Combating Medicare Parts C and D Fraud, Waste, and Abuse

Course Objectives

- Recognize FWA in the Medicare Program;
- Identify the major laws and regulations pertaining to FWA;
- Recognize potential consequences and penalties associated with violations;
- Identify methods of preventing FWA;
- Identify how to report FWA; and
- Recognize how to correct FWA.

Fraud

- **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 furnished or supplies not provided, including billing Medicare for appointments that the patient failed to keep;
- Billing for non-existent prescriptions; and
- Knowingly altering claim forms, medical records, or receipts to receive 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 the 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 upcoding or unbundling codes.

Differences Among Fraud, Waste, and Abuse

- There are differences among fraud, waste, and abuse. One of the primary differences is intent and knowledge. Fraud requires intent to obtain payment and the 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

- 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).
- For details about the specific laws, such as safe harbor provisions, consult the applicable statute and regulations.

Civil False Claims Act (FCA)

- 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.

Civil FCA (continued)

- **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.

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.”

Criminal Fraud

- 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 for 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).
- For more information, refer to 42 U.S.C. Section 1320A-7b(b) on the Internet.

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).
- For more information, refer to 42 U.S.C. Section 1395nn on the Internet.

Civil Monetary Penalties Law

- 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.
- For more information, refer to the Act, Section 1128A(a) on the Internet.

Exclusion

- 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 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. You may access the EPLS at https://www.sam.gov on the Internet.
- If looking for excluded individuals or entities, make sure to check both the LEIE and the EPLS since the lists are not the same. For more information, refer to 42 U.S.C. Section 1320a-7 and 42 Code of Federal Regulations Section 1001.1901 on the Internet.

Health Insurance Portability and Accountability Act (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.
- 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.
- For more information, visit http://www.hhs.gov/ocr/privacy on the Internet.

Lesson 1 Summary

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

Lesson 1 Review

Knowledge Check

- Which of the following requires intent to obtain payment and the knowledge that the actions are wrong?
- Select the correct answer.

  A. Fraud

  B. Abuse

  C. Waste

Answer

- The correct answer is:

- A. Fraud

- **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.

Knowledge Check

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

  A. Civil Monetary Penalties

  B. Deportation

  C. Exclusion from participation in all Federal health care programs

Answer

- The correct answer is:
- B. Deportation
- Deportation is NOT a potential penalty for violation of a law or regulation prohibiting Fraud, Waste, and Abuse.

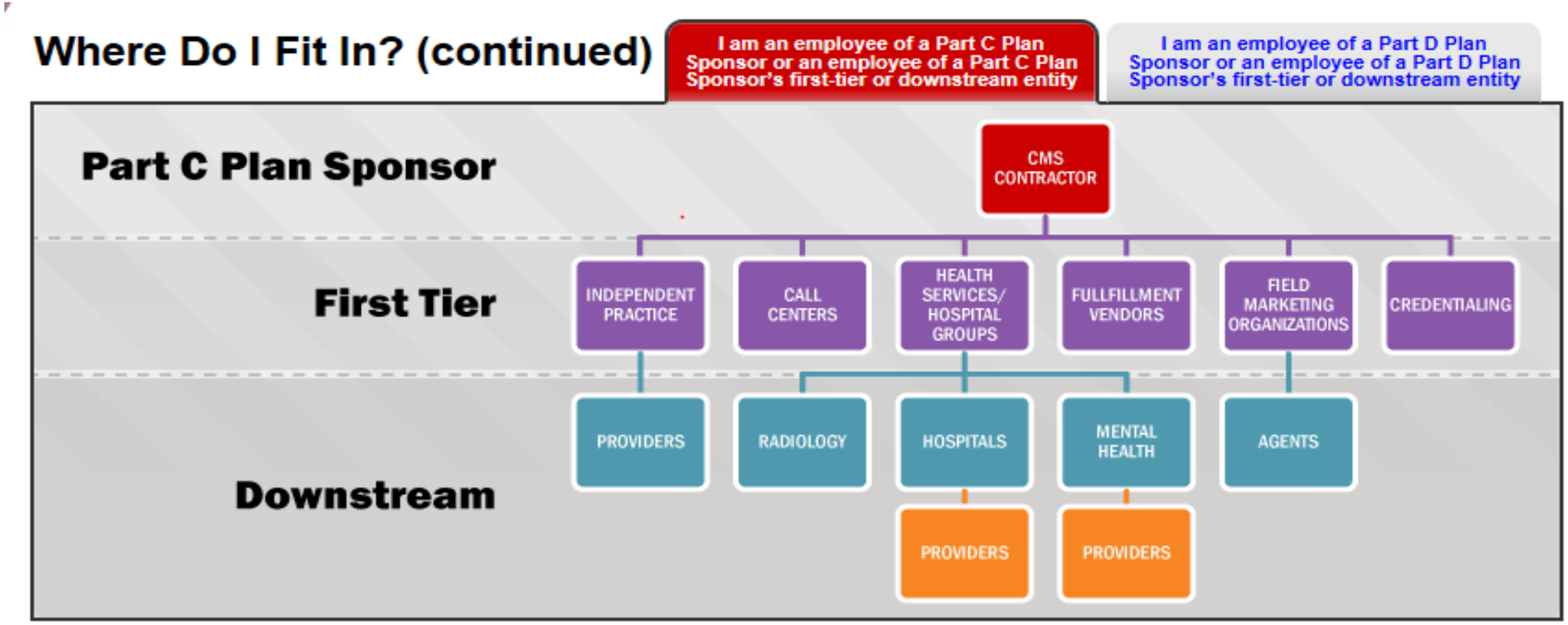
Lesson 2: Your Role in the Fight Against FWA

- Identify methods of preventing FWA;
- Identify how to report FWA; and
- Recognize how to correct FWA

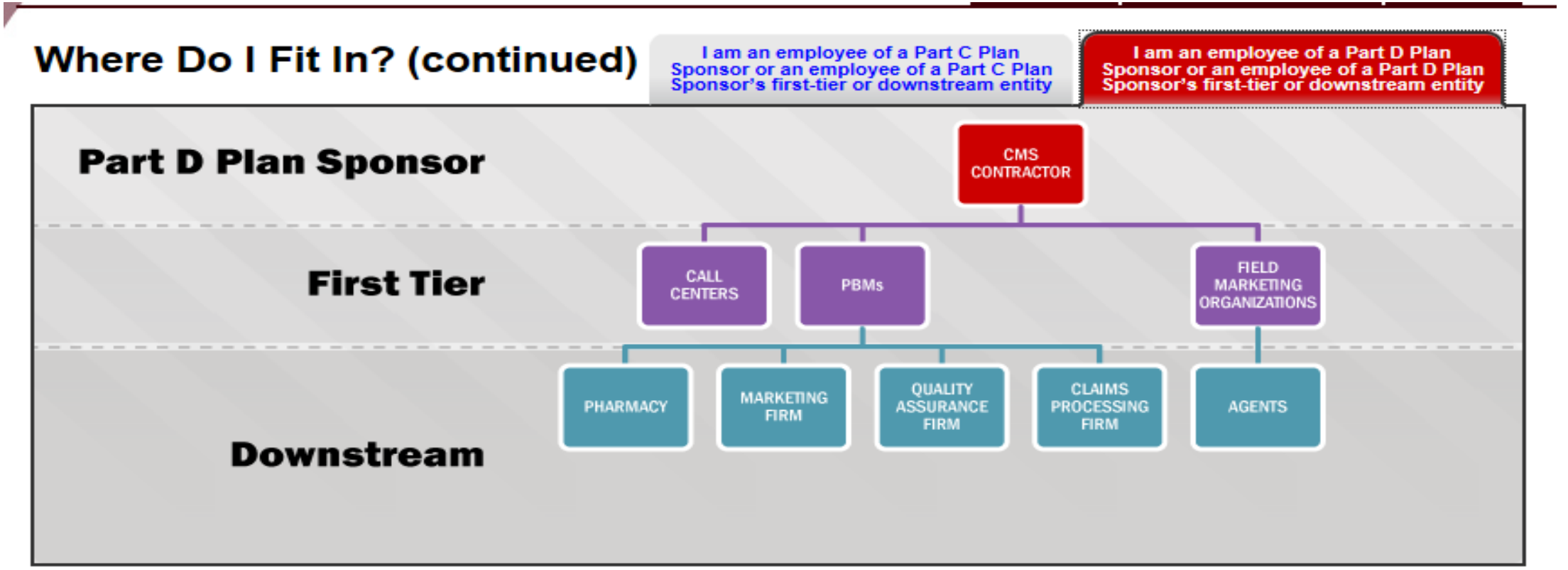
Where Do I Fit In?

- Sponsor;
- First-tier entity (Examples: Pharmacy Benefit Management (PBM), hospital or health care facility, provider group, doctor office, clinical laboratory, customer service provider, claims processing and adjudication company, a company that handles enrollment, disenrollment, and membership functions, and contracted sales agent);
- Downstream entity (Examples: pharmacies, doctor office, firms providing agent/broker services, marketing firms, and call centers); or
- Related entity (Examples: Entity with common ownership or control of a Sponsor, health promotion provider, or SilverSneakers®).

Where Do I Fit In? (continued)



Where Do I Fit In? (continued)



Text version of chart

What Are Your Responsibilities?

- **FIRST**, you must comply with all applicable statutory, regulatory, and other Medicare Part C or Part D requirements, including adopting and using an effective compliance program.
- **SECOND**, you have a duty to the Medicare Program to report any compliance concerns, and suspected or actual violations that you may be aware of.
- **THIRD**, you have a duty to follow your organization's Code of Conduct that articulates your and your organization's commitment to standards of conduct and ethical rules of behavior.

How Do You 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

- Familiarize yourself with your entity's policies and procedures.
- Every Sponsor and First-Tier, Downstream, or Related Entity (FDR) must have policies and procedures that address FWA. These procedures should help you detect, prevent, report, and correct FWA.
- Standards of Conduct should describe the Sponsor's expectations that:
  - All employees conduct themselves in an ethical manner;
  - Appropriate mechanisms are in place for anyone to report non-compliance and potential FWA; and
  - Reported issues will be addressed and corrected.
- Standards of Conduct communicate to employees and FDRs that compliance is everyone's responsibility, from the top of the organization to the bottom.

Report FWA

- Everyone must report suspected instances of FWA. Your Sponsor's Code of Conduct should clearly state this obligation. Sponsors may not retaliate against you for making a good faith effort in reporting.
- Do not be concerned about whether it is fraud, waste, or abuse. Just report any concerns to your compliance department or your Sponsor's compliance department. Your Sponsor's compliance department area will investigate and make the proper determination. Often, Sponsors have a Special Investigations Unit (SIU) dedicated to investigating FWA. They may also maintain an FWA Hotline.

Reporting FWA Outside Your Organization

- If warranted, Sponsors and FDRs must report potentially fraudulent conduct to Government authorities, such as the Office of Inspector General, the Department of Justice, or CMS.
- Individuals or entities who wish to voluntarily disclose self-discovered potential fraud to OIG may do so under the Self-Disclosure Protocol (SDP). Self-disclosure gives providers the opportunity to avoid the costs and disruptions associated with a Government-directed investigation and civil or administrative litigation.
- **Details to Include When Reporting FWA**
- When reporting suspected FWA, you should include:
  - Contact information for the source of the information, suspects, and witnesses;
  - Details of the alleged FWA;
  - Identification of the specific Medicare rules allegedly violated; and
  - The suspect's history of compliance, education, training, and communication with your organization or other entities.

Correction

- Develop a plan to correct the issue. Consult your organization's compliance officer to find out the process for the corrective action plan development. The actual plan is going to vary, depending on the specific circumstances. In general:
  - Design the corrective action to correct the underlying problem that results in FWA program violations and to prevent future non-compliance;
  - Tailor the corrective action to address the particular FWA, problem, or deficiency identified. Include timeframes for specific actions;
  - Document corrective actions addressing non-compliance or FWA committed by a Sponsor's employee or FDR's employee and include consequences for failure to satisfactorily complete the corrective action; and
  - Once started, continuously monitor corrective actions to ensure they are effective.

Key Indicators: Potential Provider Issues

- Are the provider's prescriptions appropriate for the member's health condition (medically necessary)?
- Does the provider bill the Sponsor for services not provided?
- Does the provider write prescriptions for diverse drugs or primarily for controlled substances?
- Is the provider performing medically unnecessary services for the member?
- Is the provider prescribing a higher quantity than medically necessary for the condition?
- Is the provider's diagnosis for the member supported in the medical record?

Key Indicators: Potential Beneficiary Issues

- Does the prescription, medical record, or laboratory test look altered or possibly forged?
- Does the beneficiary's medical history support the services requested?
- Have you filled numerous identical prescriptions for this beneficiary, possibly from different doctors?
- Is the person receiving the medical service the actual beneficiary (identity theft)?
- Is the prescription appropriate based on the beneficiary's other prescriptions?

Key Indicators: Potential Pharmacy Issues

- Are drugs being diverted (drugs meant for nursing homes, hospice, and other entities being sent elsewhere)?
- Are the dispensed drugs expired, fake, diluted, or illegal?
- Are generic drugs provided when the prescription requires that brand drugs be dispensed?
- Are PBMs being billed for prescriptions that are not filled or picked up?
- Are proper provisions made if the entire prescription cannot be filled (no additional dispensing fees for split prescriptions)?
- Do you see prescriptions being altered (changing quantities or Dispense As Written)?

Key Indicators: Potential Wholesaler Issues

- Is the wholesaler distributing fake, diluted, expired, or illegally imported drugs?
- Is the wholesaler diverting drugs meant for nursing homes, hospices, and Acquired Immune Deficiency Syndrome (AIDS) clinics and then marking up the prices and sending to other smaller wholesalers or pharmacies?

Key Indicators: Potential Manufacturer Issues

- Does the manufacturer promote off-label drug usage?
- Does the manufacturer provide samples, knowing that the samples will be billed to a Federal health care program?

Key Indicators: Potential Sponsor Issues

- Does the Sponsor encourage/support inappropriate risk adjustment submissions?
- Does the Sponsor lead the beneficiary to believe that the cost of benefits is one price, only for the beneficiary to find out that the actual cost is higher?
- Does the Sponsor offer cash inducements for beneficiaries to join the plan?
- Does the Sponsor use unlicensed agents?

Lesson 2 Summary

- As a person who provides health or administrative services to a Medicare Parts C or D enrollee, you play a vital role in preventing FWA. Conduct yourself ethically, stay informed of your organization's policies and procedures, and keep an eye out for key indicators of potential FWA.
- Report potential FWA. Every Sponsor must have a mechanism for reporting potential FWA. Each Sponsor must be able to accept anonymous reports and cannot retaliate against you for reporting.
- Promptly correct identified FWA with an effective corrective action plan.

Lesson 2 Review

Knowledge Check

- A person comes to your pharmacy to drop off a prescription for a beneficiary who is a “regular” customer. The prescription is for a controlled substance with a quantity of 160. This beneficiary 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

Answer

- Correct answer:

- C: Call the prescriber to verify the quantity

Knowledge Check

- Your job is to submit a risk diagnosis to the Centers for Medicare & Medicaid Services (CMS) for the purpose of payment. As part of this job you verify, through a certain process, that the data is accurate. Your immediate supervisor tells you to ignore the Sponsor's process and to adjust/add risk diagnosis codes for certain individuals. What should you do?
- Select the correct answer.

  A. Do what your immediate supervisor asked you to do and adjust/add risk diagnosis codes

  B. Report the incident to the compliance department (via compliance hotline or other mechanism)

  C. Discuss your concerns with your immediate supervisor

  D. Call law enforcement

Answer

- Correct answer:

- B: Report the incident to the compliance department (via compliance hotline or other mechanism)

Knowledge Check

- You are in charge of payment of claims submitted by providers. You notice a certain diagnostic provider (“Doe Diagnostics”) requested a substantial payment for a large number of members. Many of these claims are for a certain procedure. You review the same type of procedure for other diagnostic providers and realize that Doe Diagnostics’ claims far exceed any other provider that you reviewed. What should you do?
- Select the correct answer.

  A. Call Doe Diagnostics and request additional information for the claims

  B. Consult with your immediate supervisor for next steps or contact the compliance department (via compliance hotline, Special Investigations Unit (SIU), or other mechanism)

  C. Reject the claims

  D. Pay the claims

Answer

- Correct answer:

- B: Consult with your immediate supervisor for next steps or contact the compliance department (via compliance hotline, Special Investigations Unit (SIU), or other mechanism)

Knowledge Check

- You are performing a regular inventory of the controlled substances in the pharmacy. You discover a minor inventory discrepancy. What should you do?
- Select the correct answer.

  A. Call local law enforcement

  B. Perform another review

  C. Contact your compliance department (via compliance hotline or other mechanism)

  D. Discuss your concerns with your supervisor

  E. Follow your pharmacy's procedures

Answer

- Correct answer:

- E: Follow your pharmacy's procedures

The Health Insurance Portability and Accountability Act (HIPAA)

HIPAA Privacy & Security

- Protect and enhance the rights of consumers
- Ensure strong privacy protections without interfering with access to quality of healthcare
- Improve the efficiency and effectiveness of healthcare delivery

Scope of Privacy Rule

Individually identifiable health information also known as protected health information (PHI)

- Paper
- Oral
- Electronic

What Does HIPAA Privacy Mean to Healthcare Staff?

- HIPAA impacts the majority of healthcare operations
- Its more than a medical records issue
- There are specific requirements in how health information is handled and maintained
- There is more patient involvement in use and disclosure
- There is more workforce accountability about use and disclosures
- It requires training & education of workforce

What is Covered?

Protected Health Information (PHI)

- Individually Identifiable Health Information
- Created, Received, or Transmitted

When It is NOT Covered

De-Identified Information

Information that is de-identified is no longer considered to be protected health information, and is thus exempt from the other provisions of the regulation

Means of De-Identifying:

- Removing
- Coding
- Encrypting
- Otherwise eliminating or concealing

Authorization for Disclosure

The release, transfer, provision of access to, or divulging in any other manner of PHI outside the covered entity holding the information.

Minimum Necessary

Privacy Rights of Patient

Covered Entity need for the information

(for use or disclosure)

Protected Health Information

- Electronic Health Information
- Only access information which is needed to perform work related duties
- Access to the system is monitored electronically

HIPAA Security

Requirements

- Ensure confidentiality, integrity, and availability of ePHI
- Identify and protect against threats
- Protect against impermissible uses and disclosures
- Ensure compliance of workforce

Reporting

Saint Louis University Compliance Hotline

- Available and answered 24/7
- Caller / reporter may remain anonymous
- Protection provided

Physician Billing, Coding & Documentation

- Copy and paste, per payer's guidelines, cannot be used to support a billed service.
- Saint Louis University Compliance will fail providers on audit if the only documentation to support a billed service has been copy and pasted

EMR Audit Tool

- Our EPIC Audit Tool can identify and highlight copy and pasted documentation.
- The audit tool identifies:
  - Where the material was copied from;
  - When the original material was written; and
  - The original author.

You completed Lesson 2: Your Role in the Fight Against FWA

- Now that you have learned how to fight FWA, let's take a post-assessment to see how much you've learned!