FRAUD, WASTE, AND ABUSE **TRAINING FOR PROVIDERS**

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LEARNING OBJECTIVES

After completing this training, you should be able to:

- Understand the definitions of fraud, waste, and abuse (FWA) as they pertain to state and federal healthcare programs
- Recognize laws, regulations, and penalties related to FWA
- Recognize methods of preventing, detecting, and correcting FWA
- Know how to report suspected FWA

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INTRODUCTION - COMMITMENT

Healthcare FWA can have a long-lasting impact on health plans, providers, and members, both financially and personally. Therefore, University of Utah Health Plans will comply with all applicable state and federal laws, rules, and regulations.

To safeguard the healthcare system, we are committed to detecting, preventing, correcting, and reporting suspected FWA behaviors. We include in these efforts, contracted and non-contracted providers, members, employees, affiliates, agents, brokers, facilities, vendors, and other individuals or organizations associated with the U of U Health Plans operations.

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WHY DO I NEED TRAINING?

Every year, billions of dollars are improperly spent because of FWA. The National Health Care Antifraud Association (NHCAA) conservatively estimates that three percent of all healthcare spending, $60 billion dollars, is lost to healthcare FWA. It affects everyone, including you.

As a provider or employee within a healthcare organization, this training will assist you in detecting, preventing, correcting and reporting Fraud, Waste, and Abuse (FWA).

Additional FWA training and resources are made available to providers through the Centers for Medicare and Medicaid Services (CMS) website at cms.gov/Outreach-and-Education/Outreach/Partnerships/FraudPreventionToolkit

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DEFINING FRAUD, WASTE, AND ABUSE

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WHAT IS FRAUD?

Fraud is defined as the intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to them or some other person (42 CFR § 455.2).

It is knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program or to obtain by means of false or fraudulent pretenses, representations, or promises, any money or property owned by, or under the custody or control of, any healthcare benefit program (18 USC §1347).

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EXAMPLES OF FRAUD

- Knowingly billing and/or documenting in the patient's medical records, services of higher complexity than what were actually provided
- Knowingly billing for services or supplies not provided, and/or falsifying records to show item delivery
- Knowingly ordering medically unnecessary patient items or services
- Billing for appointments patients don't keep

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WHAT IS WASTE?

Waste is the overutilization of services or other practices that directly or indirectly result in unnecessary costs to a state or federal healthcare program. Waste is generally not considered to be caused by criminally negligent actions, but rather the misuse of resources (CMS Medicare Managed Care Manual Chapter 21 - Rev. 109).

Examples of Waste:

- Conducting excessive office visits
- Prescribing more medication(s) than is/are necessary for the treatment of a specific condition
- Ordering excessive laboratory or diagnostic tests

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WHAT IS ABUSE?

Abuse includes practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the healthcare program. These practices include reimbursement for services that are not medically necessary, that fail to meet professionally recognized standards for healthcare, and recipient practices that result in unnecessary cost to the healthcare program (42 CFR § 455.2).

Abuse involves payment for items or services where there is no legal entitlement to the payment, but the provider has not knowingly and/or intentionally misrepresented facts (CMS Medicare Managed Care Manual Chapter 21 - Rev. 109).

Examples of Abuse:

- Billing for unnecessary medical services
- Charging excessively for services or supplies
- Misusing codes on a claim, such as upcoding or unbundling codes

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FRAUD, WASTE, AND ABUSE DIFFERENCES

There are differences between FWA. The primary differences are **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, but does not require the same intent and knowledge.

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STATE AND FEDERAL STATUTES

STATE OF UTAH FWA LAWS

Utah Fraudulent Insurance Act (Utah Code §76-6-521)

Intentionally performing any of the following acts

- Providing false, incomplete, or misleading information concerning any fact material to an insurance application or claim, either in writing or orally
- Presenting, or causing to be presented, any oral or written statement or representation as part of or in support of a claim for payment or other benefit pursuant to an insurance policy, certificate, or contract, knowing that the statement or representation contains false, incomplete, or fraudulent information concerning any fact or thing material to the claim
- Accepting a benefit from insurance fraud proceeds
- Knowingly, intentionally, or recklessly devising a scheme to obtain professional service fees or anything of value through false or fraudulent pretenses, representations, promises, or material omissions
- Assisting, aiding, soliciting, or conspiring with another person to commit insurance fraud
- Supplying false or fraudulent material information in a document or statement required by the Department of Insurance.

Possible Civil and/or Criminal Penalties

The determination of the penalties and degrees of any of the above shall be measured by the total value of all money obtained or sought to be obtained by the fraudulent act.

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STATE OF UTAH FWA LAWS

Utah Insurance Fraud Act (Utah Code §31A-31-103)
Any person who knowingly presents any oral or written statement that is false, incomplete, or misleading to an insurance company, agent, or others to obtain money for which they are not entitled.

Possible Penalties
The determination of the penalties are assessed to pay back the victim fully and to also pay for the law enforcement resources expended to research and prosecute the fraud. That includes full restitution to the victim plus the cost of investigators, attorneys, and possibly up to three times the total value of the fraud to the state.

Utah Mandatory Reporting of Fraudulent Insurance Acts (Utah Code §31A-31-110)
A person shall report a fraudulent insurance act to the Department of Insurance if an insurer has a good-faith belief that a fraudulent insurance act is being, will be, or has been committed by a person other than the person making the report.

Possible Penalties
Criminal penalty: Class B misdemeanor

FEDERAL FWA LAWS

False Claims Act (31 USC §§ 3729–3733)

The False Claim Act is a federal law that makes it a crime for any person or organization to knowingly make a false record or file a false claim regarding any federal healthcare program, which includes any plan or program that provides health benefits, whether directly (through insurance or otherwise), which is funded directly (in whole or in part), by the United States Government or any state healthcare system.

Possible Civil and/or Criminal Penalties

- Civil Penalties: Treble damages the government sustained and a fine between $11,665 to $23,331 for each claim
- Criminal Penalties: Fine, imprisonment, or both; if the violations resulted in death, the individual may be imprisoned for any term of years, or for life, or both

Whistleblower Protection

The federal False Claims Act also contains a provision that protects a whistleblower against retaliation. This applies to any employee who is terminated, demoted, suspended, threatened, harassed, or discriminated against in his or her employment as a result of having brought forward a lawful false claims action.

FEDERAL FWA LAWS

Physician Self-Referral or Stark Law (42 USC §1395nn)
The Stark Law prohibits a physician from making referrals for certain designated health services to an entity with which the physician or an immediate family member has an ownership/investment interest or a compensation arrangement, unless an exception applies.

Possible Civil and/or Criminal Penalties
- Civil Penalties: Up to a $15,000 fine for each service provided and up to a $100,000 fine for entering into an arrangement or scheme
- Criminal Penalties: Fine, imprisonment, or both

Anti-Kickback Statute (42 USC §1320a-7b(b))
The Anti-Kickback Statute prohibits a person or business from 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 healthcare program.

Possible Civil and/or Criminal Penalties
- Civil Penalties: Up to five years imprisonment or a fine of up to $25,000 per violation or both
- Criminal Penalties: Fine, imprisonment, or both

FEDERAL FWA LAWS

Health Care Fraud Statute (18 USC § 1347)

The Health Care Fraud Statute prohibits anyone who knowingly and willfully executes, or attempts to execute, a scheme to defraud any healthcare 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 healthcare benefit program.

Possible Civil and/or Criminal Penalties

- Civil Penalties: An individual healthcare provider who is convicted can be fined up to $250,000. An organization convicted under this statute can be fined up to $500,000.
- Criminal Penalties: Healthcare providers who are convicted can be put in federal prison for as much as 10 years. Penalties tend to be more severe in proportion to the amount of money involved. If the fraud causes the victim serious bodily harm, such as an overdose on an unnecessary prescription, a healthcare provider can be imprisoned for up to 20 years. If the fraud results in a death, then a life sentence is a realistic possibility.

FEDERAL FWA LAWS

Exclusion Statute (42 USC § 1320a-7)

The Exclusion Statute requires the federal Office of Inspector General (OIG) to exclude individuals or entities convicted of healthcare fraud from participating in all federal healthcare programs, including:

- Medicare or Medicaid fraud, as well as other offenses related to delivering Medicare or Medicaid items or services
- Patient abuse or neglect
- Felony convictions for other healthcare-related fraud, theft, or other financial misconduct
- Felony convictions for unlawful manufacture, distribution, prescribing, or dispensing controlled substances

PREVENTING, DETECTING, CORRECTING, AND REPORTING FRAUD, WASTE, AND ABUSE

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WHAT ARE MY RESPONSIBILITIES?

You are a vital part of the effort to prevent, detect, correct, and report suspected FWA.

Comply with all applicable statutory and regulatory requirements, laws, regulations, policies, and guidelines.

- Bill for services according to what was provided and follow proper coding guidelines
- Ensure your data and billing is accurate and timely
- Monitor and maintain accurate and complete medical records to ensure the documentation support the services you rendered
- Perform regular internal audits
- Make sure you are up-to-date with the laws, regulations, guidelines, and policies
- Be on the lookout for suspicious activity

Follow your organization's Code of Conduct that describes your commitment to standards of conduct and rules of ethical behavior.

- If FWA is detected, promptly correct it; develop an action plan to fix the underlying problem(s) that resulted in the FWA violation, to prevent future occurrences
- Establish effective lines of communication with your colleagues and staff members

Promptly report any violation of laws of which you may be aware.

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REPORTING SUSPECT FWA

All entities including contracted and non-contracted providers and staff, have a duty to report suspected FWA behaviors.

- Suspected FWA can be reported anonymously
- When reporting suspected FWA, even if choosing to remain anonymous, always provide specific details and ensure all essential questions (who, what, where, why, and how) are addressed in the reporting form

Report suspected FWA by one of the following methods

- U of U Health Plans FWA Email: **HealthPlansReportFraud@utah.edu**
- EthicsPoint Hotline: **888-206-6025** – Anonymity and interpretation services are available
- EthicsPoint: **secure.ethicspoint.com**
- Special Investigations Unit Fax: **801-585-2654**
- Online Form: **app.secure.uuhsc.utah.edu/uhealthPlans/forms/fraud**
- Mail: University of Utah Health Plans
  Attention: Special Investigations Unit
  6053 South Fashion Square Drive, Suite 110
  Murray, UT 84107

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SUMMARY

As a person or organization providing health or administrative services for University of Utah Health Plans, you play a vital role in preventing Fraud, Waste, and Abuse. Stay informed of the policies and procedures, conduct yourself ethically, promptly correct identified FWA in your office, and report potential FWA as soon as possible.

- Combatting FWA is **everyone's** responsibility
- **You** are part of the solution

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THANK YOU

Thank you for our partnership. We appreciate you for being part of our team and for your commitment to providing access to the highest quality of care, while delivering exceptional value to our members, clients, and the community.

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