Independent Health’s Special Investigations Unit

FWA Prevention and Referral Process and Training for Providers

2017
FWA Prevention Mission

Independent Health is committed to ensuring its entire provider network meets all regulatory requirements set forth by the various agencies overseeing our industry. We set out to be an industry leader in adopting an enterprise-wide strategy for combating fraud, waste and abuse in healthcare. IH will protect subscriber’s premiums, engage in “best of class” provider network management and develop business processes to create an environment inherent to growing and defending our organizational value.
Every year billions of dollars are improperly spent because of Fraud, Waste and Abuse (FWA). It affects everyone — including you.

• This information will help you detect, correct, and prevent FWA, and to know where to report it if you encounter FWA.

• You are part of the solution.

• Combating FWA is everyone's responsibility!

• As an individual who provides health or administrative services for our members, we call upon you to be vigilant and protect yourself, protect Independent Health and protect our members from harm that can be caused by FWA.
What is Fraud?

- **Fraud** is intentional and typically characterized by:
  - Knowingly submitting false statements or making misrepresentations of fact to obtain health care payments for which no entitlement would otherwise exist.
  - Knowingly soliciting, paying, and/or accepting money to induce or reward referrals for items reimbursed by health care programs; or
  - Making prohibited referrals for certain designated health services.
Examples of actions that may constitute fraud include:

- Knowingly billing for services not furnished or supplies not provided
- Billing more than once for the same service
- Misrepresenting a diagnosis to get an authorization or justify payment for services that may otherwise not be covered
- Falsifying the identity of a provider of service, so as to obtain payment for services rendered by a non-participating and/or non-licensed provider
- Billing for appointments that the patient failed to keep
- Billing for non-existent prescriptions
- Knowingly altering claim forms, medical records, or receipts to receive a higher payment
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 actions that may constitute waste include:

• Conducting excessive office visits or writing excessive prescriptions
• Prescribing more medications than necessary for the treatment of a specific condition
• Ordering excessive laboratory and/or diagnostic tests
• Not billing in accordance with recognized and approved industry standards
Abuse Examples

Examples of actions that may constitute abuse include:

• Billing for unnecessary medical services
• Billing for brand name drugs when generics are dispensed
• Charging excessively for services or supplies
• Misusing codes on claims, up coding or unbundling codes
• Improper use of coding modifiers to obtain payment for services that otherwise may be denied
• Lack of medical record documentation in support of services submitted for reimbursement
• Physicians billing for immediate family members
The difference between fraud, waste and abuse is understood by examining knowledge and intent. Fraud requires that the person have intent to obtain payment and the knowledge that their actions are wrong. Waste and abuse may involve obtaining an improper payment but do not require the same intent and knowledge. Laws and regulations exist that prohibit FWA. Penalties for violating these laws may include:

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

• You play a vital part in preventing, detecting, and reporting potential FWA, as well as non-compliance.
  ➢ FIRST, you must comply with all applicable statutory, regulatory, and other requirements, including adopting and using an effective compliance program.
  ➢ SECOND, you have a duty to report any compliance or FWA concerns, and suspected or actual violations that you may be aware of.
  ➢ THIRD, you have a duty to follow Independent Health’s Code of Conduct that articulates our commitment to standards of conduct and ethical rules of behavior.
What We Need From You

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
What We Need From You

How Do You Prevent FWA?

• Understand the provisions of the **Red Flags Rule** set forth by the Federal Trade Commission.
  
  • Red Flags are suspicious patterns or practices, or specific activities that indicate the possibility of identity theft.

• Secure data you collect and maintain about our members/patients

• Review documents provided to you - they can offer hints of identity theft:
  
  • Identification looks altered or forged
  
  • The person presenting the identification doesn’t look like the photo or match the physical description
  
  • Information on the identification differs from what the person with identification is telling you or doesn’t match a signature card or recent check
The Red Flags Rule was created by the Federal Trade Commission (FTC), along with other government agencies such as the National Credit Union Administration (NCUA), to help prevent identity theft.

Providers and beneficiaries of health plans are at risk for medical identity theft.

Medical identity theft is a costly issue and it is defined as “the appropriation or misuse of a patient’s or [provider’s] unique medical identifying information to obtain or bill public or private payers for fraudulent medical goods or services.”
Protecting Yourself and Patients from Identity Theft

There are two major approaches where medical identity theft leads to the billing of fraudulent claims made under stolen medical identities:

- Provider medical identifiers are used to make it appear as if providers ordered or referred patients for additional health services, such as durable medical equipment (DME), diagnostic testing, or home health services.
- Fraudsters use provider medical identifiers to make it appear that a physician provided and billed services directly.

Be on the lookout for signs of potential medical identity theft:

- Patient uses an address, phone number, or other personal information that is inconsistent with what you know.
- Patient provides a fictitious address, a PO Box, or prison address, they supply an invalid phone number or one that’s for a pager or answering service.
- Patient omits information on an intake form and doesn’t respond to requests to secure those details
- Patient is unable to provide authenticating information
Be Cautious with how you use your Medical Identifiers

Common examples of ways providers allow the misuse of their medical identifiers include:

• Signing referrals for patients they do not know;
• Signing Certificates of Medical Necessity (CMNs) for patients they know but who do not need the service or supplies;
• Signing CMNs even though their own documentation disputes medical need;
• Signing CMNs for more than what patients actually need; and
• Signing blank referral forms.
Mitigate Risks

• Keep Information on file with IH current - By keeping your information current, we can alert you to problems, such as additional billings from old locations or new locations opened without your knowledge.

• Monitor billing and compliance processes - Be aware of billings in your name - pay close attention to the organization(s) to which you have reassigned billing privileges.

• Control unique medical identifiers – Protect your information and that of your patients by training staff on the appropriate use and distribution of your medical identifiers, including when not to distribute them. Carefully consider which staff will have access to your medical identifiers.

• Control Prescription Pads: Use tamper-resistant prescription pads and design features that prevent counterfeit prescriptions. Do not inadvertently leave prescription pads unattended in exam rooms or other public areas. Keep prescription pads locked up when not in use, and do not leave them visible in your car. You may want to take a daily count of prescription pads.
See Something, Say Something

• If you suspect fraud, waste or abuse as you conduct yourself on behalf of Independent Health, you must report it.

• Do not be concerned about whether it is fraud, waste, or abuse. Just report any concerns to Independent Health.

• Independent Health’s SIU will investigate and make the proper determination.
How to Report Fraud, Waste & Abuse

Confidential SIU Hotline: 1-800-665-1182

SIU Email: siu@independenthealth.com
Fraud and Abuse Laws

- False Claims Act (FCA)
- Anti-kickback Statute (AKS)
- Physician self-referral law (Stark Law)
- Social Security Act; and
- United States Criminal Code
**False Claims Act (FCA)**

- The FCA protects the government from being overcharged or sold substandard goods or services

- **Example:**
  - A physician submits claims to Medicare for a higher level of medical services than actually provided or that the medical record documents
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.”

Conviction under the statute does not require proof that the violator had knowledge of the law or specific intent to violate the law.

For more information, refer to 18 U.S.C. Section 1346
Anti-Kickback Statute (AKS)

- The AKS makes it a criminal offense to knowingly and willfully offer, pay, solicit, or receive any money directly or indirectly to induce or reward referrals of items or services reimbursable by a Federal health care program.

- Example:
  - A provider receives cash or below fair market value rent for medical offices in exchange for referrals
Physician Self-Referral Law (Stark Law)

• The Stark Law prohibits a physician from making a referral for certain designated health services to an entity in which the physician (or member of his/her immediate family) has an ownership/ investment interest or with which he/she has a compensation arrangement, unless and exception applies.

• Example:
  • A provider refers a beneficiary for a designated health service to a business in which the provider has an investment interest.
Civil Monetary Penalties (CMP) Law

- The Office of Inspector General (OIG) may impose civil penalties for a number of reasons, including:
  - Arranging for services or items from an excluded individual or entity;
  - 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.
The Secretary through the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General shall establish a program to coordinate Federal, State, and local law enforcement programs to control fraud and abuse with respect to health plans, to conduct investigations, audits, evaluations, and inspections relating to the delivery of and payment for health care in the United States, to facilitate the enforcement of the provisions of sections 1128, 1128A, and 1128B and other statutes applicable to health care fraud and abuse, and to provide for the modification and establishment of safe harbors and to issue advisory opinions and special fraud alerts pursuant to section 1128D.
Title 18 of the United States Code is the main criminal code of the federal government of the United States. It deals with federal crimes and criminal procedure.

The Criminal Health Care Fraud Statute prohibits knowingly and willfully executing, or attempting to execute, a scheme or ploy in connection with the delivery of or payment for health care benefits, items, or services to:

- Defraud any health care benefit program; or
- Obtain (by means of false or fraudulent pretenses, representations, or promises) any of the money or property owned by, or under the custody of, any health care benefit program.

Example:
- Several doctors and medical clinics conspire in a coordinated scheme to defraud the Medicare program by submitting claims for power wheelchairs that were not medically necessary.
The Federal Deficit Reduction Act of 2005 ("DRA") requires Independent Health to provide information to its workforce regarding federal and state laws, dealing with health care fraud, waste, and abuse. This policy also explains the legal remedies and protections available to whistleblowers that make reports to the Government about false and fraudulent claims.

This policy captures important details about the laws we discussed here and also additional laws that are relevant to the FWA arena. You can access this policy through the provider portal offered by Independent Health.
HIPAA – Health Insurance Portability and Accountability Act

• **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.
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).

• 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.

• 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.
Summary

• As a person who provides health or administrative services to our members, 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. Have a process defined in your office/practice outlining the steps to report potential FWA.
• Independent Health can accept anonymous reports and cannot retaliate against you for reporting.
• Promptly correct identified FWA with an effective corrective action plan.