

Responding to Attorney General Investigation Letters

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It can be intimidating for a health center to receive letters, subpoenas¹, or notifications of a complaint or investigation from the Indiana Attorney General's Office filed against the health center or one of its providers. Such notifications should be taken seriously, properly and fully investigated, and a thoughtful report should be provided in response. This article will provide information about the Indiana Attorney General and its powers and duties, what to expect when you receive a letter or subpoena from the Indiana Attorney General, and the general steps of how to investigate and reply to the various requests.

The Attorney General has a broad range of powers and duties

The Indiana Attorney General's Office may receive, prosecute, and/or investigate various complaints made against health centers and their individual providers. As it applies to health centers, most Attorney General letters would likely come from the Consumer Protection Division, Licensing Enforcement & Homeowner Protection Unit, and the Medicaid Fraud Control Unit.

- Consumer Protection Division (“Division”): The Consumer Protection Division of the Indiana Attorney General's Office has the power to investigate a written consumer complaint made by a non-merchant arising from a transaction with a merchant (i.e. patient complaining about provider after a patient visit). The Division has a duty to notify the merchant of the complaint and request a reply, forward to the appropriate state or federal agency, and has the power to initiate and prosecute civil actions on behalf of the state. (*See IC 4-6-9*).
- Licensing Enforcement & Homeowner Protection Unit (“Licensing Unit”): The Licensing Unit of the Indiana Attorney General's Office has the authority to receive, investigate, and prosecute licensed individuals who violate the terms of their professional licenses governed by Title 25 of the Indiana code. The Licensing Unit is part of the Consumer Protection Division and follows the same rules as noted above. Once a complainant files a written complaint against an individual, the Licensing Unit reviews the merit of the complaint. If the complaint is found to have merit, the complaint may be forwarded to the board having jurisdiction over the licensee's regulated occupation. The Licensing Unit may also investigate the complaint against a licensee, subpoena witnesses, and compel the production of documents for furtherance of the investigation. (*See IC 25-1-7 & IC 25-1-9-4*).
- Medicaid Fraud Control Unit: The Medicaid Fraud Control Unit has the authority to investigate Medicaid fraud, misappropriation of a Medicaid patient's private funds, abuse of Medicaid patients and neglect of Medicaid patients. The Medicaid Fraud Control Unit may issue, serve and apply to a court to enforce a subpoena for a witness to appear or to produce documents for inspection and examination. (*See IC 4-6-10*).

Health Centers are permitted to disclose PHI to the Indiana Attorney General's Office

¹ Responding to an enforcement subpoena will be the subject of a new upcoming blog article.

Receiving a request for records or information at a health center can raise red flags because of HIPAA concerns. However, the release of Protected Health Information (“PHI”) is generally permitted when it is requested by the Attorney General’s Office for an investigation. There are several exceptions that apply when releasing PHI for an Attorney General investigation. The examples below are just a few of the possible HIPAA exceptions that apply to requests made for PHI by the Attorney General’s Office.

- **Health Oversight Activities:** Pursuant to 45 CFR 164.512(d), health centers may disclose information to a health oversight agency for health oversight activities. A health oversight agency includes federal, state, or local government agencies authorized by law to oversee the public and private health care system or government programs in which health information is necessary to determine eligibility or compliance. This includes the employees or agents of such a public agency or its contractors or persons or entities to whom it has granted authority. 45 C.F.R. § 164.501. Health Centers may release PHI for health oversight activities, including audits, civil, administrative, or criminal investigations; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of the receipt of health care, government benefit programs for which health information is relevant to beneficiary eligibility, and entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards. 45 CFR 164.512(d)(1).
- **Disclosures for Law Enforcement Purposes:** Pursuant to 45 CFR 164.512(f)(1)(ii)(C), a health center may disclose PHI for a law enforcement process required by law. This includes administrative requests, such as subpoenas, summons, or an authorized investigative demand, provided that (i) the information sought is relevant and material to a legitimate law enforcement inquiry, (ii) the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought, and (iii) de-identified information could not reasonably be used.

Tips on Responding to an Attorney General Complaint and/or Investigation

As previously stated, the most commonly received letters by providers are from the Division, Licensing Unit, and the Medicaid Fraud Control Unit. The investigation may request information or your appearance through a subpoena or simply request you reply with the findings of your investigation. Your response will vary based on the type of investigation and the requested information. However, in general you can follow the steps outlined below when investigating and responding to the requests from the Attorney General.

1. If you are not familiar with the process or feel help is needed for any reason, contact your attorney.

Attorney General investigations are fairly common and it is likely that your attorney has seen and/or responded to such an investigation. Additionally, an attorney may be helpful to understand the significance and potential consequences of the allegations made against the health center or provider. It is imperative to understand what the investigation is alleging in order to efficiently conduct the investigation and/or produce the correct documents.

2. Make sure the investigation was appropriately directed to the correct person/entity.

Individuals filing investigations with the Attorney General's Office may have general knowledge of their provider, such as their doctor's name, but may not have the correct address or other information. It is important to make sure the letter from the AG was properly directed to the health center or provider. Was the individual filing the investigation actually a patient at your center? Is the named provider employed by your center? Health centers should have a policy that ANY communications from a state or federal agency be immediately given to the CEO.

3. If more time is needed, ask for an extension.

Most consumer complaints will require a response within (30) days, and licensing complaints allow twenty (20) days to respond. Start investigating the complaint as soon as reasonably possible and notify the Attorney General immediately if more time is needed to meet the response deadline. A responding party can usually directly reach out to the individual working the case, whether it's a Deputy Attorney General or Case Analyst, at the contact information provided in the letter. Or, simply call the Attorney General's Office at 317.915.5300 and request to be transferred to the correct individual, division, or unit. The Deputy Attorney General and Case Analyst are usually very reasonable in granting an extension for good cause.

4. Investigate the complaint.

Read the investigation thoroughly and determine what information is requested. Determine what records need to be gathered, if any, and who you will have to involve. It is best to stick to the known facts that are in the medical or billing records and not to include speculations or opinions.

- **Billing Complaints:** If the complaint alleges billing errors, whether it's from the Medicaid Fraud Unit or a Consumer Complaint, inform the Revenue Cycle department or the appropriate individual who handles billing and collections. Depending on what the complaint alleges, a coding review may be needed. Review the medical record for any inaccuracies, ensure the procedures were medically necessary, and generally review that the billing and collections process was followed appropriately.
- **Consumer Complaints:** Be forewarned, consumer complaints can allege just about anything and the AG is required to investigate, so be prepared to do a little digging on those. It is important not to simply dismiss a consumer complaint because you do not believe it has any merit. Consumers can, and will, rebut your answer if they are not satisfied, which will cause the investigation to last longer than it should have. If the complaint is against a specific provider, inform them of the issue and ask them to provide you with relevant documents. The provider may immediately know who the patient is and be able to provide you with relevant medical records and provide you with some context. If the provider does not have enough information to provide you, locate the specific encounter(s) in the medical and billing record which the individual is complaining about and find relevant information. It often is a good idea to ask the Chief Medical Officer or Medical Director to oversee these investigations.
- **Licensing Issues:** If the complaint alleges that a provider was practicing outside the scope of their license, pull the relevant medical records and review them thoroughly. Make sure there are no inaccuracies in the records which may have led the Attorney General's Office to believe there was a licensure issue (i.e. credentials listed incorrectly). Also, make sure the provider's license is currently valid. Most licenses need to be renewed yearly or bi-yearly and it may have

lapsed. And lastly, review the records with your Chief Medical Officer to evaluate if the provider was actually practicing outside the scope of their license. If you are unsure about the laws regarding the specific provider's license, contact your attorney.

5. Type your response and/or produce the required documents.

The response should be concise. Always include the file number and address the Deputy Attorney General or case analyst directly in the letter.

- Responding to a complaint: One of the biggest mistakes a health center can make when responding to a complaint is to only state that the allegations are untrue without providing sufficient facts and reasoning. Your response should clearly state your position and the supporting facts. If all the necessary facts have been gathered and laid out, the facts themselves will support your position. That being said, only include objective facts that will directly support your position. Another mistake a health center can make when responding to a complaint is to criticize the individual complaining because the health center had a bad experience with them. The complaint should not include anything that directly attacks the individual complaining. You may attach relevant documents to your response, although it is only required if the Attorney General's Office requests them. Never include emotional outbursts in the response. The themes of the response should include: the complaint was taken seriously; a thorough investigation was conducted, indicating what records were reviewed and by whom; sufficient detail of facts to address the issue in the complaint; refer to policies of the health center that were followed; have a simple conclusion (e.g. the allegations are not supported by the records, or there was no breach of the standard of care, or the instructions to the patient were proper under the circumstances). The tone of the letter should be respectful and professional.
- Producing documents: In general, the Attorney General's Office will tell you what documents they are specifically requesting. Gather the documents and organize them in the order requested. If there are a lot of documents, label them so they are easy to get through. Include a summary of the documents in your letter with the documents.

6. Mitigate and prepare if an issue is discovered.

Finally, it is important to keep in mind that there is someone in the office of the Attorney General who is tasked with determining whether there is a problem that the AG office needs to address. That person needs sufficient information to make a recommendation objectively. If a true problem is discovered while investigating and preparing the response, contact your attorney. If a problem is detected, in most cases the health center should show how it was remedied.

- Billing Issues: If you discover that there may have been an overpayment or a potential false claim, you need to contact your attorney *immediately*. If not handled properly, a discovery of potential fraud can result in hefty fines, extra costs, and disruptions associated with a Government-directed investigation and civil or administrative litigation. Your attorney will be able to advise you on whether disclosure is necessary and the proper self-discloser protocols.
- Consumer Complaints: If an issue is discovered when investigating a consumer complaint, the health center should note it in the response and explain how the issue is being resolved or remedied. Sections 5 and 6 of the Consumer Complaint which is filed with the Attorney

General's Office should give a health center an idea of what the individual is looking for. A lot of consumers simply want their bills lowered or written off when there is an issue, and that may be an option to consider. However, other consumers want to see that the bigger issue is being addressed as well, so a health center may also have to re-evaluate policies, re-train staff, or take other steps to show the issue was taken seriously and addressed appropriately.

- **Licensing Complaints:** If a licensing issue is discovered during your investigation, a health center should prepare to explain its findings to the Attorney General and/or the licensing board which governs the particular provider's license. The provider may be required to attend a hearing regarding sanctions and should be prepared with the necessary information from the specific encounter(s). In its reply to the Attorney General, the health center may want to show that it took steps to re-train or sanction the provider and state that they will work with the appropriate licensing board to resolve any further issues.

Finally, look at the investigation by the Attorney General as an opportunity to review health center practices and policies. If policies can be improved, prepare revised policies for consideration by the board of directors of the health center. Additionally, make sure corporate compliance² policies are in place and being followed, including regular peer reviews.

Disclaimer: This article is made available for educational purposes only and is not intended as legal advice.

² Corporate compliance for health centers will be the subject of a new upcoming blog article.