Fraud, Waste & Abuse (FWA) Training

UB|MD
PHYSICIANS' GROUP

A Message from the Compliance Office…

ALL UBMD providers and their staff are **required** by the Centers for Medicare and Medicaid Services (CMS) to complete Fraud, Waste & Abuse training when newly hired, and annually thereafter.

Our training is developed from the CMS web-training course. By viewing this PowerPoint presentation, and successfully completing the quiz afterward, your annual FWA training requirement will be fulfilled.

Should a 3rd party payor request proof from you that your practice completed FWA training, we can provide you with a list of employees in your practice who successfully completed the training quiz. With that, you can attest to completion if the list we provide includes ALL of your practice plan providers and employees.

If you have any questions regarding this, pleases do not hesitate to contact us.

UB|MD
PHYSICIANS' GROUP

Training Requirements

- Upon training completion, you will be able to correctly:
  - ✓ Recognize FWA;
  - ✓ Identify major laws & regulations pertaining to FWA;
  - ✓ Recognize potential consequences & penalties associated with violations;
  - ✓ Identify methods of preventing FWA;
  - ✓ Identify how to report FWA; and
  - ✓ Recognize how to correct FWA.

UB|MD
PHYSICIANS' GROUP

Why do we need FWA training?

- Billions of dollars are improperly spent every year due to fraud, waste & abuse.
- As healthcare workers who provide health or administrative services for Medicare patients and all medical patients, every action we take potentially affects the Medicare program.
- Combatting fraud, waste & abuse is the responsibility of ALL of us.
- Training will enable you to be part of the solution by showing how to detect, correct and prevent FWA.

UB|MD
PHYSICIANS' GROUP

What is FWA?

- **Fraud**
  - ✓ Knowingly & willfully executing, or attempting to execute a scheme to defraud any health care benefit program;
  - ✓ Obtain by means of false or fraudulent pretenses, representations, promises, money or property owned by any health care benefit program;
  - ✓ Intentionally submitting false information to the government or government contractor to get money or a benefit.
- **Waste**
  - ✓ Practices that, directly or indirectly, result in unnecessary costs to the Medicare Program, such as overusing services.
  - ✓ Generally not considered to be caused by criminally negligent actions, but by the misuse of resources.
- **Abuse**
  - ✓ Includes actions that may, directly or indirectly, result in unnecessary costs to the Medicare Program.
  - ✓ Involves paying for items or services when there is no legal entitlement to that payment, and the provider has not knowingly and/or intentionally misrepresented the facts to obtain payment.

UB|MD
PHYSICIANS' GROUP

Examples

- **Fraud**
  - ✓ Knowingly billing for services not furnished or supplies not provided, including billing Medicare for appointments patient doesn't keep;
  - ✓ Billing for non-existent prescriptions;
  - ✓ Knowingly altering claim forms, medical records, or receipts to receive a higher payment.
- **Waste**
  - ✓ Conducting excessive office visits or writing excessive prescriptions;
  - ✓ Prescribing more medications than necessary for the treatment of a specific condition;
  - ✓ Ordering excessive laboratory tests.
- **Abuse**
  - ✓ Unknowingly billing for unnecessary medical services;
  - ✓ Unknowingly charging excessively for services and supplies;
  - ✓ Unknowing billing for brand name drugs when generics are dispensed;
  - ✓ Unknowingly misusing codes on a claim, such as upcoding or unbundling codes.

UB|MD
PHYSICIANS' GROUP

Difference Between Fraud, Waste & Abuse

- Primary difference is intent and knowledge.
- Fraud requires intent to obtain payment, and knowledge that the actions are wrong.
- Waste & Abuse may involve obtaining improper payment or creating unnecessary cost to Medicare Program, but do not require the same intent and knowledge.

For the definitions of fraud, waste & abuse, refer to Chapter 21 Section 20 of the "Medicare Managed Care Manual" and Chapter 9 of the "Prescription Drug Benefit Manual" on the Centers for Medicare & Medicaid Services (CMS) website

UB|MD
PHYSICIANS' GROUP

Laws & Penalties

- Civil provisions of the False Claims Act (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;
  - ✓ Conceals or improperly avoids or decreases an obligation to pay the government;
  - ✓ Makes or uses a false record or statement supporting a false claim;
  - ✓ Presents a false claim for payment or approval.
- Damages & Penalties
  - ✓ Three times the government's damages cause by violator, plus a penalty.
- Example
  - ✓ The owner-operator of a medical clinic in California used marketers to recruit individuals for medically unnecessary office visits, promised free, medically unnecessary equipment or free food as enticement, and charged Medicare more than $1.7 million for the scheme.
  - ✓ **The owner-operator was sentenced to 37 months in prison.**

UB|MD
PHYSICIANS' GROUP

Laws & Penalties

- The Fraud Statute makes it a criminal offense to :
  - ✓ Knowingly and willfully execute, or attempt to execute, a scheme to defraud a health care benefit program;
  - ✓ Conviction does not require proof that the violator had knowledge of the law or specific intent to violate the law.
- Damages & Penalties
  - ✓ Up to $250,000 fine or up to 10 years imprisonment, or both.
- Criminal Health Care Fraud Damages
  - ✓ Persons who knowingly make a false claim may be subject to criminal fines of up to $250,000, imprisonment for up to 20 years, or both.
  - ✓ If the violations result in death the individual may be imprisoned for any term of years or for life.
- Example
  - ✓ A Pennsylvania pharmacist submitted claims to a Medicare Part D plan for non-existent prescriptions and drugs not dispensed.
  - ✓ **The pharmacist pleaded guilty to health care fraud, received a 15 month prison sentence, and ordered to pay more than $166,000 restitution to the plan.**

UB|MD
PHYSICIANS' GROUP

Laws & Penalties

- The Anti-Kickback Statute (AKS):
  - ✓ Prohibits knowingly and willfully soliciting, receiving, offering or paying remuneration for referrals for services that are paid, in whole or in part, under a Federal health care program, including Medicare.
  - ✓ This includes kickbacks, bribe or rebate.
  - ✓ Safe harbors may apply.
- Damages & Penalties
  - ✓ Up to $25,000 fine, imprisonment for up to 5 years, or both.
- Example
  - ✓ From 2012-2015, a physician operating a pain management practice in Rhode Island conspired to solicit and receive kickbacks for prescribing a highly addictive version of the opioid Fentanyl, reported patients had breakthrough cancer pain to secure insurance payments, received $188,000 in speaker fee kickbacks from the drug manufacturer, and admitted the kickback scheme cost Medicare and other payers more than $750,000 .
  - ✓ **The physician must pay more than $750,000 restitution and is awaiting sentencing.**

UB|MD
PHYSICIANS' GROUP

Laws & Penalties

- According to the Civil Monetary Penalties Law (CMP) the Office of Inspector General (OIG) may impose civil monetary penalties for a number of reasons, including:
  - ✓ Arranging for services or items from an excluded individual or entity;
  - ✓ Providing services or items while provider is excluded;
  - ✓ Failing to grant OIG timely access to records;
  - ✓ Knowing of and failing to report and return an overpayment within 60 days of identification;
  - ✓ Making false claims; or
  - ✓ Paying to influence referrals.
- Damages & Penalties
  - ✓ Around $15,000 to $70,000 depending on the specific violation.
  - ✓ Also subject to 3 times the amount claimed for each service item, or of remuneration offered, paid, solicited or received.
- Example
  - ✓ A Florida medical practice allowed credit balances from various federal health care programs to accrue despite multiple internal warnings that the balances should be paid back. Failure to return those balances within 60 days violated the False Claims Act.
  - ✓ **The alleged $175,000 in unreturned payments was resolved for $448,821.58.**

UB|MD
PHYSICIANS' GROUP

Laws & Penalties

- The Stark Statute (Physician Self-Referral Law):
  - ✓ 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 may apply.
- Damages & Penalties
  - ✓ A penalty of around $24,250 can be imposed for each service provided.
  - ✓ May also be around a $161,000 fine for entering into an unlawful arrangement or scheme.
- Example
  - ✓ A California hospital maintained 97 financial relationships with physicians and physician group outside the fair market value standards, or that were improperly documented as exceptions.
  - ✓ **The hospital was ordered to pay a settlement of more than $3.2 million.**

UB|MD
PHYSICIANS' GROUP

Laws & Penalties

- Mandatory Exclusions: Excluded individuals & entities will be excluded from participation in all Federal health care programs. OIG is required by law to exclude individuals & entities convicted of the following types of criminal offenses.

  - ✓ Medicare or Medicaid fraud, and other offenses related to delivery of items or services under Medicare, Medicaid, SCHIP or other State health care programs;
  - ✓ Patient abuse or neglect;
  - ✓ Felony convictions for other health care-related fraud, theft or other financial misconduct; and
  - ✓ Felony convictions relating to unlawful manufacture, distribution, prescription or dispensing of controlled substances.

UB|MD
PHYSICIANS' GROUP

Laws & Penalties

- Permissive Exclusions: OIG has discretion to exclude individuals and entities on a number of grounds, including but not limited to:
  - ✓ Misdemeanor convictions related to health care fraud other than Medicare or a State health program, fraud in a program (other than a health care program) funded by any Federal, State or local government agency;
  - ✓ Misdemeanor convictions relating to the unlawful manufacture, distribution, prescription or dispensing of controlled substances;
  - ✓ Suspension, revocation or surrender of a license to provide health care for reasons bearing on professional competence, professional performance or financial integrity;
  - ✓ Provision of unnecessary or substandard services;
  - ✓ Submission of false or fraudulent claims to a Federal health care program;
  - ✓ Engaging in unlawful kickback arrangements;
  - ✓ Defaulting on health education loan or scholarship obligations; and
  - ✓ Controlling a sanctioned entity as an owner, officer or managing employee.

UB|MD
PHYSICIANS' GROUP

Laws & Penalties

- Exclusion
  - ✓ No Federal health care program payment may be made for any item or service furnished, ordered or prescribed by and individual or entity excluded by the OIG.
  - ✓ OIG has authority to exclude individuals & entities from federally funded health care programs, and maintains the List of Excluded Individuals and Entities (LEIE).
  - ✓ The U.S. General Services Administration (GSA) administers the Excluded Parties List system (EPLS), which contains debarment actions taken by various Federal agencies, including OIG.
  - ✓ If looking for excluded individuals or entities make sure to check both LEID and EPLS monthly since the lists are not the same.
- Example
  - ✓ A pharmaceutical company pleaded guilty to two felony counts of criminal fraud related to failure to file required reports with the FDA concerning oversized morphine sulfate tablets.
  - ✓ **The executive of the pharmaceutical firm was excluded based on the company's guilty plea.**
  - ✓ At the time he was excluded, he had not been convicted himself, but there was evidence he was involved in misconduct leading to the company's conviction.

UB|MD
PHYSICIANS' GROUP

Laws & Penalties

- Health Insurance Portability & Accountability Act (HIPAA):
  - ✓ Created greater access to health care insurance, strengthened protection of privacy of health care data, and promoted standardization and efficiency in the health care industry.
  - ✓ HIPAA safeguards deter unauthorized access to PHI.
  - ✓ As an individual with access to PHI, you must comply with HIPAA.
- Damages & Penalties
  - ✓ Violations may result in Civil Monetary Penalties.
  - ✓ In some cases, criminal penalties may apply.
  - ✓ Can lead to action against a provider's license to practice medicine.
- Example
  - ✓ A former hospital employee pleaded guilty to criminal HIPAA charges after obtaining PHI with the intent to us it for personal gain.
  - ✓ **He was sentenced to 12 months and 1 day in prison.**

UB|MD
PHYSICIANS' GROUP

Laws & Penalties

- A Whistleblower is a person who exposes information or activity that is deemed illegal, dishonest, or violates professional or clinical standards:
  - ✓ Persons who report false claims or bring legal actions to recover money paid on false claims are protected from retaliation.
  - ✓ Persons who bring a successful whistleblower lawsuit receive at least 15% but not more than 30% of money collected.

- The **UBMD Compliance Plan** includes a non-retaliation policy which states that retaliation for reporting an actual or potential violation in good faith will not be tolerated.

UB|MD
PHYSICIANS' GROUP

What are your responsibilities?

- We all play a vital part in preventing, detecting and reporting potential FWA, as well as Medicare non-compliance.
- You must comply with all applicable statutory, regulatory and other Medicare requirements, including adopting and using an effective compliance program.
- You have a duty to report any compliance concerns and suspected or actual violations of which you may be aware.
- You have a duty to follow the UBMD Compliance Plan (including the Code of Conduct), which articulates UBMD's commitment to standards of conduct and ethical rules of behavior.

UB|MD
PHYSICIANS' GROUP

How do you prevent FWA?

- Look for or be aware of suspicious activity.
- Conduct yourself in an ethical manner at all times.
- Ensure accurate and timely data/billing.
- Ensure that you comply with other payers' rules.
- Verify all information provided to you.
- Keep up to date with FWA policies and procedures, standards of conduct, laws, regulations, and CMS guidance.
  - ✓ Know that reported issues will be addressed.
  - ✓ Read *Compliance Quarterly* newsletters and other communications sent to you from the Compliance Office. They contain important information and updates.
  - ✓ Complete all compliance and HIPAA training as required.

UB|MD
PHYSICIANS' GROUP

Reporting FWA

Lawrence C. DiGiulio, Chief Compliance Officer
716-888-4705

- Everyone must report known or suspected instances of FWA.
  - ✓ Retaliation for reporting compliance concerns in good faith will not be tolerated, regardless of whether or not a violation is found as a result of the initial report.
  - ✓ This, and the process for reporting is clearly stated in the UBMD Compliance Plan.
- Any concerns should be reported to your supervisor and/or the UBMD Compliance office.
  - ✓ Even if you suspect something is wrong but aren't sure if it is FWA, report it.
  - ✓ Call or email the Compliance Office directly.
  - ✓ Utilize the Compliance Hotline (716.888.4752) if you wish to remain anonymous.
  - ✓ All reported concerns will be investigated by the Chief Compliance Officer.

UB|MD
PHYSICIANS' GROUP

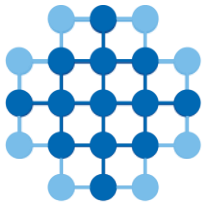
Reporting FWA

- If warranted, potentially fraudulent conduct must be reported to government authorities such as OIG, DOJ or CMS.
  - ✓ Individuals or entities who wish to voluntarily disclose self-discovered potential fraud to OIG may do so under 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.
  - ✓ **The UBMD Chief Compliance Officer should be contacted first regarding cases of self-disclosure.**
- When reporting suspected FWA, you should include:
  - ✓ Contact information for the source of information, suspects & witnesses;
  - ✓ Details of the alleged FWA;
  - ✓ Identification of specific Medicare rules allegedly violated; and
  - ✓ The suspect's history of compliance, education training and communication within UBMD and other entities.

UB|MD
PHYSICIANS' GROUP

Correcting FWA

- Once fraud, waste or abuse has been detected, it must be promptly corrected.
- Correcting the problem saves the government money, and ensures that you are in compliance with CMS requirements.
- Consult the UBMD Chief Compliance Officer to find out the process for corrective action plan development, and develop a plan.
- Actual plan will vary, depending on the specific circumstances, but in general:
  - ✓ Design the corrective action to correct the underlying problem that results in FWA program violations and prevents future non-compliance.
  - ✓ Tailor the corrective action to address the particular FWA, problem, or deficiency identified.
  - ✓ Include timeframe for specific actions.
  - ✓ Document corrective actions addressing non-compliance or FWA committed by the employee, and include consequences for failure to satisfactorily complete the corrective action.
  - ✓ Once started, continually monitor corrective actions to ensure they are effective.



UB|MD
PHYSICIANS' GROUP

Correcting FWA

- Corrective action may include:
  - ✓ Adopting new prepayment edits or document review requirements;
  - ✓ Conducting additional mandated training;
  - ✓ Providing educational materials;
  - ✓ Revising policies and/or procedures;
  - ✓ Sending warning letters;
  - ✓ Terminating an employee or provider;
  - ✓ Any combination of the above.

UB|MD
PHYSICIANS' GROUP

For more information on…

- False Claims Act: 31 United States Code (U.S.C.) Sections 3729-3733
- Fraud Statute: 18 USC Sections 1346-1347
- Anti-Kickback Statute: 42 USC Section 1320a-7b(b)
- Stark Statute (Physician Self-Referral Law): 42 USC Section 1395nn
- Civil Monetary Penalties: 42 USC 1320a-7a and the Act, Section 1128A(a)
- Exclusion: LEIE and EPLS and 42 USC Section 1320a-7 and 42 Code of Federal Regulations (CFR) Section 1001.1901
- HIPAA: HIPAA Webpage

UB|MD
PHYSICIANS' GROUP

To Complete Your Training…

You are required to successfully complete a 5 question quiz based on this presentation.

The questions appear on a separate Word document. Use the following link to input your answers.

https://smbsweb.med.buffalo.edu/ubmd/training.aspx

When you submit your answers, if all are correct, you will see a "Success" message on the screen.

If not, the message will tell you which answers you need to go back and re-check.

Training will be complete only when you receive the "Success" message.

UB|MD
PHYSICIANS' GROUP

Questions

REMEMBER!!!

Compliance & prevention are everyone's responsibility,
from governing boards, to management, to providers, to staff.

If you have any questions regarding this training, please contact:

Larry DiGiulio, Chief Compliance Officer
larryd@buffalo.edu
or
Sue Marasi, CHC, CPCA
Compliance Administrator
smmarasi@buffalo.edu
or
Peter Rossow, CPC, CPMA
Director of Audit & Education
pvrossow@buffalo.edu

UB|MD
PHYSICIANS' GROUP