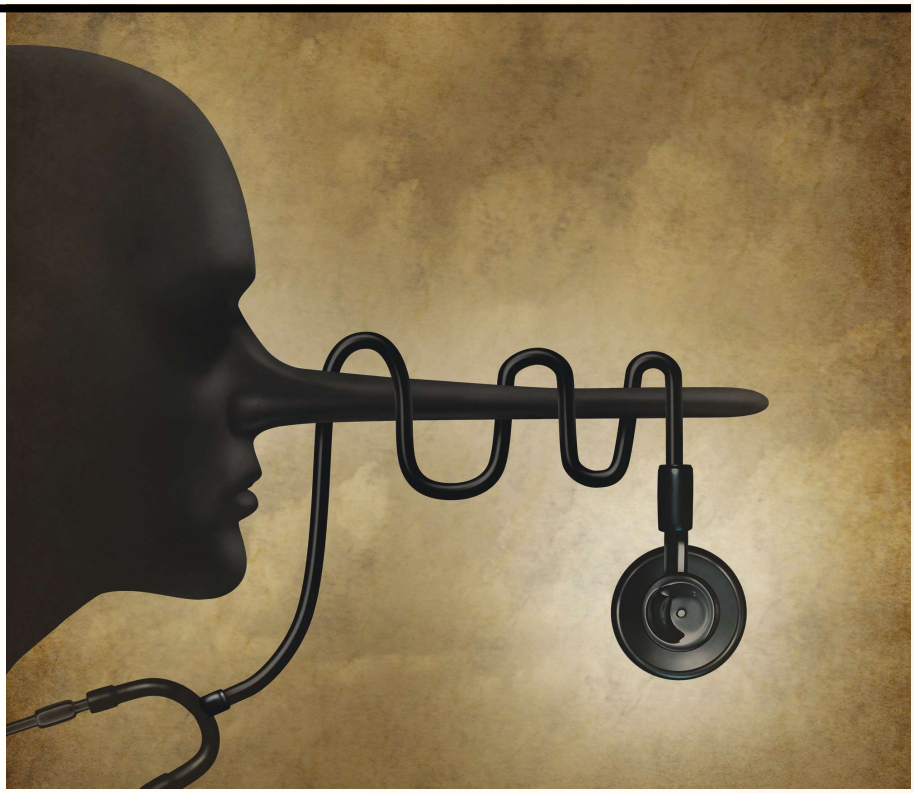
Clinic Made of Straw

Combatting Fraud by Exposing Straw Ownership

By Frank Goldstein and Tomi L. Dorris



Medical clinic fraud is plaguing insurance companies. Almost every day a new fraudulent medical clinic is established by criminals who have no intention of ever licensing it. These are your straw clinics.

To get around potential medical licensing requirements, criminal laypersons will purchase or "lease" the medical license of a willing healthcare practitioner to make it appear as though the medical professional, or "straw owner," is the legal owner of the clinic. The actual clinic owner, however, is someone else — sometimes a member of an organized crime ring.

Because straw-owned medical clinics can be virtual gold mines for owners, often processing millions of dollars in insurance claims for treatment of injuries, they continue to be a frequently used tool for the perpetration of medical fraud, particularly in states where personal injury protection (PIP) or no-fault insurance provisions are in play. To deter the filing of fraudulent medical claims, some states have taken steps to regulate clinics in order to ensure they are not transformed into criminal enterprises.

Anti-Fraud Provisions

In some states, only licensed medical professionals are allowed to own a clinic. However, the threat of losing a medical license and/or potential jail time may not be enough to curb some of these scams. States that permit laypersons to own clinics often require detailed financial information about the owners and their plans for clinic operations, a thorough investigation and fingerprinting of the owners, and mandatory licensing fees. These owners also face possible prison sentences if they violate the law overseeing medical clinic operations.

These restrictions are aimed at utilizing government scrutiny into the entity as a deterrent. However, for operators of straw clinics, the potential to earn big money many times outweighs the possible punishment that comes with getting caught.

Unfortunately, catching these guys in the act and recovering fraudulent payments falls to the investigators and attorneys who work with and for insurance companies — ideally, in partnership with law enforcement. Partnerships between law enforcement and carriers have improved, increasing the chances that insurers can find and compile the evidence necessary to prosecute fraud in civil court.

Investigating Straw Clinics

The first is stop and assess the situation.

- Have you clearly defined the objectives? Are you looking for civil recovery, a criminal conviction or fact gathering to stop a straw clinic's criminal activities?

- If the insurer wishes to pursue both criminal and civil remedies, take into account how best to balance those parallel tracks.

- Have you coordinated with law enforcement, in order to make use of their resources and ensure your investigation does not interfere with their investigation?

Once the objectives are clarified, determine what the straw clinic investigation should look like. Decide what information and documentation the insurer will require for potential claim denial and/or to pursue further action and how those items are to be gathered, compiled, and analyzed. How your investigators access and utilize material will not only affect the ongoing insurance investigation, but may affect possible civil recoveries and criminal prosecutions.

What type of documents should you look for? Some good places to start include:

- Division of corporation records
- Number of clinics "owned" by the medical professional
- The history of the alleged doctor owners
- Bank records
- Office leases and equipment/supply/marketing contracts
- Clinic inspections (and asking some good questions of the staff)
- City and county licensure records
- Criminal or civil records

Additional information insurers will want to review includes a history of the straw owner's previous clinic ownership, the owner's (both real and straw) prior work history, and statements from former clinic employees regarding operations. Don't forget to look at not only the straw clinic owner, but also the real owners, participating recruiters, and even those alleging injury.

Next Steps

You believe you have enough evidence to prove fraud. Now what? If you live in a state with mandatory fraud reporting, consider the mandates of the appropriate regulatory authority and report as required. Or, you could consider a civil lawsuit or criminal prosecution by sharing your accumulated evidence with law enforcement.

If opting to pursue litigation, there is also the possibility that you must mount a defense to a counterclaim filed by the clinic owner. When that happens, the insurance company and legal team jointly need to seek a new round of discovery insights and determine how best to defend against the clinic owner's counterclaim.

This discovery phase includes going back over all the information and documents compiled during the initial investigation, as well as seeking the straw clinic's bank records, business financials, vendor invoices, accountant ledgers, and the like.

Also depose and analyze the statements of current and former clinic employees, clinic landlords, equipment and supply vendors, accountants and bank representatives, perhaps even advertising and marketing firms.

In New York, there is a very effective, additional tool known as the Mallela argument, which has its genesis in the case of *State Farm Mutual Auto Ins. Co. v Mallela*. In that case, the Court issued a decision in which insurance companies do NOT have to pay no-fault claims submitted by providers that were fraudulently established. New York carriers that raise the Mallela argument more often than not secure positive outcomes.

Once discovery is completed, insurance companies planning to file a civil suit must be sure all lawsuit objectives have been defined and met. They need to examine the opposing party's evidence, which could mitigate their own evidence and/or derail their case completely. This is also the time to meet with the state attorney or U.S. attorney to determine the impact of any ongoing government case(s).

Looking Ahead

Insurance carriers have been reviewing their exposure in these types of cases and are trying to limit both future exposure and the current false medical claims being submitted by straw-owned clinics. When considering when or how to fight fraudulent straw clinic medical claims, follow a plan:

- Clearly define your objectives
- Research all required documen tation and information
- Use discovery about straw clinic ownership to gather key evidence
- Analyze all the evidence; prepare to defend against it
- Let the evidence determine your course of action
- Set realistic expectations regard ing your case outcome

Fighting suspected fraud is a first step toward reducing fraudulent straw clinic claims, but legislative support also is required. Carriers must be more creative, unified, and specific, when demonstrating for lawmakers just how much straw clinics are costing consumers.

There is strength in numbers — both in deflating the payouts from which fraudulent clinics hope to prosper, and in seeking stronger laws. Make it a team effort.

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