

Fraud, Abuse, and Prevention Training

2020

Prevention Mission

- ▶ Ensure our healthcare organization are compliant with all regulatory requirements set forth by the various agencies that oversee the healthcare system.

Why do we need to know about FWA?

- ▶ Every year billions of dollars are improperly spent because of Fraud, Waste and Abuse (FWA). It affects everyone – including you.
- ▶ • This information will help you detect, correct, and prevent FWA, and to know where to report it if you encounter FWA.
- ▶ • You are part of the solution.
- ▶ • Combating FWA is everyone's responsibility!
- ▶ • As an individual who provides health or administrative services for our members, we call upon you to be vigilant and protect yourself, protect Independent Health and protect our members from harm that can be caused by FWA

Fraud Defined

- ▶ Fraud is intentional and typically characterized by:
 - ▶ Knowingly submitting false statements or making misrepresentations of fact to obtain health care payments for which no entitlement would otherwise exist.
 - ▶ Knowingly soliciting, paying, and/or accepting money to induce or reward referrals for items reimbursed by health care programs; or
 - ▶ Making prohibited referrals for certain designated health services.

Examples of Fraud

- ▶ Examples of actions that may constitute fraud include:
 - ▶ • Knowingly billing for services not furnished or supplies not provided
 - ▶ • Billing more than once for the same service
 - ▶ • Misrepresenting a diagnosis to get an authorization or justify payment for services that may otherwise not be covered
 - ▶ • Falsifying the identity of a provider of service, so as to obtain payment for services rendered by a non-participating and/or nonlicensed provider
 - ▶ • Billing for appointments that the patient failed to keep
 - ▶ • Billing for non-existent prescriptions
 - ▶ • Knowingly altering claim forms, medical records, or receipts to receive a higher payment

Waste

- ▶ Includes overusing services, or other practices that, directly or indirectly, result in unnecessary costs. Waste is generally not considered to be caused by criminally negligent actions but rather by the misuse of resources.

Examples of Waste

- ▶ Examples of actions that may constitute waste include:
 - ▶ • Conducting excessive office visits or writing excessive prescriptions
 - ▶ • Prescribing more medications than necessary for the treatment of a specific condition
 - ▶ • Ordering excessive laboratory and/or diagnostic tests
 - ▶ • Not billing in accordance with recognized and approved industry standards

Abuse

- ▶ Includes actions that may, directly or indirectly, result in unnecessary costs. Abuse involves payment for items or services when there is not legal entitlement to that payment and the provider has not knowingly and/or intentionally misrepresented facts to obtain payment.

Examples of Abuse

- ▶ Examples of actions that may constitute abuse include:
 - ▶ • Billing for unnecessary medical services
 - ▶ • Billing for brand name drugs when generics are dispensed
 - ▶ • Charging excessively for services or supplies
 - ▶ • Misusing codes on claims, up coding or unbundling codes
 - ▶ • Improper use of coding modifiers to obtain payment for services that otherwise may be denied
 - ▶ • Lack of medical record documentation in support of services submitted for reimbursement
 - ▶ • Physicians billing for immediate family members

Knowledge vs. Intent

- ▶ **Knowledge** is knowing that their actions were wrong
 - ▶ Example documenting or submitting codes for services that were not done
- ▶ **Intent** is doing something fraudulently to obtain something they are not entitled too
 - ▶ Knowingly documenting or submitting codes for services that were not done for the intention of a higher payment or payment for services not rendered.

Penalties and Violations

- ▶ Civil Monetary Penalties;
- ▶ • Civil prosecution;
- ▶ • Criminal conviction/fines;
- ▶ • Exclusion from participation in all Federal health care programs;
- ▶ • Imprisonment; or
- ▶ • Loss of provider license.

What can you do to help prevent FWA?

- ▶ Look for suspicious activity
- ▶ • Conduct yourself in an ethical manner
- ▶ • Ensure accurate and timely data/billing
- ▶ • Ensure you coordinate with other payers
- ▶ • Keep up to date with FWA policies and procedures, standards of conduct, laws, regulations, and the Centers for Medicare & Medicaid Services (CMS) guidance; and
- ▶ • Verify all information provided to you
- ▶ • Stay Informed About Policies and Procedures

Patient Identity Theft

- ▶ Ensure patient medical identity information is secured
- ▶ Watch for:
 - ▶ Identification that looks altered or forged
 - ▶ The person presenting does not match the photo or physical description you have
 - ▶ Signatures or other identifying information does not match previous information on file

Medical Identity Theft

- ▶ The appropriation or misuse of a patient's or [provider's] unique medical identifying information to obtain or bill public or private payers for fraudulent medical goods or services.
 - ▶ Provider medical identifiers are used to make it appear a provider ordered or referred patients to additional health evaluations
 - ▶ Identifications are stolen to make it appear a provider has provided or billed services.
 - ▶ Example... a DME provider uses information to bill for services that were never ordered by the physician since they have his medical identifying information.

Other potential misuse of medical identifiers

- ▶ Signing referrals for patients they do not know;
- ▶ Signing Certificates of Medical Necessity (CMNs) for patients they know but who do not need the service or supplies;
- ▶ Signing CMNs even though their own documentation disputes medical need;
- ▶ Signing CMNs for more than what patients actually need; and
- ▶ Signing blank referral forms.

Other signs of medical identity theft..

- ▶ Patient uses an address, phone number, or other personal information that is inconsistent with what you know.
- ▶ Patient provides a fictitious address, a PO Box, or prison address, they supply an invalid phone number or one that's for a pager or answering service.
- ▶ Patient omits information on an intake form and doesn't respond to requests to secure those details
- ▶ Patient is unable to provide authenticating information

Reduce Risks

- ▶ Monitor billing and compliance processes
- ▶ Control who has access and how unique medical identifiers are used
- ▶ Control Prescription pads
 - ▶ Use Tamper-resistant prescription pads
 - ▶ Do not leave them laying around unsecured

What to do if you suspect FWA?

- ▶ Contact OMG's Compliance Hot Line at extension 2440
- ▶ Other ways to report FWA?
 - ▶ HHS Office of Inspector General:
 - ▶ - Phone: 1-800-HHS-TIPS (1-800-447-8477) or TTY 1-800-377-4950
 - ▶ - Fax: 1-800-223-8164
 - ▶ - Email: HHSTips@oig.hhs.gov
 - ▶ - Online: Forms.OIG.hhs.gov/hotlineoperations/index.aspx
 - ▶ • For Medicare Parts C and D:
 - ▶ - Investigations Medicare Drug Integrity Contractor (I MEDIC) at 1-877-7SafeRx (1-877-772-3379)
 - ▶ - CMS Hotline at 1-800-MEDICARE (1-800-633-4227) or TTY 1-877-486-2048
 - ▶ • Office of Medicaid Inspector General (OMIG)

Fraud and Abuse Laws

- ▶ False Claims Act (FCA)
- ▶ Anti-kickback Statue (AKS)
- ▶ Physician self-referral Law (Stark Law)
- ▶ Social Security Act
- ▶ United States Criminal Code

False Claims Act

- ▶ “The False Claim Act is a federal law that makes it a crime for any person or organization to knowingly make a false record or file a false claim regarding any federal health care program, which includes any plan or program that provides health benefits, whether directly, through insurance or otherwise, which is funded directly, in whole or in part, by the United States Government or any state healthcare system. Knowingly includes having actual knowledge that a claim is false or acting with “reckless disregard” as to whether a claim is false.”
- ▶ Examples of false claims include:
 - ▶ billing for services not provided
 - ▶ billing for the same service more than once or making false statements to obtain payment for services.

Whistleblower

- ▶ **A whistleblower is a person who exposes information or activity that is deemed illegal, dishonest, or violates professional or clinical standards.**
- ▶ **Protected:** Persons who report false claims or bring legal actions to recover money paid on false claims are protected from retaliation.
- ▶ **Rewarded:** Persons who bring a successful whistleblower lawsuit receive at least 15 percent, but not more than 30 percent, of the money collected.

Health Care Fraud Statute

- ▶ “Whoever knowingly and willfully executes, or attempts to execute, a scheme to ...defraud any health care benefit program ... shall be fined ... or imprisoned not more than 10 years, or both.”
- ▶ • Conviction under the statute does not require proof that the violator had knowledge of the law or specific intent to violate the law.
- ▶ • For more information, refer to 18 USC Section 1346

Example of Health Care Fraud Statute

- ▶ **A Pennsylvania pharmacist:**
 - ▶ Submitted claims to a Medicare Part D plan for non-existent prescriptions and drugs not dispensed
 - ▶ Pleaded guilty to health care fraud
 - ▶ Received a 15-month prison sentence and was ordered to pay more than \$166,000 in restitution to the plan
- ▶ **Persons who knowingly make a false claim may be subject to:**
 - ▶ Criminal fines up to \$250,000
 - ▶ Imprisonment for up to 20 years If the violations resulted in death, the individual may be imprisoned for any term of years or for life.

Anti-Kickback Statute (AKS)

- ▶ Criminal law that prohibits the knowing and willful payment of compensation to induce or reward patient referrals or the generation of business involving any item or service payable by the Federal health care programs (e.g., drugs, supplies, or health care services for Medicare or Medicaid patients)
- ▶ Criminal penalties and administrative sanctions for violating the AKS include fines, jail terms, and exclusion from participation in the Federal health care programs. Under the CMPL, physicians who pay or accept kickbacks also face penalties of up to \$50,000 per kickback plus three times the amount of the remuneration.

Kickbacks lead too....

- Overutilization of services
- Increased program costs
- Corruption of medical decision making
- Patient steering towards certain providers or other services
- Unfair competition

Stark Law

- ▶ The Stark Law prohibits a physician from making a referral for certain designated health services to an entity in which the physician (or member of his/her immediate family) has an ownership/ investment interest or with which he/she has a compensation arrangement, unless an exception applies.

Office of Inspector General (OIG)

- ▶ OIG is legally required to exclude from participation in all Federal health care programs individuals and entities convicted of the following types of criminal offenses:
 - ▶ (1) Medicare or Medicaid fraud, as well as any other offenses related to the delivery of items or services under Medicare or Medicaid;
 - ▶ (2) patient abuse or neglect;
 - ▶ (3) felony convictions for other health-care-related fraud, theft, or other financial misconduct; and
 - ▶ (4) felony convictions for unlawful manufacture, distribution, prescription, or dispensing of controlled substances.

Excluded Physicians

- ▶ Cannot bill directly for treating Medicare and Medicaid patients, nor may their services be billed indirectly through an employer or a group practice.
 - ▶ Basically, they will no longer be paid for services performed on patients that have Medicare, Medicaid or other federally funded payers

HIPAA

- ▶ HIPAA created greater access to health care insurance, protection of privacy of health care data, and promoted standardization and efficiency in the health care industry.
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- ▶ HIPAA safeguards help prevent unauthorized access to protected health care information. As an individual with access to protected health care information, you must comply with HIPAA.

Social Security Act

- ▶ The OIG of the Department of Health and Human Services, and the Attorney General shall establish a program to coordinate Federal, State, and local law enforcement programs to control fraud and abuse with respect to health plans, to conduct investigations, audits, evaluations, and inspections relating to the delivery of and payment for health care in the United States

United States Criminal Code

- ▶ Title 18 of the United States Code is the main criminal code of the federal government of the United States. It deals with federal crimes and criminal procedure.
- ▶ • The Criminal Health Care Fraud Statute prohibits knowingly and willfully executing, or attempting to execute, a scheme or ploy in connection with the delivery of or payment for health care benefits, items, or services to :
 - ▶ • Defraud any health care benefit program; or
 - ▶ • Obtain (by means of false or fraudulent pretenses, representations, or promises)any of the money or property owned by, or under the custody of, any health care benefit program.
- ▶ • Example:
 - ▶ • Several doctors and medical clinics conspire in a coordinated scheme to defraud the Medicare program by submitting claims for power wheelchairs that were not medically necessary

References

- ▶ (IHA) Independent Health (2020). *Annual fraud, waste and abuse training*. Retrieved October 29, 2020
<https://www.independenthealth.com/Provider/WhatsNew/ComplianceUpdates/FWAAttestation>
- ▶ (OIG) Office of Inspector General (n.d.). *A roadmap for new physicians fraud & abuse Laws*. Retrieved October 29, 2020
[https://oig.hhs.gov/compliance/physician-education/01laws.asp#:~:text=The%20AKS%20is%20a%20criminal,for%20Medicare%20or%20Medicaid%20patients\).](https://oig.hhs.gov/compliance/physician-education/01laws.asp#:~:text=The%20AKS%20is%20a%20criminal,for%20Medicare%20or%20Medicaid%20patients).)