



# ROCKY MOUNTAIN

## HEALTH PLANS®

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# Required Medicare Fraud Waste and Abuse Training (FWA)

Created August 24, 2009; Updated June 7, 2011

# Training Objectives

- Define FWA
- Describe Medicare Part D
- Identify who is required to complete FWA training
- Recognize laws affecting Part D compliance and FWA
- Increase awareness of Part D FWA
- Frequency and tracking of Part D training

# Training Objectives

Identify possible fraud risks by type of entity

- Identify relevant laws and regulations related to Medicare Part D
- Identify government agencies that oversee Part D FWA activities
- Outline the necessary components of a general compliance program
- Reporting Part D FWA

# Definitions of FWA

- Fraud – the intentional use of deception for unjust gain and/or enrichment
- Waste – careless or needless expenditures of resources
- Abuse – medical practices and services that result in unnecessary costs to the Medicare program

# What is Medicare Part D?

- Medicare Part D is a federal prescription drug program that is used to subsidize the cost of prescription medications to Medicare beneficiaries.
- It was enacted as a part of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) that went into effect January 1, 2006.

# Who Does the Training Requirement Cover?

- Sponsor employees – All Rocky Mountain Health Management Company employees with functions related to Medicare
- First-tier entity – any party that enters into a written arrangement to provide administrative services for a Medicare-eligible individual (an example would be a PBM or a physician group)

# Who Does the Training Requirement Cover?

- Downstream entity – any party that enters into a written arrangement with persons or entities involved with Medicare benefits, below the level of the arrangement between a plan sponsor (RMHP) and a first-tier entity, that continues down to the level of the ultimate provider of both health and administrative services (an example would be a pharmacy contracted through the PBM)

# Frequency of FWA Training

- All employees of the sponsor, first-tier entities, and downstream entities are required to receive effective training and education upon hire and annually thereafter
- It is up to the sponsor to provide training materials and track and ensure all entities' employees receive the required training
- Future training will be reviewed, and revised if necessary, on an annual basis

# FWA Risks by Entity



The following seven slides contain risks for different entities. The lists are not all-inclusive and are intended only to provide examples and to provoke thought and recognition of additional considerations of FWA as it relates to Medicare.

# FWA Risks – Sponsor



- Failure to provide medically necessary services
- Marketing schemes
  - Offering beneficiaries inducement to enroll
  - Unsolicited marketing
  - Misrepresenting medical or Part D products
- Payment for excluded drugs
- Multiple billing
- Inaccurate data submission

# FWA Risks – PBM



- Prescription drug switching
- Steering a beneficiary to a certain plan or drug
- Inappropriate formulary decisions
- Failure to offer negotiated prices

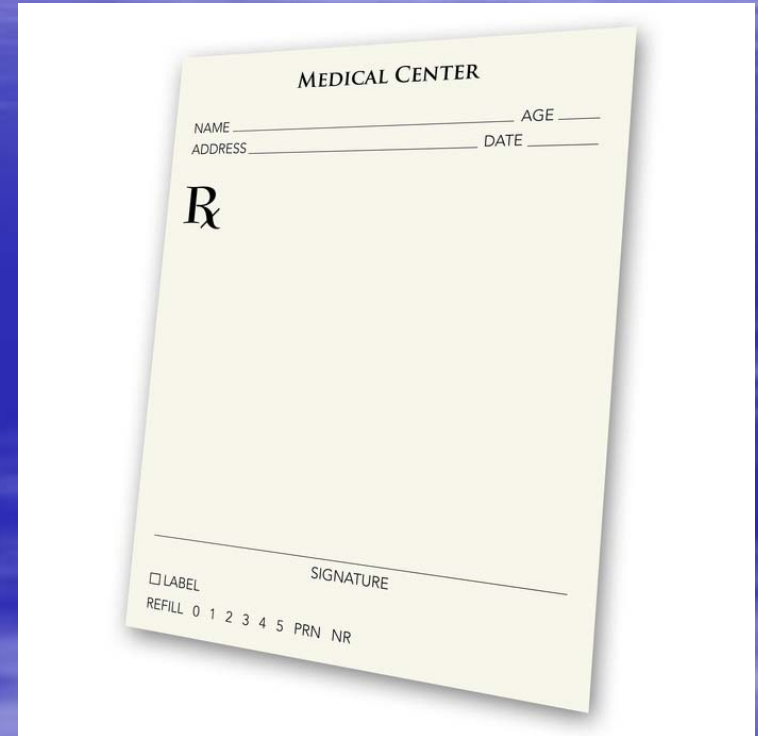
# FWA Risks – Pharmacy



- Inappropriate billing practices
- Prescription drug shorting
- Bait and switch pricing
- Prescription forging or altering
- Dispensing expired or adulterated drugs
- Prescription refill errors
- Failure to offer negotiated prices

# FWA Risks – Prescriber

- Prescription drug switching
- “Script” mills
- Provision of false information
- Theft of DEA number or prescription pad



# FWA Risks – Wholesaler

- Counterfeit or adulterated drugs through black markets
- Drug diversions
- Inappropriate/false documentation of pricing information



# FWA Risks – Manufacturer

- Lack of data integrity to establish payment or determine reimbursement
- Kickbacks, inducement, or other illegal remuneration
- Inappropriate relations with formulary committee members
- Inappropriate relations with physicians
- Illegal “off-label” promotion
- Illegal use of free samples



# FWA Risks – Beneficiary



- Misrepresentation of enrollment status
- Identity theft
- Prescription forging or altering
- Drug diversion or inappropriate use
- Resale of drugs
- Prescription stockpiling
- Doctor “shopping” for drugs

# Laws Related to Medicare and Part D FWA



# Medicare Modernization Act (MMA)

- 42 CFR 423.504 requires CMS to have a comprehensive program in the Medicare Prescription Drug Program to detect, correct and prevent FWA
- 42 CFR 422.503B also requires FWA programs for Medicare plans
- Additional information is available from CMS in Chapter 9 of the Part D Program to Control Fraud, Waste and Abuse

# Federal False Claims Act (FCA)

- It is a violation of the FCA to knowingly present, or cause to be presented, a “false or fraudulent” claim to the federal government
- Civil fines of up to \$11,000 per claim
- Penalties of three times the amount of the false claim(s)
- May lead to dual liability with States that have similar statutes

# FCA Whistleblower Suit (*Qui tam*)

- Allows individuals or entities to bring suit in the name of the government for instances of FWA
- Entitles the “whistleblower” certain protections against retaliation for reporting instances of FWA
- Whistleblowers may be entitled to a percentage of what the government recovers

# Federal Anti-Kickback Statute

- Also referred to as the Stark Law
- Prohibits self-referral or remuneration that is directly tied to patient referral, recommending purchase of supplies or services
- Is considered a felony with penalties of up to \$25,000 or up to 5 years imprisonment, or both
- Can result in exclusion from the Medicare program

# Health Insurance Portability and Accountability Act (HIPAA)

- Established standards and requirements for electronic submission of certain health information and requires patient information to be kept confidential
- Penalties of up to \$250,000 and/or imprisonment of up to 10 years for knowingly misusing individually identifiable health information

# CMS Exclusion List Screening

- No payment will be made by any Federal health care program for items or services furnished, ordered or prescribed by an excluded individual or entity
- Sponsors must screen to ensure they are not contracting with an excluded entity
- For more information, visit <http://exclusions.oig.hhs.gov/search.aspx>

# Some Government Agencies Involved in Curbing FWA

- Centers for Medicare and Medicaid Services (CMS)
- MEDICs – the contractor responsible for monitoring fraud, waste, or abuse in the Medicare Prescription Drug benefit program
- Office of Inspector General (OIG)
- Department of Justice (DOJ)
- Federal and State Attorneys General

# Components of a Compliance Plan

- Written policies and procedures
- Compliance officer and committee
- Training and education
- Effective lines of communication
- Enforcement standards
- Monitoring and auditing
- Prompt responses to detected offenses and corrective action plans

# Where to Report FWA

- Rocky Mountain Health Plans (RMHP)
  - Fraud/Compliance Hotline – 888-237-1179 or 970-248-5101
  - Email – [fraudauditor@rmhp.org](mailto:fraudauditor@rmhp.org)
  - Mail reports to: Fraud Investigator, 2775 Crossroads Blvd, Grand Junction, CO 81506
- CMS
  - Hotline – 800-447-8477
  - Fax – 800-223-8164
  - Email – [HHSTips@oig.hhs.gov](mailto:HHSTips@oig.hhs.gov)
  - Mail reports to: Office of the Inspector General, HHS Tips Hotline, PO Box 23489, Washington, D.C. 20026

# In Closing

It is the responsibility of the Sponsor to provide training for its employees, first-tier entities and downstream entities upon initial hire or contract and annually thereafter. All persons, regardless of the type of entity, involved in administering or delivering Medicare benefits are required to complete FWA training.

# Obligations of contracted entities

- Have processes for employees to detect and report suspected FWA
- Have a policy to protect employees who report suspected FWA in good faith
- Train employees upon hire and annually regarding Medicare FWA
- Contact RMHP if you have any questions about your obligation