BlueCross BlueShield of Tennessee
Senior Care Division
and Volunteer State Health Plan

Fraud Waste and Abuse Training for Providers, First Tier, Downstream and Related Entities

of Tennessee

plans for better health. plans for a better life.™

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Overview

- The Centers for Medicare & Medicaid Services (CMS) has mandated that Medicare Advantage (MA) and Prescription Drug Program (PDP) sponsors are responsible for providing Fraud, Waste and Abuse training on an annual basis to first-tier, downstream and related entities.
- The State of Tennessee requires healthcare providers working with Volunteer State Health Plan (VSHP) under the state's Medicaid contract to meet training requirements about Fraud, Waste and Abuse.
- To meet these government annual training requirements, BlueCross BlueShield of Tennessee (BCBST) has created this presentation.
- At the conclusion of this training, you or an authorized representative will need to complete the attached attestation form stating that the training has been completed by all those within your organization.

Objectives

- **WHO:** First Tier, Downstream and Related Entities that engage in business with the MA and PDP Plan Sponsor and/or VSHP

- **WHAT:** New federal training mandates regarding the detection, prevention and correction of fraud, waste and abuse. All organizations or individuals who contract with VSHP or BCBST's Senior Care Division (MA and PDP division) are subject to the laws concerning fraud, waste and abuse.

- **WHY:** To provide education and information to those who actively work with an MA Sponsor and other federal programs and are potentially exposed to fraud, waste and abuse of government funds. Every year, the United States spends more than $2 trillion on health care with fraud, waste and abuse costing a conservative estimate of 3 percent – approximately $60 billion.

- **HOW:** MA Plan Sponsors are required to provide and implement an effective compliance program to detect, prevent and correct fraud, waste and abuse and educate their partners on the sponsor's compliance plan and ways that partners can identify, detect and report potential fraud, waste or abuse.

- **WHEN:** Now – through this training material; but no later than **December 31, 2009**

Training Requirements

There are THREE ways that your organization and employees can comply with Fraud, Waste and Abuse Training:

1. Provide your own training – refer to CFR 422.504(b)(4)(vi)(c) *or* 423.504(b)(4)(vi)(c),

2. Receive training from another entity, such as another MA Plan Sponsor,

   or

3. Take this training course being provided by BCBST.

Definitions

As a MA Plan Sponsor, BCBST is responsible for oversight and monitoring

of training of First Tier, Downstream and Related Entities.

- **First Tier Entity:** A party that enters into a written arrangement that is acceptable to CMS with a Sponsor to provide *administrative services or healthcare services* for a Medicare eligible individual under Medicare Advantage (MA) or Part D (PDP) plan.

  example: Pharmacy Benefits Manager, Hospitals, Clinics, Providers

- **Downstream Entity:** Any party that enters into a written agreement that is acceptable to CMS with a Sponsor and a first tier entity.

  example: Agents, brokers, marketing firms, call center firms, etc.

- **Related Entity:** Any entity that is related to the Sponsor by common ownership and control and performs so the Sponsor's management under contract or delegation; furnishes services to Medicare enrollees, or leases real property or sells material to the Sponsor at a cost of more than $2,500 per contract period (usually one year).

  example: Shared Health

BCBST's *Code of Business Conduct*

For organizations or individuals doing business with BCBST's government program, it is important to be familiar with BCBST's *Code of Business Conduct*. In addition, as a provider, First Tier, Downstream or Related Entity, you have an obligation to have appropriate policies and procedures to address fraud, waste and abuse.

The BCBST *Code of Business Conduct* can be accessed from the web at: http://www.bcbst.com/about/company_profile/code-of-conduct/

BCBST's *Code of Business Conduct*

Elements of the BCBST *Code of Business Conduct* include:

- Legal Compliance
- Reporting Data Truthfully and Accurately
- Records Management
- Confidential Information
- Conflicts of Interest
- Dealing with Customers, Suppliers and Third Parties
- Government Contracts
- Competing Ethically and Fairly
- Government Investigations
- Safeguarding Company Assets
- Political Activities
- Safe and Professional Work Environment
- Reporting Violations of the Code of Conduct

What is Fraud, Waste and Abuse (FWA)?

- **Fraud:** an intentional act of deception, misrepresentation, or concealment in order to gain something of value. See 18 U.S.C. §1347.

- **Examples:**
  - Billing for services that were never received
  - Billing of “free” services
  - Offering bribes, kickbacks or rebates
  - Violating self-referral prohibition
  - Deliberately misrepresenting services in order to receive additional payment

What is FWA?

- **Waste:** over-utilization of services, not caused by criminally negligent actions and the misuse of resources
- **Examples:**
  - Unnecessarily using resources excessively or carelessly

What is FWA?

- **Abuse:** excessive or improper use of services that are inconsistent with acceptable business or medical practice. Refers to incidents that are not necessarily fraudulent, but may directly or indirectly cause financial loss.

- **Examples:**
  - Charging in excess for services or supplies
  - Providing medically unnecessary services
  - Providing services that do not meet professionally recognized standards
  - Billing for services that should not be paid for by Medicare

Five Elements of Health Care Fraud

1. Misrepresentation or concealment of a material fact on a health care claim
2. Knowledge of the falsity of the misrepresentation
3. Intent to deprive or harm a plan sponsor and its customers financially
4. A plan sponsor, a victim, acting on the misrepresentation
5. Financial damage to a plan sponsor and its customers

Who can be involved in FWA schemes?

- Members/Patients
- Employees
- Insurance Companies
- Providers
- Pharmacies
- Brokers and Agents
- Everyone!

Examples of FWA by Members/Patients

- Misrepresentation of Eligibility Status
- Identity Theft
- Prescription Forging or Altering
- Prescription Diversion/Inappropriate Use
- Resale of Drugs on Black Market
- Prescription Stockpiling
- Doctor Shopping
- Theft of a Prescriber's DEA number or prescription pad to illegally write prescriptions for controlled substances or other medication.

Examples of Insurance Company/Employee FWA

- Falsifying reports and data submitted to CMS
- Failure to provide medically necessary services
- Inappropriate formulary decisions
- Inappropriate handling of appeals
- Incorrect calculation of True Out of Pocket expense
- Kickbacks, Inducements or Other Illegal Payments
- Inappropriate marketing or promotion of goods or services that are reimbursable by federal health care programs
- Inappropriate discounts, educational grants

Examples of MA and/or PDP Sponsor FWA

- Offering beneficiaries a cash payment as an inducement to enroll in an MA or Part D plan
- Unsolicited door to door marketing
- Enrolling of beneficiaries without their knowledge or consent
- Misrepresentation of the product that is being marketed
- Stating that the agent or broker works for or is contracted with the Social Security Administration or CMS
- Using unlicensed agents

Examples of Providers FWA

- Prescriber is offered, paid, solicits or receives unlawful payment to induce or reward the prescriber to write prescriptions for drugs or products

- Script Mills - Prescribers write prescriptions for drugs that are not medically necessary, usually multiple scripts and usually for patients that do not see the prescriber. These are usually written for controlled drugs for sale on the black market and the prescriber is usually inappropriately paid for the scripts.

- Payments for Excluded Items - Receiving payment for services that are excluded by the Plan or federal program

Examples of Provider FWA

- Billing for services that were never provided
- Misrepresenting services that were provided
- Billing for a higher level of service then what was actually delivered
- Billing for non-covered services or prescriptions as covered items

Examples of FWA by Brokers and Agents

- Offering beneficiaries a cash incentive or other incentive as an encouragement to enroll in a MA plan
- Unsolicited door – to – door marketing
- Enrolling a beneficiary in a MA plan without the individual's knowledge or consent
- Stating that a marketing agent/broker works for or is contracted with the Social Security Administration or CMS
- Misrepresenting the MA or Part D plan benefits
- Requesting financial beneficiary information or check numbers
- Requiring beneficiary to pay up front premiums

Examples of FWA by a Pharmacy Benefit Manager (PBM)

- Prescription drug switching, splitting or shorting
- Unlawful payments
- Failure to offer negotiated prices
- Submission of falsified data to CMS

Examples of FWA by Pharmacies

Inappropriate billing practices –

- Billing for brand name and providing generics
- Billing for non-existent prescriptions
- Billing for multiple payers for the same prescription
- Billing for prescriptions that are never picked up

Illegal remuneration schemes

Drug shorting

Failure to offer negotiated prices

Dispensing expired or adulterated prescription drugs

Prescription refill errors

Billing for non-covered prescriptions as covered items

Examples of FWA by Pharmaceutical Manufacturers

- Kickbacks, inducements and other illegal pay received
- Illegal off-label promotions
- Illegal use of free samples
- Incentives offered to physicians

Examples of FWA by Wholesalers

- Offering counterfeit and adulterated drugs through black and grey market purchases (fake, diluted, expired and illegally imported drugs)
- Inappropriate documentation of pricing information; submitting false or inaccurate pricing or rebate information
- Diverters – brokers who illegally gain control of discounted drugs intended for places such as nursing homes, hospices and AIDS clinics. They then mark up the stolen drugs' prices and rapidly move them to wholesalers

Some of the Federal Fraud, Waste and Abuse Laws

- **Federal False Claims Act (31 U.S.C. 3729-3732):** prohibits any person from knowingly presenting or causing a false claim to be presented for payment. Intent under FCA can be acting in "deliberate ignorance," "reckless disregard" and with no intent to defraud.

- **Fraud Enforcement and Recovery Act of 2009** amended the False Claims Act. Failure to return overpayments violates the FCA even if the payments were innocently received or correct based on information available at the time. Applies to claims for reimbursement made by or to MA or PDP plans.

- **Deficit Reduction Act of 2005** (Pub L. No 109-171§6032(a)(3) takes the False Claim Act to new heights with major incentives for states to enact civil false claims acts similar to the federal act.

Federal FWA laws

- **Anti-kickback Statute:** makes it a crime to knowingly and willfully offer to pay, solicit, or receive, directly or indirectly, anything of value to induce or reward referrals of items or services reimbursable by a Federal health care program.

- **Self-Referral Prohibition Statute (Stark Law):** prohibits physicians from referring Medicare patients to an entity with which the physician or the physician's immediate family has a financial relationship unless an exception applies.

- **HIPAA** authorized the establishment of the Health Care Fraud and Abuse Control Program (HCFAC) under the U.S. Attorney General and the Office of the Inspector General. The goal is to coordinate federal, state and local efforts in combating FWA.

Penalties

Penalties for Violation of Fraud, Waste and Abuse Laws

- Suspension or exclusion from participation in federally funded health care programs
- Loss of license to deliver health care services
- Civil Monetary Penalties
- Imprisonment

Reporting Potential Fraud, Waste and Abuse

Everyone has the right and responsibility to report possible fraud, waste and abuse.

Report issues or concerns to:

- ✓ *Your organization's compliance officer*
- ✓ *Your organization's compliance hotline*
- ✓ *The compliance officer of the applicable Plan Sponsor with whom you participate*
- ✓ *The compliance hotline of the applicable Plan Sponsor with whom you participate*

Reporting Potential FWA

BCBST – on the web, go to: www.bcbst.com and click on “Fight Fraud.” Or call the toll-free, Confidential Compliance Hotline at 1.888.343.4221.

- CMS – call 1-800-Medicare (1.800.633.4227)
- Reporting to the Office of the Inspector General
  - www.oig.hhs.gov
  - 1.800.HHS.TIPS (1.800.447.8477)
  - Email: HHTIPS@oig.hhs.gov

Volunteer State Health Plan Providers

Volunteer State Health Plan

- **Volunteer State Health Plan (VSHP)** cooperates with all state and federal agencies in the investigation of fraud and abuse.
- **VSHP Providers are *required* to be familiar with the Fraud and Abuse Section 2.20 of the Contractor Risk Agreement and Section 2-9.14 of the TennCareSelect Agreement**
- ***ANY*** suspected fraud and abuse must be reported to the Tennessee Bureau of Investigation and the Office of Inspector General

Volunteer State Health Plan

***To report any suspected fraudulent activity that involves* TennCare**

and/or Volunteer State Health Plan:

Call BlueCross BlueShield of Tennessee Fraud and Abuse Hotline at 1.800.496.9600

E-mail BlueCross BlueShield of Tennessee at http://www.bcbst.com/fraud/report.shtml

- **Call the Bureau of TennCare from anywhere in Tennessee at 1.800.433.3982**
- **Log on to www.tncarefraud.tennessee.gov and follow the prompts for "Report Fraud Now"**

Volunteer State Health Plan

Deficit Reduction Act of 2005

- The Deficit Reduction Act (DRA) contains provisions that impact Federal Health Care Programs.
- Federal Health Care programs include any plan or program that provides health benefits which is funded directly, in whole or in part, by the US Government.
- Volunteer State Health Plan is considered a Federal Health Care Program.

FALSE CLAIMS ACT

- As part of the Deficit Reduction Act, VSHP must train staff on the provisions of the False Claims Act

- The False Claims Act outlines liability for certain acts such as:

1. *presenting false or fraudulent claims for payment or approval to the US Government*
2. *creates or uses a false record to get a false or fraudulent claim paid by the US Government*
3. *conspires to defraud the government by getting a false or fraudulent claim allowed or paid*
4. *defrauding the Government by concealing property or delivering less property than the amount of receipt*
5. *certifying a receipt of property without knowing if the information on the receipt is true*
6. *knowingly purchasing property from an officer or employee of the Government who cannot lawfully sell or pledge the property*
7. *knowingly creates or assists in creation of a false record to conceal, avoid or decrease an obligation to pay or transmit money or property to the Government*

FALSE CLAIMS ACT

Any person who is found guilty of the offenses is liable to the United States Government for:

- *A civil penalty of not less than $5,000 and not more than $10,000,*
- *Three times the amount of damages that the Government sustains because of the act of that person, but no less than two times the amount of damages sustained,*
- *UNLESS THE COURT FINDS THAT the person committing the violation furnished US officials with information of the violation within 30 days of the date that the individual received the information;*
- *Such person fully cooperated with the investigation; and*
- *At the time the person furnished the information there was no investigation, criminal prosecution or civil action underway.*

Reporting Potential Fraud, Waste and Abuse

REMEMBER:

You may report any potential fraud, waste and abuse anonymously and retaliation is prohibited when you report a concern in good faith.

Additional Resources

The Internet is an excellent source for additional information regarding the subject of fraud, waste and abuse.

- **CMS: Physician Self Referral:**

  www.cms.hhs.gov/PhysicianSelfReferral

- **CMS Main Website:**

  www.cms.hhs.gov/MDFraudAbuseGenInfo/

- **Department of Health and Human Services Office of the Inspector General:**

  http://oig.hhs.gov/fraud.asp

- **Your Plan Sponsor's website**

Attestation of Fraud, Waste & Abuse Training

Pursuant to the final rule issued in the Federal Register for 42 CFR Parts 422 and 423 of the Medicare Program (December 5, 2007) Medicare Advantage and Part D sponsor is ultimately responsible for compliance plan oversight, including monitoring training and education, and complying with statutory and regulatory requirements.

As a first tier, downstream or related entity (physician or group name)_____ attests that it has conducted appropriate education and training to identify, correct and prevent potential fraud, waste and abuse per the final rule issued in the Federal Register for 42 CFR Parts 422 and 423 of the Medicare Program (December 5, 2007). Please select the method of education and training that your organization chose to comply with the final requirement.

- ❑ Conducted our own education and training per CFR 422.504(b)(4)(vi)(c) or 423.504(b)(4)(vi)(c),
- ❑ Took training and education provided by a Medicare Advantage and/or Part D sponsor, or other organization,
- ❑ Took training provided by BlueCross and BlueShield of Tennessee.

Signature attests that your organization has completed appropriate education and training to identify, correct and prevent potential fraud, waste and abuse, and your organization will furnish, upon request to BlueCross BlueShield of Tennessee (BCBST) training logs to validate that training was completed. In addition, your organization will obtain attestations from other entities that provide health, prescription and/or administrative services on behalf of BCBST Medicare Advantage and/or Part D beneficiaries, and upon request obtain training logs to verify that fraud, waste and abuse training was completed by those entities.

_____(Signature)

Name: _____

Title: _____

Date: _____

Provider or Group NPI: _____

Please sign and fax to 423-535-3066 or 423-535-5808

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1 Cameron Hill Circle
Chattanooga, TN 37402

bcbst-medicare.com

Questions?

For any questions or concerns, you may contact your local Network Manager at the following number:

Chattanooga	**(423) 535-6307**
Jackson	**(731) 664-4127**
Johnson City	**(865) 588-4640**
Knoxville	**(865) 588-4640**
Memphis	**(901) 544-2399**
Nashville	**(615) 386-8630**