



# **Kootenai**CareNetwork

Annual Fraud, Waste Abuse and Ethics

# Fraud Waste and Abuse Laws and Regulations- Corporate Compliance

Corporate compliance means following business laws and regulations. Applicable laws and regulations for the healthcare field are:

- Medicare Regulations
- Federal False Claims Act
- Stark Law
- Anti-Kickback Statute
- Sections of the Social Security Act
- Mail and Wire Fraud Statutes
- EMTALA
- HIPAA
- Medical Identity Theft

In recent years, government agencies have started to look more closely for healthcare fraud and misconduct. Federal money has been used to investigate and prosecute fraud. This has increased the number of providers convicted of fraud.

# Medicare and Medicaid

- **Medicare** is a national social insurance program, administered by the U.S. Federal Government since 1965, that guarantees access to health insurance for Americans ages 65 and older, younger people with disabilities as well as people with end stage renal disease.
- **Medicaid** is a national health program for certain people and families with low incomes and resources. It is an eligibility program that is jointly funded by the state and federal governments, and is managed by each individual state.
- Any healthcare organization that participates in Medicare and Medicaid must follow Centers for Medicare and Medicaid Services (CMS) regulations.

# False Claims Act

- The False Claims Act makes it illegal to submit a falsified bill to a government agency (such as Medicaid and Medicare). This act:
  - Allows a citizen who has evidence of fraud to sue on behalf of the government. This “whistleblower” is protected from retaliation for reporting the fraud.
  - For example, a physician was prosecuted under the False Claims Act for submitting claims for evaluation and management (E&M) services even though he has already received payment for the same services under previously billed stress test claims.
  - He paid the Government \$435,000 and entered into a 5-year Integrity Agreement.
- 31 United states code § 3729

# Stark Law

- The Physician Self-Referral Statute, or Stark law as it is sometimes called, prohibits physicians from referring Medicare or Medicaid patients for designated health services to entities with which they have a financial relationship, unless an exception applies.
- Financial relationships covered by this law include ownership/investment interests, as well as compensation relationships.
- This law applies to a physician's financial relationships and those of their immediate family members.
- Designated health services include clinical laboratory services, physical therapy, and home health services, among others.

42 United States Code § 1395nn

# Anti-Kickback Statute

- The **Anti-Kickback Statute** (AKS) prohibits asking for or receiving anything of value that could be reimbursed by a government healthcare program.
- This applies to both payers and recipients of kickbacks. Just asking for or offering a kickback could violate the law.
- For example, a physician accused of accepting kickbacks from device manufacturers in exchange for preferentially using their artificial hip and knee joints recently paid \$650,000 to settle the case against him.

42 United States Code § 1320a-7b(b)

# Mail and Wire Fraud Statutes

- Mail and wire fraud statutes make it illegal to use the US Mail or electronic communication as part of a fraud. For example, these statutes make it illegal to mail a fraudulent bill to Medicare.

18 United States Code Chapter 63

# EMTALA

- The Emergency Medical Treatment and Active Labor Act (EMTALA) is commonly known as the Patient Anti-Dumping Statute. This statute requires hospitals to provide a medical screening exam and stabilize the patient before making a medically appropriate transfer to another facility. This is required regardless of the patient's ability to pay for services.
- 42 United States Code § 1395dd



# HIPAA

- **HIPAA** is the Health Insurance Portability and Accountability Act and is a federal regulation. HIPAA sets standards for patient privacy and security and enforces civil and criminal penalties for individuals who violate HIPAA. It also outlines different privacy rights that patients have such as the right to request a copy of their medical record.
- HIPAA regulatory citation: 45 CFR Parts 160, 162, and 164

# Exclusions

- No Federal health care program payment may be made for any item or service furnished, ordered, or prescribed by an individual or entity excluded by the Office of Inspector General (OIG). The OIG has authority to exclude individuals and entities from federally funded health care programs and maintains the List of Excluded Individuals and Entities (LEIE). You can access the LEIE at <https://exclusions.oig.hhs.gov> on the internet.
- The United States General Services Administration (GSA) administers the Excluded Parties List System (EPLS), which contains debarment actions taken by various Federal agencies, including the OIG.

For more information, refer to 42 U.S.C. Section 1329a-7 and 42 Code of Federal Regulations Section 1001.1901 on the internet.

# Civil Monetary Penalties Law

The OIG may impose Civil penalties for a number of 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

# Medical Identity Theft

**Medical Identity Theft** is a serious issue in the healthcare industry. Every healthcare organization must have controls in place to identify, detect and prevent medical identity theft from happening.

**Some warning signs or red flags to look for include:**

- The identification provided by the patient appears to be forged or altered.
- The identification provided does not resemble the patient.
- The identifying information provided by the patient does not match what is in the medical record.
- The practice receives notification from a victim or law enforcement regarding possible identity theft in connection with one of your patients.

15 United States Code § 1601

# Potential Consequences of Noncompliance

Employees that engage in non-compliant behavior must receive some type of disciplinary action.

Outside of internal disciplinary action, your practice could face other penalties of noncompliance. The actual consequence depends on the violation.

- Civil Money Penalties
- Criminal Conviction/Fines
- Civil Prosecution
- Imprisonment
- Loss of Provider License
- Exclusion from Federal Health Care programs

# Additional Compliance Issues

- **Waste:** the over utilization of 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 misuse of resources.

# Additional Compliance Issues

- **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.

# Additional Compliance Issues

- **Differences Between Fraud, Waste, and Abuse:** There are differences between fraud, waste, and abuse. One of the primary difference is intent and knowledge. **Fraud** requires the person to have an intent to obtain payment and the knowledge that their actions are wrong. **Waste** and **abuse** may involve obtaining an improper payment, but does not require the intent and knowledge.



# Additional Compliance Issues

## **Examples of actions that may constitute Medicare Fraud:**

- Knowingly billing for services not furnished or supplies not provided, including billing Medicare 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

## **Examples of actions that may constitute Medicare Waste:**

- Conducting excessive office visits or writing excessive prescriptions
- Ordering excessive laboratory tests

## **Examples of actions that may constitute Medicare Abuse:**

- Billing for unnecessary medical services;
- Billing for brand name drugs when generics are dispensed

# Patient Inducement

Federal law generally prohibits offering or paying rewards, incentives, discounts, or other items of value to federal beneficiary's choice of services or items that are paid for by insurance. Offering gifts to patients is sometimes referred to as "patient inducement."

The law permits Medicare or Medicaid providers to offer federal beneficiaries inexpensive gifts other than cash or cash equivalents without violating the statute. These are items having a retail value of no more than \$15 individually, and no more than \$75 in the aggregate annually per patient (or patient's family).

## **Some examples include:**

- Hospital-issued slippers
- Toothbrushes or toothpaste
- Free coffee in waiting room
- Bus tokens or other local transportation vouchers

## **Examples of prohibited gifts include:**

- Routinely waiving patient co-pays or deductibles regardless of whether the patient can afford to pay
- Giving patients free equipment, supplies or drugs beyond a minimal value for use at home
- Providing additional services for which the patient is not billed

# How to Report Noncompliance

- Discuss with your practice leader
- Report anonymously to the Confidential hotline by calling 1-844-678-6269 or visiting the website [www.kootenaicarenetwork.ethicspoint.com](http://www.kootenaicarenetwork.ethicspoint.com)
- Contact the Kootenai Care Network Compliance Officer: 208-625-4016
- Report to the Office of the Inspector General Hotline 1-800-HHS-TIPS or [OIG.HHS.GOV](http://OIG.HHS.GOV)

Everyone is required to report suspected instances of noncompliance. Kootenai Care Network may not retaliate against you for making a good faith effort in reporting.

# Waste, Fraud, Abuse, and Ethics Quiz

## Case Study One

A person comes to your pharmacy to drop off a prescription for a patient who is a “regular” customer. The prescription is for a controlled substance with a quantity of 160. This patient normally receives a quantity of 60, not 160. You review the prescription and have concerns about possible forgery. What is your next step?

**Select the correct answer.**

- a. Fill the prescription for 160
- b. Fill the prescription for 60
- c. Call the prescriber to verify the quantity
- d. Call the Sponsor’s compliance department
- e. Call law enforcement

# Waste, Fraud, Abuse, and Ethics Quiz

- The answer is c
- Great Choice!

# Waste, Fraud, Abuse, and Ethics Quiz

## Case Study Two

In an effort to boost business, a clinic is offering new patients with traditional Medicare or Medicaid insurance \$75 gift cards for receiving care at their clinic. They are giving \$100 gift cards to new patients who have private insurance or are self-pay.

### What is wrong with this scenario?

- a. It depends on where the gift cards are from.
- b. You cannot give gift cards to patients but cash is okay.
- c. You cannot offer gifts of cash equivalents to influence patients to get care at your facility.
- d. Nothing is wrong with this scenario – people love gifts!

# Waste, Fraud, Abuse, and Ethics Quiz

- The answer is C
- While everyone loves freebies, you must be very careful about offering gifts or cash equivalents to patients as a means to influence them to get healthcare services or items. You may offer them inexpensive gifts for \$15 or under not to exceed \$75 annually.

# Waste, Fraud, Abuse, and Ethics Quiz

## True or false?

Bribes or kickbacks of any kind for services that are paid under a federal health care program (which includes Medicare) constitute fraud by the person making as well as the person receiving them.

- a. True
- b. False



# Waste, Fraud, Abuse, and Ethics Quiz

- The answer is A
- Well done!

# Waste, Fraud, Abuse, and Ethics Quiz

## Case Study Three

You are a physician who is asked by two pharmaceutical companies to prescribe your patients their anti-psychotic drug clozapine. They offer to pay you cash and provide other gifts in exchange for prescribing this drug. You agree and prescribe the drug to all your patients, even those who don't need it. You bill their insurance which include Medicare and Medicaid.

### What laws has this physician violated?

- a. Anti-kickback statute
- b. HIPAA
- c. False Claims act
- d. A and C

# Waste, Fraud, Abuse, and Ethics Quiz

- The answer is D
- This physician accepted kickbacks from pharmaceutical companies and submitted false claims because he prescribed the drug to patients based on the kickbacks he received instead of his medical judgment or the needs of his patients.

# Waste, Fraud, Abuse, and Ethics Quiz

## True or False?

If you aren't sure how to code a particular service, you should just choose the code that will give you the highest reimbursement.

- a. True
- b. False

# Waste, Fraud, Abuse, and Ethics Quiz

- The answer is False
- This is considered a form of “up coding”, which occurs when a provider bills for a higher item or service than what was actually performed and may result in higher reimbursement from Medicare. If you are uncertain about how to code a particular service, you should always consult with your supervisor on how to proceed.

# Waste, Fraud, Abuse, and Ethics Quiz

**Which of the following requires intent to obtain payment and the knowledge that the actions are wrong?**

- a. Fraud
- b. Abuse
- c. Waste

# Waste, Fraud, Abuse, and Ethics Quiz

- The answer is A
- That's right!

# Waste, Fraud, Abuse, and Ethics Quiz

**Which of the following is NOT potentially a penalty for violation of a law or regulation prohibiting Fraud, Waste, and Abuse (FWA)?**

- a. Civil Monetary Penalties
- b. Deportation
- c. Exclusion from participation in all Federal health care programs



# Waste, Fraud, Abuse, and Ethics Quiz

- The answer is B
- Excellent!

# Waste, Fraud, Abuse, and Ethics Quiz

## **How Do You Prevent Fraud, Waste, and Abuse?**

- a. Look for suspicious activity
- b. Conduct yourself in an ethical manner
- c. Ensure accurate and timely data/billing
- d. Verify all information provided to you
- e. All of the above

# Waste, Fraud, Abuse, and Ethics Quiz

- The answer is E
- Great answer!

# Waste, Fraud, Abuse, and Ethics Quiz

## Ways to report potential Fraud, Waste, and Abuse (FWA) at Kootenai Care Network include:

- a. Call the confidential hotline
- b. Discussion with your practice leader
- c. Report it directly to the compliance officer
- d. All of the above

# Waste, Fraud, Abuse, and Ethics Quiz

- The answer is D
- Nicely done!