



Fraud, Waste and Abuse

A Training and Education Tool for Passport Advantage
Network Providers and Staff

Compiled by Passport Advantage, December 2009

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Provider Action Required



In accordance with the Centers for Medicare & Medicaid Services (CMS), all Medicare Advantage Plans, along with their delegated and contracted entities, must:

- **Conduct FWA training for all employees by December 31, 2009** and annually thereafter;
- **Maintain in-office training records**, including signatures, and provide those records to Passport Advantage upon request; and,
- **Implement appropriate policies and procedures** for your organization to address incidents of fraud, waste, and abuse.

You may comply with the FWA training requirement by either:

- A. Completing this training provided by Passport Advantage; or,
- B. Participating in training from another Medicare Advantage and/or Part D Plan Sponsor, or other organization.

Key Definitions



Downstream Entity: (e.g. PAD Practitioners, Hospitals and Facilities)

Any party that enters into a written arrangement, acceptable to CMS, below the level of a Medicare Advantage Organization (e.g. Passport Advantage) or a first tier entity (i.e. a pharmacy benefit manager or other contracted administrative entity). Downstream entities include all written agreements down to the level of the provider of health services.

Medicare Drug Integrity Contractor (MEDIC):

An organization CMS has contracted with to perform specific program integrity functions for Part D under the Medicare Integrity Program.

Pharmacy Benefit Manager (PBM):

An entity that provides pharmacy benefit management services (including contracting with a network of pharmacies; establishing payment levels for network pharmacies; negotiating rebate arrangements; developing and managing formularies, preferred drug lists, and prior authorization programs; maintaining patient compliance programs; performing drug utilization review; and operating disease management programs).

Key Definitions



Fraud:

Federal health care fraud generally involves a person or entity's intentional use of false statements or fraudulent schemes (such as kickbacks) to obtain payment for, or to cause another to obtain payment for items or services payable under a Federal health care program.

Waste:

The over-utilization of services not caused by criminally negligent actions; waste involves the misuse of resources.

Abuse:

In general, program abuse, which may be intentional or unintentional, and directly or indirectly results in unnecessary or increased costs to the Medicare Program.

Laws & Regulations



The False Claims Act Prohibits:

- Knowingly presenting (or causing to be presented) to an officer or employee of the US government a false or fraudulent claim for payment or approval; or,
- Knowingly making, using or causing a false record or statement to get a false or fraudulent claim paid or approved by the government.

Sanctions:

- If convicted, an individual/entity is liable to the US government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the government sustains because of the act of that person or entity.

Laws & Regulations



Anti-Kickback Statute:

Individuals or entities that knowingly and willfully solicit or receive any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind in return for:

- Referring an individual to a person for the furnishing or arranging for the furnishing of any item or service or which payment may be made in whole or in part under a Federal health care program; or,
- Purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program.

Sanctions:

- If convicted of soliciting remunerations, an individual/entity shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.

Laws & Regulations



Health Insurance Portability and Accountability Act (HIPAA)

The primary purpose of HIPAA is to ensure the privacy of beneficiary Protected Health Information (PHI) that is maintained or transmitted electronically or through other mediums by healthcare providers, health plans and healthcare clearinghouses.

Under HIPAA, health plans and providers are required to:

- Disclose PHI between "Covered Entities" without the beneficiary's consent for Treatment, Payment, and health care Operations (TPO) only.
- Limit disclosure of PHI to the "minimum amount necessary."
- Obtain beneficiary's consent for use and/or disclosure of PHI to non-covered entities for non-health care operation (i.e. marketing).

Laws & Regulations



Other Criminal Actions Include:

- **Mail Fraud** - Refers to any scheme which attempts to defraud any health care benefit program by unlawfully obtaining money or valuables in which the postal system is used at any point in the commission of a criminal offense.
- **Wire Fraud** - Any criminally fraudulent activity that has been determined to have involved electronic communications of any kind, at any phase of the event.
- **False Statements** - when an individual/entity, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact.

Examples of Provider FWA



- Billing for items or services not rendered as claimed.
- Soliciting, offering or receiving a kickback, bribe or rebate.
- Violations of the physician self-referral ("Stark") prohibition.
- Charging in excess for services or supplies.
- Providing medically unnecessary services.
- Upcoding the level of service provided.

Other Examples of FWA



- ***Appeals Process Handled Incorrectly:***

A Medicare Advantage Plan denies a member's right to appeal or wrongfully denies a timely appeal.

- ***Prescription Drug Switching:***

Pharmacy Benefit Manager (PBM) influences the prescriber to change the member's drug or receives payment to switch a member from one drug to another.

- ***Bait and Switch Pricing:***

Occurs when 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 Drug Shorting:***

Pharmacist provides less than the prescribed quantity and intentionally does not inform the member or make arrangements to provide the balance but bills for the fully-prescribed amount.

Other Examples of FWA



- ***Script Mills:***

Provider writes prescriptions for drugs that are not medically necessary, often in mass quantities, and often for patients that are not theirs. (These scripts are usually written, but not always, for controlled drugs for sale on the black market, and might include improper payments to the provider.)

- ***Theft of Provider's DEA Number or Prescription Pad:***

Prescription pads and/or DEA numbers can be stolen from prescribers. (This information could illegally be used to write prescriptions for controlled substances or other medications often sold on the black market.)

- ***Illegal Off-label Promotion:***

Illegal promotion of off-label drug usage through marketing, financial incentives, or other promotion campaigns.

- ***Illegal Usage of Free Samples:***

Providing free samples to physicians knowing and expecting them to bill the federal health care programs for the sample.

Other Examples of FWA



- ***Identify Theft or Card Sharing:***
Perpetrator uses another person's Medicare card to illegally obtain prescriptions or other medical services.
- ***Resale of Drugs on Black Market:***
Beneficiary falsely reports loss or theft of drugs or feigns illness to obtain drugs for resale on the black market.
- ***Doctor Shopping:***
Beneficiary consults a number of doctors for the purpose of inappropriately obtaining multiple prescriptions for narcotic painkillers or other drugs. (Doctor shopping might be indicative of a underlying scheme, such as stockpiling or resale on the black market.)
- ***Prescription Forging or Altering:***
Where existing prescriptions are altered, by an individual without the prescriber's permission to increase quantity or number of refills.

Reporting Suspected FWA



For suspected FWA in regard to **Passport Advantage (PAD)**, report to:

- PAD Corporate and Financial Investigations (CFI)
Toll Free Hotline 1-866-833-9718

For suspected FWA in regard to **any Medicare Plan**, report to:

- Medicare Customer Service Center (at CMS)
1-800-MEDICARE (1-800-633-4227) or TTY at 1-877-486-2048
- U.S. Department of Health & Human Services, Office of Inspector General
1-800-447-8477 or TTY at 1-800-377-4950

Reporting Suspected FWA



When reporting suspected FWA, please provide as many details as possible, including:

- ✓ Item or service involved in the allegation;
- ✓ Place of service;
- ✓ Nature of the allegation; and/or,
- ✓ Timeframe of the allegation.

As warranted, PAD's CFI Department will refer cases to the appropriate law enforcement agency and/or the Medicare Drug Integrity Contractor for further investigation.

Protections & Cooperation



Whistleblower Provision to Protect Employees Who Report FWA

Prohibits discharging or discriminating against any **employee** with respect to compensation, terms, conditions, or privileges of employment because the **employee** (or any person acting pursuant to the request of the **employee**) provided information to the Secretary of the Treasury, the Attorney General, or any Federal supervisory agency regarding a possible FWA violation.

Obstruction of a Criminal Investigation

Downstream entities of Passport Advantage, are required to cooperate in the investigation of suspected incidents of fraud, waste and abuse.

An individual or entity who willfully prevents, obstructs, misleads, delays or attempts to prevent, obstruct, mislead, or delay the communication of information or records relating to a violation of a Federal health care offense to a criminal investigator shall be fined or imprisoned not more than 5 years, or both.

Documentation Requirements



Upon completion of training, all employees must sign a "Training Log" attesting they have received training.

A sample Training Log is available on the Passport Advantage web site by visiting www.passportadvantage.org, selecting "Providers," then choosing the link to "References."

Your organization is responsible for maintaining in-office training records, including signatures, and must provide those records to the Plan upon request.

If your organization contracts with **other entities** to provide health and/or administrative services on behalf of Passport Advantage, you must ensure standardized FWA training is administered to those entities, as well.

In addition, those entities must maintain in-office training records and provide those records to the Plan upon request.

Additional FWA Resources



- **Department of Health & Human Services Office of Inspector General (OIG)**
<http://www.oig.hhs.gov/fraud.asp>
- **Centers for Medicare & Medicaid Services (CMS) Security Administration**
<http://www.ssa.gov/oig/guidelin.htm>
- **Health Insurance Portability and Accountability Act (HIPAA)** <http://www.hhs.gov/ocr/privacy/>