€ 58.1 Billion

Pre-existing Legal Relationships can lower Transaction Costs and serve as a Basis for the Enforcement of Corrupt Arrangements.

[Lambsdorff et al., 2002]

Average Referral Value

Medication & Drugs: € 45.51

Physical Therapy: € 55.55

Durable Medical Equipment & Orthotics: € 139.55

Inpatient Hospital Services: € 3,447.00

Number of Transactions

Medication & Drugs: Million 885

Physical Therapy: Million 79

Durable Medical Equipment & Orthotics: Million 41

Inpatient Hospital Services: Million 16



The Intention to act corruptly is stronger in Case of a high Bribe than in Case of a low Bribe.

[Rabl T., 2011]

Durable Medical Equipment & Orthotics Company and 17 Fraudulent Contracted Physicians

Outpatient Physicians	Reimbursement Revenue Health Insurance	Kickback Payments
17 Orthopedic Practitioners	€ 691,064.76	€ 74,611.04
Period October, November, December 2007		

2007 Totals

Orthopedic Referrals	€ 2,764,256.00	€ 298,444.16
Ø Referral Revenue / Kickback	€ 162,603.29	€ 17,555.53
Ø Physician Income 2006	€ 86,169.00	+ 19.8 % Kickbacks

Some Network Conditions favor the Emergence of unethical Behavior.

[Kulik et al., 2008]

Health Sector Actors		Pre-existing Legal Relationship Reimbursement Agreements	Compliance Program
Pharmacist	21,441	Association of Pharmacist (ABDA)	NO
Medical Supply Stores	2,500	Guilds, Associations	YES
Outpatient Physicians	121,414	Physician Association (KV)	YES
Physical Therapy	28,950	Association of Therapist	NO
Hospitals	2,084	Hospital Association	NO



Abstract behavioral Guidelines facilitate Corruption.

[Rabl T., 2011]

No legitimate Compliance Program in Germany

- Implementing written policies, procedures and standards of conduct
- Designating a compliance officer and compliance committee
- Conducting effective training and education
- Developing effective lines of communication
- Enforcing standards through wellpublicized disciplinary guidelines
- Conducting internal monitoring and auditing
- Responding promptly to detected offenses and developing corrective action
- Preventing fraud, abuse, and waste in health care plans

Voluntarily developed Compliance Programs for Health Care in Germany:

- BVMed Code of Conduct Medical Device Industry (Kodex Medizinprodukte)
- Physicians Code of Conduct (Muster-) Berufsordnung September 2011
- Sana Compliance (Verhaltenskodex) Juni 2011

2007 (GKV - Org WG)

128 Social Code Five has been introduced, generally prohibiting the provision and acceptance of any kind of benefits with respect to hospitals and physicians. Prohibited are:

1. Co-location of items and supplies with the referral source (stock inventory).
2. Compensation programs providing medical equipment or staff and / or the “dumping” of medical equipment in a facility.
3. Providing incentives or kick-backs to actual or potential referral sources.



2007 (AMNOG)

Section 128 (2) Social Code Five includes pharmacists and HomeCare services.

2011 (GKV - VStG) coming into effect January 1, 2012

Section 128 (2) Social Code Five will include service providers for physical therapy and prohibiting physicians holding interest in a firm of whom can refer referral business to the other.

Section 73 Social Code Five will prohibit paying of fees to a physician for each referral the physician signs.

Federal Supreme Court (BGH)

The German Federal Supreme Court will decide if a licensed physician being subject to personal criminal liability for accepting inducements or incentives from drug and device manufacturers.

331 Penal Code Bribery

299 Penal Code Agent of Business Operation



Federal Supreme Court (BGH)

Ruling by the Great Senate for Criminal Matters could result that both physicians and companies will be exposed to enforcement by public prosecutors and police authorities.



What Needs To Be Done ?

1. Implementation of **Standard Contracts** as legal documents designed centrally by the Department of Health [or Joint-Commission (G-BA in Germany)] setting out the rights and responsibilities of both the provider and insurance company in service areas [e.g. NHS-England].
2. Disclosure of a **Federal Register** notice, which sets forth a **Compliance Program Guidance** for health care providers [e.g. Health Care Financing Administration (HCFA) & the Department of Justice (DOJ) – US].
3. Implementation of **Special Investigative Units** which sit at the end of the referral pipeline [Stellen zur Bekämpfung von Fehlverhalten – Germany].
4. Functional coordination and coordinating strategy with **Tax Authorities** [multidisciplinary fraud control strategies and intelligence gathering].

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Thank you ...

... for your Attention and have a
great Conference and Fun
in Krakow!

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