

PENNSYLVANIA OFFICE OF ATTORNEY GENERAL



Bruce R. Beemer, Attorney General
Medicaid Fraud Control Section
Neglect of Care-Dependent Person Unit

Disclaimer

- This Power Point presentation is solely intended as an informative presentation about the Medicaid Fraud Control Section within the Pennsylvania Office of Attorney General.
- Information provided by this presentation does not directly or indirectly represent the views or opinions of the Attorney General.
- Consent must be given prior to the distribution of this Power Point presentation.

Presenters

Special Agent Stephen Stahl:

SA Stephen Stahl is a graduate from Marywood University in Scranton, Pennsylvania with a Bachelor's degree in History Political Science (Pre-Law), and has a Master's degree in Health Care Administration from Utica College in Utica, New York.

SA Stahl started with the Commonwealth in 2008 as a Claims Investigation Agent with the Pennsylvania Office of Inspector General. SA Stahl investigated fraud cases involving welfare fraud (recipient) including: SNAP benefits, Medical Assistance, CCIS, and Long Term Care.

In 2014, SA Stahl started with the Pennsylvania Office of Attorney General as a Medicaid Analyst with the Medicaid Fraud Control Section. Then, in 2015, SA Stahl was promoted as a Special Agent investigating cases involving provider fraud.

Presenters Continued...

Special Agent Mark Brumaghim:

SA Brumaghim is a retired Detective who had 26 years of service with Lower Paxton Township Police Department. SA Brumaghim spent the first six years in the Traffic Safety Unit before transferring to the Patrol Unit. He was promoted to the rank of Detective in 2000. SA Brumaghim started his career in the Criminal Investigation Unit investigating property crimes such as burglaries and thefts. From there, he transferred to violent crimes where he spent the next two years. SA Brumaghim spent the last ten years of his career investigating financial crimes such as credit card fraud, identity theft, and embezzlement. SA Brumaghim has extensive experience and training in investigating fraud type crimes.

SA Brumaghim retired from Lower Paxton Township in 2014 and immediately went to work for the Pennsylvania Office of Attorney General. He currently investigates cases of neglect of a care-dependent persons.

Commonwealth Attorney's Act

- The Commonwealth Attorney's Act establishes the Attorney General as the chief legal and law enforcement officer of the Commonwealth and provides the following fundamental duties of the Office of Attorney General:
 - To be the Commonwealth's chief law enforcement officer charged with the responsibility for the prosecution of organized crime and public corruption. This law enforcement program includes a criminal investigations unit and drug law enforcement program as well as direction of statewide and multi-county investigating grand juries and a Medicaid Fraud Control Section.
 - To represent the Commonwealth and all Commonwealth agencies and upon the request of the Auditor General, State Treasurer, and Public Utilities Commission in any action brought by or against the Commonwealth or its agencies; to furnish upon request legal advice to the Governor or the head of any Commonwealth agency.

Continued...

- To review for form and legality all proposed rules and regulations for Commonwealth agencies.
- To review for form and legality all Commonwealth deeds, leases, and contracts to be executed by Commonwealth agencies.
- To collect, by suit or otherwise, all debts, taxes and accounts due to the Commonwealth which shall be referred to and placed with the Attorney General.
- To administer the provisions relating to consumer protection as well as appoint the Advisory Committee.
- To represent the Commonwealth and its citizens in any action brought for violation of the Antitrust Laws of the United States and the Commonwealth.

**The Attorney General, in addition, serves as a member of the Board of Pardons, the Joint Committee on Documents, the Hazardous Substances Transportation Board, the Board of Finance and Revenue, the Pennsylvania Commission on Crime & Delinquency, the Civil Disorder Commission and the Municipal Police Officers Education and Training Commission.

Medicaid Fraud Control Section (MFCS)

- Congress enacted Section 17 of the Medicare and Medicaid Anti-Fraud and Abuse Amendments of 1977 (Public Law 95-142).
- Established and funded the state Medicaid Fraud Control Section to investigate and prosecute provider fraud in the Medicaid program.
- In 1978, in response to the new law, the Pennsylvania Office of Attorney General formed its Medicaid Fraud Control Section.
- Federally mandated and funded (75%) with federal money.

MFCS Demographics

Andrew E. Demarest
Chief Deputy Attorney General

James Mancini
Senior Supervisory Special
Agent

- Attorneys
- Supervisory Special Agents
- Special Agents
- Nurse Analyst
- Medicaid Analysts
- Support Staff

Medicaid Fraud

62 P.S. § 1407

- **Knowingly** or **intentionally** present for allowance or payment any false or fraudulent claim or cost report for furnishing services or merchandise under medical assistance, or to knowingly present for allowance or payment any claim or cost report for medically unnecessary services or merchandise under medical assistance, or to knowingly submit false information, for the purpose of obtaining greater compensation than that to which he is legally entitled for furnishing services or merchandise under medical assistance, or to knowingly submit false information for the purpose of obtaining authorization for furnishing services or merchandise under medical assistance.

62 P.S. §1407 Continued...

- Solicit or receive or to offer or pay any remuneration, including any kickback, bribe or rebate, directly or indirectly, in cash or in kind from or to any person in connection with the furnishing of services or merchandise for which payment may be in whole or in part under the medical assistance program or in connection with referring an individual to a person for the furnishing or arranging for the furnishing of any services or merchandise for which payment may be made in whole or in part under the medical assistance program.
- Submit a duplicate claim for services, supplies or equipment for which the provider has already received or claimed reimbursement from any source.
- Submit a claim for services, supplies or equipment which were not rendered to a recipient (ghost visit).
- Submit a claim for services, supplies or equipment which includes costs or charges not related to such services, supplies, or equipment rendered to the recipient.

62 P.S. § 1407 Continued...

- Submit a claim or refer a recipient to another provider by referral, order or prescription, for services, supplies or equipment which are not documented in the record in the prescribed manner and are of little or no benefit to the recipient, are below the accepted medical treatment standards, or are unneeded by the recipient.
- Submit a claim which misrepresents the description of services, supplies or equipment dispensed or provided; the dates of services; the identity of the recipient; the identity of the attending, prescribing or referring practitioner; or the identity of the actual provider.
- Submit a claim for reimbursement for a service, charge or item at a fee or charge which is higher than the provider's usual and customary charge to the general public for the same service or item.
- Submit a claim for a service item which was not rendered by the provider (rendered by another).
- Dispense, render or provide a service or item without a practitioner's written order and the consent of the recipient, except in emergency situations, or submit a false claim for a service or item which was dispensed, or provided without the consent of the recipient, except in emergency situations.

62 P.S. § 1407 Continued...

- Except in emergency situations, dispense, render or provide a service or item to a patient claiming to be a recipient without making a reasonable effort to ascertain by verification through a current medical assistance identification card, that the person or patient is, in fact, a recipient who is eligible on the date of service and without another available medical resource.
- Enter into an agreement, combination or conspiracy to obtain or aid another to obtain reimbursement or payments for which there is not entitlement.
- Make false statement in the application for enrollment as a provider.

If Found Guilty of 62 P.S. § 1407...

- 3rd Degree Felony for each such violation with a maximum penalty of \$15,000.00 and 7 YEARS of imprisonment.
- Previously convicted in any state or federal court of conduct that would constitute a violation of subsection (a), a subsequent allegation, indictment or information under subsection (a): Shall be classified as a 2nd Degree Felony with a maximum penalty of \$25,000.00 and 10 YEARS imprisonment.
- Restitution, court costs, fines, probation, possible community service, suspension/revocation of license(s), and HHS-OIG exclusion



Neglect of Care-Dependent Person

18 Pa.C.S. § 2713

A caretaker is guilty of neglect of a care-dependent person if he/she....

- **Intentionally, knowingly or recklessly** causing bodily injury or serious bodily injury by failing to provide treatment, care, goods or services necessary to preserve the health, safety or welfare of a care-dependent person for whom he is responsible to provide care.
- **Intentionally or knowingly** uses a physical restraint or chemical restraint or medication on a care-dependent person, or isolates a care-dependent person contrary to law or regulation, such that bodily injury or serious bodily injury results.

A Closer Look...

A **caretaker** is any person who...

- Is an owner, operator, manager or employee of a nursing home, personal care home, domiciliary care home, community residential facility, intermediate care facility for the mentally retarded, adult daily living center, home health agency or home health service provider whether licensed or unlicensed;
- Provides care to a care-dependent person in the setting described in paragraph (1); or
- Has an obligation to care for a care-dependent person for monetary consideration in the settings described in paragraph (1) or in the care-dependent person's home.

A Closer Look Continued...

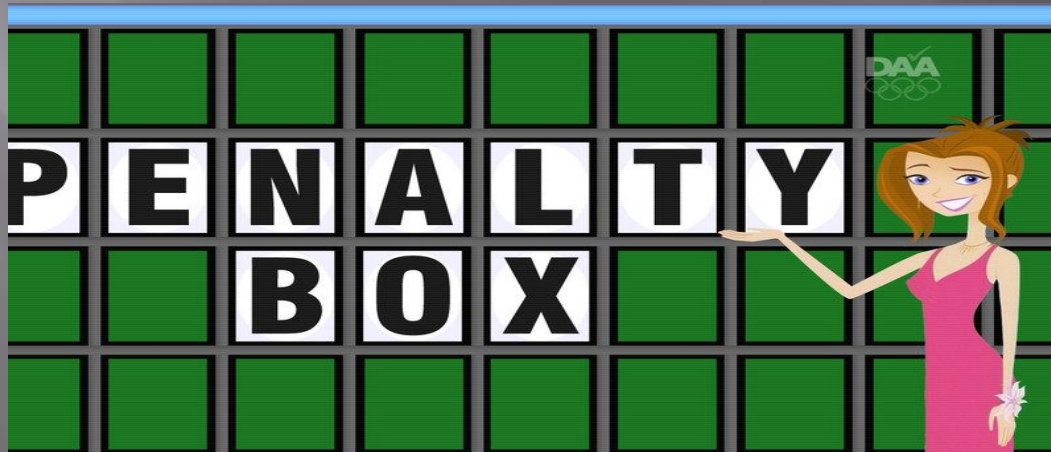
A **care-dependent person** is...

- Any adult who, due to physical or cognitive disability or impairment, requires assistance to meet his needs for food, shelter, clothing, personal care or health care.

A **person** is a natural person, corporation, partnership, unincorporated association or other business entity.

If Found Guilty of 18 Pa.C.S. § 2713...

- Penalties...
- **Bodily Injury: Misdemeanor of the First Degree; Maximum: 5 YEARS, \$10,000.00**
- **Serious Bodily Injury: Felony of the First Degree; Maximum 20 YEARS, \$25,000.00**



Neglect Unit's Jurisdiction



Where's the Fraud?!

| Outcomes | FY 2012 | FY 2013 | FY 2014 | 3- Year Total |
|----------------------------------|----------------|----------------|----------------|----------------------|
| Criminal Convictions | 30 | 54 | 46 | 130 |
| Civil Judgements and Settlements | 12 | 13 | 12 | 37 |

- For FYs 2012 through 2014, the Pennsylvania MFCS reported 130 criminal convictions, 37 civil judgements and settlements, and combined criminal and civil recoveries of \$80 million.
- Of the Unit's 130 convictions over the 3 year period, 126 involved provider fraud and 4 involved patient neglect.

Where's the Fraud Continued...

| Type of Recovery | FY 2012 | FY 2013 | FY 2014 | 3-Year Total |
|-------------------------|---------------------|---------------------|--------------------|---------------------|
| Global Civil | \$41,792,261 | \$28,062,504 | \$4,352,940 | \$74,207,705 |
| Non-global Civil | \$0 | \$0 | \$0 | \$0 |
| Criminal | \$1,462,832 | \$2,666,616 | \$1,354,491 | \$5,483,939 |
| Total Recoveries | \$43,255,094 | \$30,729,120 | \$5,707,431 | \$79,691,645 |
| Total Expenditures | \$4,442,013 | \$4,724,526 | \$5,270,942 | \$14,437,382 |

***Global Civil Cases- civil false claims actions involving the U.S. Department of Justice and other State MFCUs. The National Association of Medicaid Fraud Control Units facilitates the settlement of global cases.

*** Pennsylvania does not have a False Claims Act

Types of Investigations

APPENDIX C

Investigations Opened and Closed By Provider Category for FYs 2012 Through 2014

Table C-1: Fraud Investigations

| Provider Category | FY 2012 | | FY 2013 | | FY 2014 | |
|--|------------|-----------|------------|------------|------------|------------|
| | Opened | Closed | Opened | Closed | Opened | Closed |
| Facilities | | | | | | |
| Hospitals | 1 | 0 | 0 | 0 | 0 | 0 |
| Nursing facilities | 4 | 8 | 6 | 7 | 5 | 5 |
| Other long-term-care Facilities | 0 | 0 | 0 | 0 | 2 | 1 |
| Substance abuse treatment centers | 0 | 1 | 1 | 0 | 0 | 0 |
| Other | 2 | 2 | 1 | 1 | 6 | 2 |
| Subtotal | 7 | 11 | 8 | 8 | 13 | 8 |
| Practitioners | | | | | | |
| Doctors of medicine or osteopathy | 6 | 5 | 11 | 6 | 14 | 11 |
| Dentists | 2 | 5 | 4 | 5 | 3 | 6 |
| Podiatrists | 0 | 0 | 1 | 1 | 0 | 0 |
| Optometrists/opticians | 1 | 0 | 0 | 1 | 2 | 1 |
| Counselors/psychologists | 30 | 19 | 37 | 40 | 34 | 34 |
| Chiropractors | 0 | 0 | 0 | 0 | 0 | 0 |
| Other | 1 | 1 | 3 | 1 | 2 | 3 |
| Subtotal | 40 | 30 | 56 | 54 | 55 | 55 |
| Medical Support | | | | | | |
| Pharmacies | 2 | 1 | 3 | 2 | 2 | 3 |
| Pharmaceutical Manufacturers | 16 | 15 | 21 | 11 | 22 | 19 |
| Suppliers of durable medical equipment and/or supplies | 1 | 0 | 1 | 1 | 0 | 0 |
| Laboratories | 0 | 0 | 0 | 0 | 1 | 0 |
| Transportation services | 2 | 3 | 0 | 2 | 0 | 0 |
| Home health care agencies | 4 | 2 | 5 | 2 | 8 | 4 |
| Home health care aides | 95 | 60 | 140 | 128 | 108 | 138 |
| Nurses, physician assistants, nurse practitioners, certified nurse aides | 0 | 0 | 0 | 0 | 0 | 0 |
| Radiologists | 0 | 0 | 0 | 0 | 0 | 0 |
| Medical support—other | 3 | 3 | 4 | 1 | 0 | 4 |
| Subtotal | 123 | 84 | 174 | 147 | 141 | 168 |

Table C-1 (Continued): Fraud Investigations

| Provider Category | FY 2012 | | FY 2013 | | FY 2014 | |
|----------------------------------|------------|------------|------------|------------|------------|------------|
| | Opened | Closed | Opened | Closed | Opened | Closed |
| Managed care organizations | 0 | 0 | 0 | 0 | 0 | 0 |
| Medicaid program administration | 0 | 0 | 0 | 0 | 0 | 0 |
| Billing company | 0 | 0 | | 0 | 0 | 0 |
| Other | 0 | 0 | 0 | 0 | 0 | 0 |
| Subtotal | 0 | 0 | 0 | 0 | 0 | 0 |
| Total Provider Categories | 170 | 125 | 238 | 209 | 209 | 231 |

Source: OIG analysis of Unit-submitted documentation, 2015.

Table C-2: Patient Abuse and Neglect Investigations

| Provider Category | FY 2012 | | FY 2013 | | FY 2014 | |
|--|----------|----------|-----------|-----------|-----------|-----------|
| | Opened | Closed | Opened | Closed | Opened | Closed |
| Nursing facilities | 3 | 1 | 6 | 6 | 6 | 6 |
| Other long-term-care facilities | 5 | 4 | 9 | 8 | 10 | 11 |
| Nurses, physician assistants, nurse practitioners, certified nurse aides | 0 | 0 | 0 | 0 | 0 | 0 |
| Home health aides | 0 | 0 | 0 | 0 | 0 | 0 |
| Other | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 8 | 5 | 15 | 14 | 16 | 17 |

Source: OIG analysis of Unit-submitted documentation, 2015.

Table C-3: Patient Funds Investigations

| Provider Category | FY 2012 | | FY 2013 | | FY 2014 | |
|--|----------|----------|----------|----------|----------|----------|
| | Opened | Closed | Opened | Closed | Opened | Closed |
| Nondirect care | 2 | 1 | 1 | 0 | 1 | 2 |
| Nurses, physician assistants, nurse practitioners, certified nurse aides | 0 | 0 | 0 | 0 | 0 | 0 |
| Home health aides | 0 | 0 | 0 | 0 | 0 | 0 |
| Other | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 2 | 1 | 1 | 0 | 1 | 2 |

Source: OIG analysis of Unit-submitted documentation, 2015.

News from Around the State...

<http://wnep.com/2015/02/19/woman-charged-with-medicaid-fraud/>

<http://wnep.com/2015/10/20/two-doctors-charged-after-urgent-care-raid/>

<http://www.wearecentralpa.com/news/woman-charged-with-fraud>

How Cases Are Referred

APPENDIX B

Pennsylvania State Medicaid Fraud Control Unit Referrals by Referral Source for FYs 2012 Through 2014

| Referral Source | FY 2012 | | | FY 2013 | | | FY 2014 | | |
|---|------------|-----------------|---------------|------------|-----------------|---------------|------------|-----------------|---------------|
| | Fraud | Abuse & Neglect | Patient Funds | Fraud | Abuse & Neglect | Patient Funds | Fraud | Abuse & Neglect | Patient Funds |
| Medicaid agency – PI/SURS ³² | 93 | 1 | 1 | 131 | 0 | 0 | 133 | 1 | 0 |
| Medicaid agency – other | 3 | 3 | 0 | 3 | 2 | 0 | 0 | 4 | 0 |
| Managed care organizations | 17 | 0 | 0 | 22 | 0 | 0 | 21 | 0 | 0 |
| State survey and certification agency | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Other State agencies | 2 | 1 | 0 | 5 | 7 | 0 | 1 | 5 | 0 |
| Licensing board | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Law enforcement | 3 | 0 | 0 | 14 | 3 | 0 | 7 | 1 | 0 |
| Office of Inspector General | 1 | 1 | 0 | 3 | 1 | 0 | 1 | 1 | 0 |
| Prosecutors | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Providers | 23 | 0 | 0 | 26 | 0 | 0 | 10 | 0 | 0 |
| Provider associations | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Private health insurer | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Long-term-care ombudsman | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Adult protective services | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Private citizens | 8 | 2 | 1 | 7 | 2 | 0 | 9 | 3 | 1 |
| MFCU hotline | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Self-generated | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Other | 19 | 0 | 0 | 28 | 0 | 0 | 27 | 1 | 0 |
| Total | 170 | 8 | 2 | 239 | 15 | 0 | 209 | 16 | 1 |
| Annual Total | 180 | | | 254 | | | 226 | | |

Source: OIG analysis of Unit-submitted documentation, 2015.

³² The abbreviation “PI” stands for program integrity; the abbreviation “SURS” stands for Surveillance and Utilization Review Subsystem.

Who MFCS Works With...

- Local, State, and Federal Law Enforcement
- Governmental Agencies
- Providers



National Association of
Medicaid Fraud Control Units

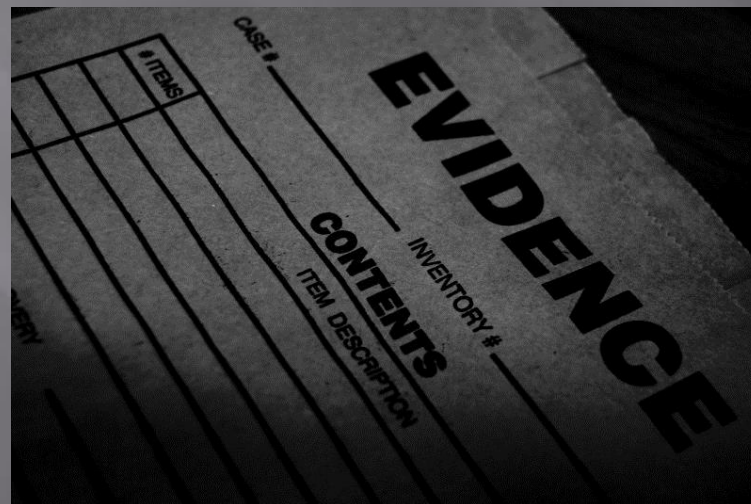
Investigations

- How complaints are received
 - Reactive vs. Proactive
- After a complaint is received
 - ***NOT first Responders
 - Evidence and witness/victim preservation



Securing Evidence

- Obtaining Evidence
 - Records/Documents
- HIPAA Letters and/or consent forms
- Court Orders
- MA Provider On-site
- Grand Jury Subpoenas
- Search Warrant



Investigations

- Video/Surveillance
- Interviews
 - Witnesses
 - Target(s)



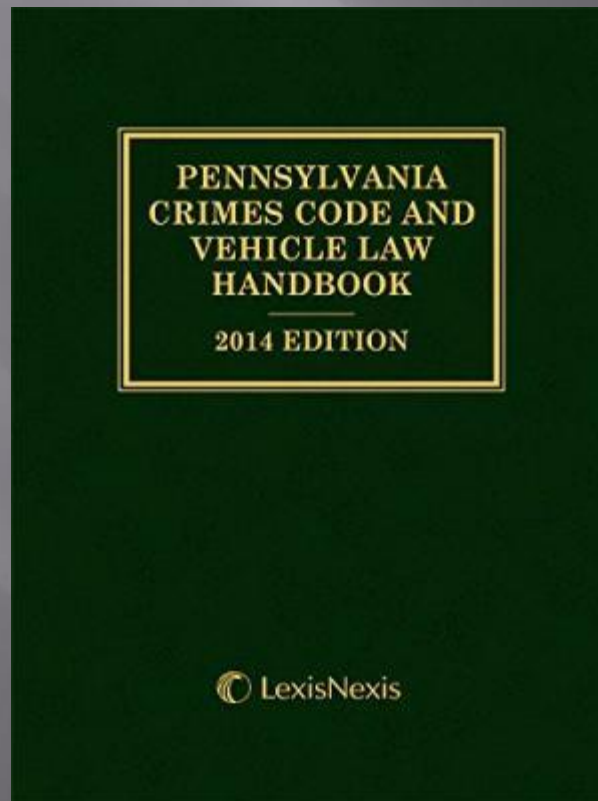
Investigations Continued...

- Piecing the facts together...
- Analyzing the evidence (documents/statements)
- Decision regarding prosecution
 - If so, file charges
 - If not, other options- referrals/deterrence



Criminal Charges

- Medicaid Fraud
- Neglect
- Remainder of the PA Crimes Code



Other Non-Criminal Remedies

- Referrals
- Deterrence



Prosecution

- File Criminal Charges/ Make Arrest
- Preliminary Hearing
 - Prima Facia case (MDJ)
 - Testimony-preparation
 - Waiver
 - Bound over for trial
- Remaining court proceedings



Why Is This Important ?

- First eyes in the field
- Knowledge of care-situation/ key players
- Recognize potential problems in care-dependent situation...whether financial, or neglect and/or abuse (verbal, physical, financial, etc.)

What to Look for...

- Absentee caregivers
- Financial concerns
- General appearance
 - Consumer
 - Residence
- Physical injuries
 - Bruising/Marks
- Changing in condition- weight/mental Alertness
- Overly attentive caregivers

- If you have suspicion...look at the information to which you have access:
 - Time Sheets
 - Care Plan
 - POA Documents

How You Can Help

- Important to gather all information and DOCUMENT that information
- Create a time line
- Report, Report, Report....
 - Call/Talk to us if you have concerns that a case could be criminal ASAP



Don't Let This Be You...



Contact Information

- Stephen J. Stahl, Special Agent:
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- Mark Brumaghim, Special Agent:
mbrumaghim@attorneygeneral.gov
- Intake-Referrals:
 - Telephone: 717-783-1481
 - Mail: Pennsylvania Office of Attorney General
Medicaid Fraud Control Section
Strawberry Square, 16th Floor
Harrisburg, Pennsylvania 17120

Sources

- United States Department of Health and Human Services, Office of Inspector General: “*Pennsylvania State Medicaid Fraud Control Unit: 2015 Onsite Review (OEI-07-15-00360)*.”
- Pennsylvania Office of Attorney General Website:
<https://www.attorneygeneral.gov>.
- WNEP.com:
 - <http://wnep.com/2015/02/19/woman-charged-with-medicaid-fraud/>
 - <http://wnep.com/2015/10/20/two-doctors-charged-after-urgent-care-raid/>
- We Are Central PA:
 - <http://www.wearecentralpa.com/news/woman-charged-with-fraud>