



# Medicare Compliance and Fraud, Waste and Abuse Training

# OBJECTIVES

- Recognize laws and concepts affecting compliance and fraud, waste and abuse (FWA)
- Increase awareness of FWA
- Use identification techniques in the work environment
- Report Medicare compliance and FWA concerns

# DEFINITIONS

- **Fraud:** The intentional use of deception for unlawful gain or unjust advantage.
- **Waste & Abuse:** Incidents or practices that are inconsistent with sound fiscal, business or medical practices and result in unnecessary cost to the Medicare Program. This includes costs for services that are not medically necessary or that fail to meet professionally recognized standards.

# Federal and State Authorities

- The Office of Inspector General, Department of Health and Human Services (OIG)
- Department of Justice
- Centers for Medicare and Medicaid Services (CMS)
- State Attorney General Office

# Federal False Claims Act

**The Federal False Claims Act (31 U.S.C. §§ 3729-3733) imposes liability when any person or entity:**

- Knowingly submits, or causes another person or entity to submit, false claims for payment of government funds
- Knowingly makes or uses a false record or statement to obtain payment or approval of a claim by the Federal government
- Conspires to get a false claim paid by the government
- Uses a false statement to decrease an obligation to the government

# FEDERAL FALSE CLAIMS ACT PENALTIES

- Civil Monetary Penalties (CMP) between \$5,000 and \$11,000 plus three times the total damages per claim
- Possible exclusion from Medicare and Medicaid
- Possible criminal prosecution

# ANTI-KICKBACK STATUTE

- The Anti-Kickback Statute (42 U.S.C. 1320a-7b) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce or reward the referral of business payable or reimbursable under the Medicare or other Federal health care programs.
- Individual or entity may be excluded from participation in Medicare or other Federal health care programs

# BENEFICIARY INDUCEMENT LAW

- Prohibits offering a remuneration that a person knows or should know is likely to influence a beneficiary to select a particular provider, practitioner or supplier (e.g. a routine waiver of copayments).
- Creates liability of civil monetary penalties of up to \$10,000 for each wrongful act.

# EXCLUSION LISTS

- OIG has the authority to exclude individuals or organizations from participating in Medicare, Medicaid and other Federal programs.
- Exclusion reasons include:
  - Conviction of fraud or abuse
  - Default on Federal student loans
  - Controlled substance violations
  - Licensing board actions

# Exclusion List Screening

- OIG: <http://exclusions.oig.hhs.gov/search.aspx>
- GSA: <https://www.epls.gov/>
- No payment will be made by any Federal health care program for any items or services furnished, ordered, or prescribed by an excluded individual or entity.
- Individuals must be checked at time of hire and annually thereafter – can not process Medicare work if on an Exclusion list.

# RECORD RETENTION

- Provider must maintain service, prescription, claim and billing records for 10 years.
- Records are subject to CMS or contractor audit.

# POTENTIAL PHARMACY FWA

- **Inappropriate billing practices**
  - Incorrectly billing for secondary payers to receive increased reimbursement
  - Billing for non-existent prescriptions
  - Billing for brand when generics are dispensed
  - Billing for non-covered prescriptions as covered items
  - Billing for prescriptions that were never picked up
  - Inappropriate use of dispense as written (DAW) codes
  - Drug diversion
  - Prescription splitting to receive additional dispensing fees

# POTENTIAL PHARMACY FWA

- **Prescription drug shorting:** Pharmacist dispenses less than was prescribed but bills for the fully-prescribed amount.
- **Bait and switch pricing:** A member is led to believe that a drug will cost one price, but at the point of sale, the member is charged a higher amount.
- **Prescription forging or altering:** Existing prescriptions are altered to increase the quantity or number of refills.
- **Prescription refill errors:** A pharmacist provides the incorrect number of refills prescribed by the provider.

# POTENTIAL PHARMACY FWA

- **Illegal remuneration schemes:** The pharmacy is offered, solicits, or receives unlawful remuneration to induce or reward them to switch patients to different drugs, influence prescribers to prescribe different drugs, or steer patients to prescription drug plans.
- **TrOOP manipulation:** When a pharmacy manipulates true out of pocket expense to push the member through the coverage gap so the member reaches the catastrophic coverage before they are eligible.
- **Failure to offer negotiated prices:** A pharmacy does not offer a member the negotiated price of a Part D drug.

# FWA Prevention

- **Elements of a Medicare Compliance Plan**
  - Implement written policies and procedures
  - Conduct or take sponsor provided effective training and education
  - Develop effective lines of communication
  - Conduct internal monitoring & auditing
  - Enforce standards through well publicized disciplinary guidelines
  - Impose corrective action

# REPORTING FWA CONCERNS

- Call the toll-free Fraud Hotline, 1-866-282-2707 (TTY/TDD 1-888-789-0429)
- Online tip form: <http://www.futurescriptssecure.com/>
- Reports are kept confidential and callers can remain anonymous.

# ADDITIONAL INFORMATION

- CMS Prescription Drug Benefit Manual: [http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/PDBManual\\_Chapter9\\_FWA.pdf](http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/PDBManual_Chapter9_FWA.pdf)
- CMS: <http://www.cms.hhs.gov/>
- HHS/OIG: <http://oig.hhs.gov>
- DEA Drug Diversion: <http://www.deadiversion.usdoj.gov/>

Thank you for completing our FWA Training. Please be sure to [complete the attestation](#) before you log out!