Medicare Compliance and Fraud, Waste and Abuse Training

January 2011

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 and abuse:** Incidents or practices that are inconsistent with sound fiscal, business, or medical practices and result in unnecessary costs 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 (OIG)
- Department of Health and Human Services
- Department of Justice
- Centers for Medicare & Medicaid Services (CMS)
- Office of the State Attorney General

Federal False Claims Act

The Federal False Claims Act (31 U.S.C. §§ 3729-3733) establishes liability under a number of circumstances. Some examples include any person or entity who:

- knowingly presents or causes a false claim to be presented to the federal government for payment or approval;
- knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- knowingly conceals and/or improperly avoids or decreases an obligation to pay or transmit money or property to the federal government;
- conspires to commit a violation of the liability sections of the Act.

Federal False Claims Act Penalties

Penalties of the Federal False Claims Act include:

- civil penalties between $5,000 – $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.

Beneficiary Inducement Law

The 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;

- 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 the time of hire and annually thereafter.
- No excluded individual or entity may provide goods or services reimbursed by a federal health care program.

Record retention

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

Potential Billing FWA

Inappropriate billing practices include:

- – incorrectly billing for secondary payers to receive reimbursement;
- – unbundling codes;
- – billing for services that were not provided;
- – billing split fees;
- – billing outdated procedure codes;
- – billing inappropriate codes for increased reimbursement

Potential member FWA

- **Prescription drug shorting:** A pharmacist dispenses less than what was prescribed but bills for the full 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, he or she 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 member FWA

Continued

- **Illegal remuneration schemes:** A pharmacy is offered, solicits, or receives unlawful remuneration to induce or reward it to:
- – switch patients to different drugs;
- – influence prescribers to prescribe different drugs;
- – steer patients to prescription drug plans.

- **TrOOP manipulation:** A pharmacy manipulates true out-of-pocket (TrOOP) expense to push a member through the coverage gap so he or she reaches the catastrophic coverage before being eligible.

- **Failure to offer negotiated prices:** A pharmacy does not offer a member the negotiated price of a Part D drug.

Potential member FWA

Continued

- **Script mills:** A provider prescribes drugs that are not medically necessary.
- **Provision of false information:** A prescriber falsifies or misrepresents information on a prescription.
- **Theft of a Drug Enforcement Administration (DEA) number or prescription pad:** A DEA number or prescription pad can be stolen and used to illegally write prescriptions for controlled substances.
- **Provision of false information:** A prescriber falsifies information submitted through prior authorization.
- **Dispensing expired or altered prescription drugs.**

Potential member FWA

Continued

- **Prescription forging or altering:** Prescriptions are altered, by someone other than the prescriber or pharmacist without prescriber approval, to increase quantity or number of refills (prescription is written in different inks, looks like it is photocopied, or quantity is more than usual dispensed amounts).

- **Doctor shopping:** A member or other individual consults several doctors to inappropriately obtain multiple prescriptions for narcotic painkillers or other drugs.

- **Identity theft:** An individual uses another person's insurance card to obtain prescriptions.

Potential member FWA

Continued

- **Prescription diversion:** A member obtains prescription drugs and gives or sells them to someone else.
- **Prescription stockpiling:** A member obtains and stores large quantities of drugs to avoid out-of-pocket costs.
- **Resale of drugs on the black market:** A beneficiary falsely reports loss of drugs to obtain drugs for resale on the black market.
- **Marketing schemes:** A beneficiary may be victimized by a scheme where a sponsor, or its agents or brokers, violates the Medicare marketing guidelines.

Potential sponsor FWA

- **Failure to provide medically necessary services.**
- **Marketing schemes, including:**
  – unsolicited door-to-door marketing;
  – misrepresentation of the Medicare Advantage or prescription drug plan being marketed
  – requirement for beneficiaries to pay up-front premiums.
- **Appeals process handled incorrectly:** A member is denied the right to appeal or is denied a timely appeal.
- **Incorrect calculation of TrOOP:** Falsifying TrOOP to keep beneficiaries in coverage gap
- **Payments for excluded drugs.**
- **Potential**

Potential PBM FWA

- **Failure to offer negotiated prices:** A pharmacy benefits manager (PBM) does not offer a beneficiary the negotiated price of a drug.
- **Inappropriate formulary decisions:** Costs take priority over criteria, such as clinical efficacy.
- **Prescription drug switching:** A PBM receives a payment to switch a beneficiary from one drug to another.
- **Unlawful remuneration:** A PBM receives unlawful remuneration to steer a beneficiary toward a certain plan or drug.

Potential manufacturer FWA

- **Kickbacks or inducements:**
  – inappropriate marketing of products;
  – inducements offered if the products purchased are reimbursed by the federal health care programs.

- **Inappropriate relationships with physicians:**
  – offering the prescriber money to switch prescriptions;
  – offering incentives to physicians to prescribe medically unnecessary drugs;
  – improper entertainment or incentives offered by sales agents.

- **Illegal usage of free samples:** Free samples are provided to physicians knowing that they will bill the drugs to the federal health care programs.

- **Illegal off-label promotion.**

FWA prevention

Elements of a Medicare compliance plan:

- – implement written policies and procedures;
- – appoint a compliance officer and establish a compliance committee;
- – conduct effective training and education;
- – develop effective lines of communication;
- – conduct internal monitoring and auditing;
- – enforce standards through well-publicized disciplinary guidelines;
- – impose corrective action;
- – implement a comprehensive fraud, waste, and abuse program.

Reporting FWA concerns

To report any FWA concerns:

- – Call the Independence Blue Cross Fraud and Abuse Hotline toll-free at 1-866-282-2707 (TTY/TDD: 1-888-789-0429).

- – Go online to complete a tip form at http://www.ibx.com/about_ibc/antifraud/report_fraud.html.

- All reports are kept confidential, and callers may remain anonymous.

Additional information

- CMS Prescription Drug Benefit Manual:
- 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/

Questionnaire

- What does FWA stand for?
- Federal False Claim Act established liability under a number of circumstances. Give 2 examples.
- Inappropriate billing practices may include: Name 4
- What is the Anti Kickback Statute?
- Define Fraud
- How long must you maintain patient records?
- What is the purpose of the Beneficiary Inducement Law?
- Define Waste and Abuse
- What are the penalties for violating the Federal False Claim Act?
- What are the reasons for exclusion from participating in Medicare, Medicaid, and other federal programs?

Congratulations!

You have completed your 2011 CMS training requirement.

Next steps:

Return the questionnaire via email to:

jacque@kmkconsultants.com

Your certificate of completion will be mailed within one week of receipt of your test.