



The following is an overview of Fraud, Waste and Abuse that can be used as a reference guide for new and/or existing staff. This is just an overview of FWA. CMS has training resources that thoroughly cover the laws and regulations pertaining to FWA. Most importantly, make sure everyone is aware of the potential consequences and penalties associated with FWA violations.

**Fraud** is knowingly and willfully executing, or attempting to execute, a scheme or artifice to defraud any health care benefit program, or to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program.

The Health Care Fraud Statute makes it a criminal offense to knowingly and willfully execute a scheme to defraud a health care benefit program. Health care fraud is punishable by imprisonment for up to 10 years. It is also subject to criminal fines of up to \$250,000.

### **Waste and Abuse**

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

**Abuse** includes actions that may, directly or indirectly, result in unnecessary costs to the Medicare Program. 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 FWA**

Examples of actions that may constitute Medicare **fraud** include:

- Knowingly billing for services not provided, including Medicare appointments that the patient failed to keep;
- Billing for non-existent prescriptions; and
- Knowingly altering claim forms, medical records, or receipts for a higher payment.

Examples of actions that may constitute Medicare **waste** include:

- Conducting excessive office visits or writing excessive prescriptions;
- Prescribing more medications than necessary for treatment of a specific condition; and
- Ordering excessive laboratory tests.

Examples of actions that may constitute Medicare **abuse** include:

- Billing for unnecessary medical services;
- Billing for brand name drugs when generics are dispensed;
- Charging excessively for services or supplies; and
- Misusing codes on a claim, such as up-coding or unbundling codes

## **FWA (cont.)**

### **Differences Among Fraud, Waste, and Abuse**

There are differences among fraud, waste, and abuse. One of the main differences is intent and knowledge. Fraud requires intent to obtain payment and knowledge that the actions are wrong. Waste and abuse may involve obtaining an improper payment or creating an unnecessary cost to the Medicare Program, but does not require the same intent and knowledge.

### **Understanding FWA**

To detect FWA, you need to be knowledgeable on the following laws:

- Civil False Claims Act, Health Care Fraud Statute, and Criminal Fraud;
- Anti-Kickback Statute;
- Stark Statute (Physician Self-Referral Law);
- Exclusion; and
- Health Insurance Portability and Accountability Act (HIPAA).

### **Civil False Claims Act (FCA)**

The civil provisions of the FCA make a person liable to pay damages to the Government if he or she knowingly:

- Conspires to violate the FCA;
- Carries out other acts to obtain property from the Government by misrepresentation;
- Knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay the Government;
- Makes or uses a false record or statement supporting a false claim; or
- Presents a false claim for payment or approval.

### **Damages and Penalties**

Any person who knowingly submits false claims to the Government is liable for three times the Government's damages caused by the violator plus a penalty. The Civil Monetary Penalty (CMP) may range from \$5,500 to \$11,000 for each false claim.

### **Whistleblowers**

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.

FWA (cont.)

### **Health Care Fraud Statute**

The Health Care Fraud Statute states that "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.

### **Criminal Fraud**

Persons who knowingly make a false claim may be subject to:

- Criminal fines up to \$250,000;
- Imprisonment for up to 20 years; or
- Both.

If the violations resulted in death, the individual may be imprisoned for any term of years or life.

### **Anti-Kickback Statute**

The Anti-Kickback Statute prohibits knowingly and willfully soliciting, receiving, offering, or paying remuneration (including any kickback, bribe, or rebate) for referrals for services that are paid, in whole or in part, under a Federal health care program (including the Medicare Program).

### **Damages and Penalties**

Violations are punishable by:

- A fine of up to \$25,000;
- Imprisonment for up to 5 years; or
- Both.

### **Stark Statute (Physician Self-Referral Law)**

The Stark Statute prohibits a physician from making referrals for certain designated health services to an entity when the physician (or a member of his or her family) has:

- An ownership/investment interest; or
- A compensation arrangement (exceptions apply).

### **Damages and Penalties**

Medicare claims tainted by an arrangement that does not comply with the Stark Statute are not payable. A penalty of up to **\$15,000** may be imposed for each service provided. There may also be up to a **\$100,000** fine for entering into an unlawful arrangement or scheme.

## **FWA (cont.)**

### **Civil Monetary Penalties Law**

The Office of Inspector General (OIG) may impose Civil penalties for many reasons, including:

- Arranging for services or items from an excluded individual or entity;
- Providing services or items while excluded;
- Failing to grant OIG timely access to records;
- Knowing of an overpayment and failing to report and return it;
- Making false claims; or
- Paying to influence referrals.

### **Damages and Penalties**

The penalties range from \$10,000 to \$50,000 depending on the specific violation. Violators are also subject to three times the amount:

- Claimed for each service or item; or
- Of remuneration offered, paid, solicited, or received.

### **Accessing the CMS Training Material**

1. Navigate to <http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/ProviderCompliance.html>
2. Scroll to the "Fraud and Abuse-related Resources" section
3. Click on "Medicare Parts C and D Fraud, Waste, and Abuse Training and Medicare Parts C and D General Compliance Training"
4. Follow the instructions within the CMS document