Limitations on HNS' FWA & HIPAA Training

HNS' Training Module is provided to participating health care professionals and is intended to provide general information relating to fraud, waste and abuse laws and HIPAA/HITECH laws.

Neither the content of this training module nor the information in the Compliance section of HNS's web site, are offered as, or constitute, legal advice. No one should rely on this training module, or information included on this site, or information obtained from HNS' representatives, *without first seeking appropriate professional legal advice.*

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Our Practice's Fraud, Waste and Abuse (FWA) & HIPAA Training

Why Training Is Important

Fraud and abuse within the healthcare system results in higher insurance costs to all persons and entities, including individual health plans, group plans, the Medicare/Medicaid program and state and federal employee programs that are funded by taxpayers.

HIPAA training is important to ensure the confidentiality of protected health information and to ensure compliance to all HIPAA regulations.

- This organization is committed to helping detect and prevent healthcare fraud and abuse and to ensuring compliance to HIPAA regulations.
- This organization assures that all employees receive **annual** FWA & HIPAA training.
- This organization has chosen to fulfill this obligation via this training program.

FWA & HIPAA Training Goals

This training program is designed to provide you with an understanding of:

- Fraud, Waste and Abuse issues that may lead to violations.
- Pertinent federal and state laws and regulations.
- How to report any suspected Fraud, Waste and Abuse violations.
- HIPAA responsibilities.
- Our responsibilities for preventing and reporting violations of any laws and regulations including reporting mechanisms.

Our Responsibilities

As part of our practice's compliance program, we have Fraud, Waste and Abuse and HIPAA Policies and Procedures (P & P's) in place that include:

- An effective FWA and HIPAA training program.
- Reporting mechanisms for suspected FWA and HIPAA violations.
- Methods or processes to detect, prevent and correct FWA and HIPAA violations.
- Ensuring all of our employees and/or subcontractors (such as billing companies) are eligible for participation in federal healthcare plans.

Our Responsibilities

This organization will maintain ALL records of all FWA and HIPAA training, including:

- Dates and methods of training for all physicians and staff members (i.e. classroom, online)
- Materials provided for the training session
- Evidence the training has been completed (sign-in, attestation statements, etc.)

Additional Responsibilities

If our organization has contracted with other entities or individuals to provide health and/or administrative services on behalf of federal health plan members, we will also provide this training material to our subcontractor(s).

(**An example would be a billing company with which we contract for billing/collection services.)**

Our practice will keep records, including sign-in sheets with dates of training, as evidence of the training.

What is Fraud, Waste and Abuse?

Definitions
Examples
Laws
Reporting Violations

Definitions

Healthcare fraud and abuse is a national problem that either directly or indirectly affects all of us. National estimates project that billions of dollars are lost to healthcare fraud and abuse on an annual basis. These losses lead to increased healthcare costs and potential increased costs for healthcare coverage.

Fraud – A false statement made or submitted by an individual or entity who knows the statement is false and knows that the false statement could result in some otherwise unauthorized benefit to the individual or entity. False statements may be verbal or written. Specifically, healthcare fraud is an intentional misrepresentation, deception, or intentional act of deceit for the purpose of receiving greater reimbursement.

Waste – Generally means over-use of services or other practices that result in unnecessary costs. In most cases, waste is not considered caused by reckless actions but rather the misuse of resources.

Abuse – Abuse is reckless disregard or conduct that goes against and is inconsistent with acceptable business and/or medical practices resulting in greater reimbursement and that cause unnecessary costs to the healthcare system.

Differences Between Fraud, Waste and Abuse

Fraud is an intentional deception or misrepresentation that someone makes, knowing it is false, that could result in unauthorized benefit/payment. It is important to note that attempt itself is fraud, regardless of whether it is successful.

Abuse involves actions that are inconsistent with accepted, sound medical, business, or fiscal practices. Abuse directly or indirectly results in unnecessary costs to CMS and America's healthcare delivery system through improper payments.

The real difference between fraud and abuse is the person's intent.

An example of fraud is:

- A physician soliciting new patients by offering to waive or by waiving co-payments;
- Billing for services not furnished; and
- Falsifying medical necessity for a procedure or altering medical records to justify payments.

Abuse is:

- Questionable billing patterns and practices, which may result in unnecessary reimbursement from the carrier;
- Overuse of medical and healthcare services (e.g., scheduling patients for multiple visits to receive higher reimbursement);
- Billing for services that are not medically necessary; and
- Billing services at different rates to different carriers.

More Examples of FWA

- Double billing and/or bundling.
- Soliciting, offering or receiving a kickback, bribe or rebate.
- Identity theft.
- Members sharing their ID cards with friends or relatives for use.
- Billing for more expensive services or procedures than were actually provided.
- Charging in excess for services and supplies or items not covered as if they were covered.
- Performing tests on a beneficiary to establish medical necessity.
- Up-coding the level of service provided or unbundling services.
- Reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for healthcare.

FWA Regulatory Agencies

- The **Centers for Medicare and Medicaid Services (CMS)** is a federal entity within the U.S. Department of Health and Human Services. CMS is responsible for oversight of the Medicare and Medicaid programs.

- The **Department of Health & Human Services (DHHS) Office of the Inspector General.**

Laws

The 6 most important federal Fraud, Waste and Abuse laws that apply to providers are:

1. The False Claims Act
2. The Anti-Kickback Statute
3. The Physician Self-Referral Law (Stark Law)
4. The OIG Exclusion Authorities
5. The Civil Monetary Penalties Law
6. HIPAA

1. False Claims Act (FCA)

The FCA protects the government from being overcharged or sold shoddy goods or services.

It is illegal to submit claims for payment to Medicare or Medicaid that you know or should know are false or fraudulent.

A **"claim"** is broadly defined to include any submissions that result, or could result, in payment and include claims submitted to:

- Intermediaries (such as HNS, Optum, etc.)
- Managed Care Organizations
- Other subcontractors under contract with the government to administer healthcare benefits.

False Claims Act (FCA)

Violations of Medicare laws and the Medicare Fraud and Abuse statutes also constitute violations of the False Claims Act.

Since Medicaid is indirectly funded by the federal government, violations of Medicaid laws are covered by the False Claims Act.

Some examples:

- Submitting a bill for medical services not provided.
- An agent who submits a forged or falsified enrollment application to receive compensation.
- A government contractor who submits records that he knows, or should know, are false and that indicate compliance with certain contractual or regulatory requirements.

More about the False Claims Act (FCA)

This federal law also permits a person with knowledge of fraud against the US Government to file a lawsuit (plaintiff) on behalf of the government against the person or business that committed the fraud (defendant). If the action is successful, the plaintiff is rewarded with a percentage of the recovery. Individuals who file such suits are known as **"*Whistleblowers*."** Retaliation against individuals for investigating, filing, or participating in a whistleblower action is prohibited.

2. The Anti-Kickback Statute

The ***Anti-Kickback*** statute makes it a crime for individuals or entities to knowingly and willfully offer, pay, solicit or receive something of value to induce or reward referrals of business under federal healthcare programs such as Medicare and Medicaid.

Referrals for healthcare services ***must be based upon medical need***.

3. Stark Law - What are Designated Health Services?

- Physicians are prohibited from referring patients for the purpose of furnishing ***Designated Health Services*** payable by Medicare or Medicaid to entities in which the physician, or an immediate family member, *has a financial relationship*, unless an exception applies.

- Financial relationships include:
  - Ownership interests
  - Investment interests
  - Compensation arrangements (an example would be accepting compensation in exchange for referring a patient to a DME supplier for a **TENS Unit**)

The Physician Self-Referral Law (Stark Law)

- Designated Health Services include:
  - ✓ Radiology & Imaging services
  - ✓ Physical & occupational therapies
  - ✓ DME and supplies
  - ✓ Clinical Laboratory services
  - ✓ Prosthetics, orthotics & prosthetic devices & supplies
  - ✓ Outpatient speech/language pathology services
  - ✓ Radiation therapy services & supplies
  - ✓ Parenteral and enteral nutrients, equipment & supplies
  - ✓ Home health services
  - ✓ Outpatient prescription drugs
  - ✓ Inpatient & outpatient hospital services
- **Proof of specific intent to violate the law is not required.**

4. Exclusion from Federal Health care Plans

The Department of Health and Human Services Office of Inspector General (**OIG**) is legally required to *exclude from participation in all federal healthcare programs* individuals and entities convicted of the following types of criminal offenses:

- Medicare or Medicaid fraud
- Patient abuse or neglect
- Felony convictions for other health related fraud, theft, or other financial misconduct
- Felony convictions for unlawful manufacture, distribution, prescription or dispensing of controlled substances

The OIG has discretion to exclude on several other grounds, including misdemeanor convictions related to the list above.

Exclusions from Federal Healthcare Plans

- Our organization shall not employ or contract with individuals who have been excluded from participation in federally funded health care plans.
- Prior to hiring and then monthly thereafter, this organization shall ensure that we do not employ (including providers and employees) or contract with individuals who are prohibited from participation in any federal health care programs by reviewing, *at a minimum*, the Office of Inspector General (OIG) List of Excluded Individuals and Entities (LEIE), which can be accessed at http://exclusions.oig.hhs.gov
- This organization may also review the General Services Administration (GSA) Excluded Party List System (EPLS) at www.sam.gov
- If an individual (or contractor) has *pending* criminal charges relating to health care, or *proposed exclusion* from participation in federally and state funded health care programs, the individual shall be removed from direct responsibility or involvement in any federally or state funded health care programs.
- This organization shall ensure documentation is retained (for 10 years) to substantiate that our organization conducted the required review of the list(s) and that this information is available upon request by HNS, contracted payors, CMS and/or other regulatory agencies.

More About OIG Exclusions

If a physician is excluded by OIG from participation in federal healthcare programs, then Medicare, Medicaid, TRICARE and/or the Veterans Administration (VA) will **not** pay for items or services furnished, ordered or prescribed *by the excluded provider*.

Excluded physicians may not bill directly for treating Medicare and Medicaid patients, ***nor may their services be billed indirectly through an employer or a group practice.***

The **OIG** online database may be accessed at: http://exclusions.oig.hhs.gov/

5. Civil Monetary Penalties Law

The OIG may seek civil penalties and sometimes exclusion for a wide variety of conduct and is authorized to seek different amounts of penalties and assessments based on the type of violation at issue.

Penalties range from **$10,000 to $50,000 per violation** and include:

Presenting a claim that the person knows or should know is for an item or service that was not provided or is false or fraudulent or for which payment may not be made.

Violating Medicare assignment provisions and/or violating the Medicare physician agreement.

Providing false or misleading information expected to influence a decision or discharge.

Making false statements or misrepresentations on application or contracts to participate in federal healthcare programs.

Violations of the Anti-Kickback statute and/or Stark Law.

Consequences of Committing Fraud, Waste or Abuse

The following are potential penalties for committing Fraud, Waste or Abuse. The actual consequence depends on the violation.

- Civil Money Penalties
- Criminal Conviction/Fines
- Civil Prosecution
- Imprisonment
- Loss of Physician License
- Exclusion from federal healthcare programs

6. HIPAA

HIPAA training is included as a vital part of our training module.

HIPAA stands for the Health Insurance Portability and Accountability Act of 1996. **HIPAA** was created to:

- Improve access to healthcare insurance, protect privacy of healthcare data, and promote standardization and efficiency in the healthcare industry.
- Provide safeguards to prevent unauthorized access to protected healthcare information.

More about HIPAA

HIPAA contains provisions and rules to protect privacy and control fraud and abuse within the healthcare system.

The ***HIPAA Privacy Rule*** outlines specific protections for the use and disclosure of **Protected Health Information** (PHI). It also grants specific rights to members.

The ***HIPAA Security Rule*** outlines specific protections and safeguards for electronic PHI.

The ***HITECH Act*** (Health Information Technology for Economic and Clinical Health, 2010) amends certain sections of HIPAA creating new requirements for covered entities and their business associates regarding health records, ***Breach*** notifications, increased enforcement and penalties.

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Federal Beneficiary Inducement Statute

- This law is part of HIPAA and makes it illegal to offer an exchange of remuneration that a person knows or should know is likely to influence a beneficiary to select a particular provider, practitioner or supplier.
- Inexpensive gifts, items or services with a retail value of no more than $10.00 individually and no more than $50.00 annually per patient are acceptable practices.

  Prohibited remuneration does not apply to waivers of financial debt if the waiver is based on individual financial need and true financial need is appropriately verified and documented.

  Prohibited remuneration does not apply to waivers of financial debt if the waiver is based on an inability to collect for non-routine and unadvertised waivers.

PHI, HITECH and Breach Situations

Protected Health Information (PHI). PHI is individually identifiable health information that is transmitted or maintained **in any form or medium (e.g., electronic, paper, or oral),** but excludes certain educational records and employment records.

A ***Breach*** is the unauthorized acquisition, access, use or disclosure of PHI that compromises the security or privacy of the PHI.

Exclusions are:

- An unintentional breach, if the acquisition was made in good faith and the PHI is not used or disclosed again.
- An inadvertent disclosure by a covered entity or BA to another individual at the same entity if the PHI is not further used or disclosed.
- HITECH amended HIPAA language regarding the process and procedure for handling a breach in security.

Report all suspected breaches to our Privacy (Compliance) Officer for immediate handling.

Examples of PHI

- Names, Addresses
- All elements of dates directly related to an individual, including birth date, admission date, date of death
- Telephone or Fax number
- E-Mail Address
- Medical Record Number
- Health Plan Beneficiary Number (subscriber ID)
- License numbers, NPI numbers, Account Numbers,
- Vehicle Identifier and Serial Numbers (License plates)
- Device Identifiers & Serial Numbers
- URL, IP Addresses
- Biometric Identifiers (finger and voice prints)
- Full-Face Photos and Comparable Images
- Any other unique identifying number, characteristic or code

PHI Use & Disclosure

Use = Information shared within our organization

Disclosure = Information provided to individuals or entities outside our organization

HIPAA prohibits use or disclosure of PHI unless:

It is used to provide treatment, payment or healthcare operations; or

It's use is authorized by the member; or

Not sharing the information would present a risk to public health or safety, for example reporting disease as required by statute.

It is otherwise authorized by law.

Who Does HIPAA Apply To?

- **Covered Entities** – physician networks, healthcare clearinghouses, employer sponsored health plans, health insurers and healthcare providers who transmit any health information in electronic form in connection with a transaction.

- **Business Associates** – Those to whom the provider discloses PHI to carry out, assist with performance of, or perform on the behalf of, a function or activity for the covered entity.

- **This means that *everyone* within, contracted with, or associated with our organization must be aware of and comply with HIPAA requirements.**

Prohibited Disclosures of PHI

- We cannot disclose **PHI** of a member ***except*** if the disclosure is permitted or required by law.

- We will ***not*** make any other use of disclosures of **PHI** without the written authorization of the individual member unless the use or disclosure is permitted or required under the law.

Permitted Disclosures of PHI

- To carry out treatment, payment or healthcare operations
- To the individual member with a valid authorization from the member
- Special Circumstances when disclosure of PHI *without* individual consent is permissible, such as emergencies where the medical well being of the patient may be compromised by not sharing information
- For defined "**public good functions**" such as epidemics, bio-terrorism, etc.
- To **Business Associates** (BA) if they obtain satisfactory assurances that the BA will adequately safeguard the information (example is a signed business associate agreement).

Required Disclosures of PHI

- To an individual member seeking to access their PHI.
- To an individual member seeking an accounting of disclosures of their PHI.
- To the Secretary of Health and Human Services (HHS) to investigate or determine the health plan's compliance with regulations.

How PHI is Communicated

- HIPAA applies to PHI in **ALL** forms of communication, **whether electronic, written or oral.**

- This means that HIPAA applies to:
  - Face to face interactions
  - Telephone conversations
  - Faxed or scanned documents
  - E-mail and other internet based communications such as Facebook.

Member Rights Under HIPAA

- ✓ Right to access their health records.
- ✓ Right to request amendments to any inaccurate information.
- ✓ Right to request confidential communications, for example, an individual can ask to be called on his/her cell phone instead of home phone.
- ✓ Right to request restrictions, for example, allowing only specific family members to receive information.
- ✓ Right to an accounting of information.

Our Responsibilities

- We must make every reasonable effort to use, disclose or request only the ***minimum amount*** of PHI required to accomplish the task at hand.
- We must keep track of disclosures of PHI.
- Unless otherwise allowed by law, we must notify members of uses of their PHI.

Our Responsibilities

- We will obtained signed Business Associate Agreements with all applicable individuals/organizations.
- We will document our HIPAA policies and procedures and provide annual HIPAA training to our physicians and staff members.
- To adhere to all HIPAA regulations.

Best Practices to Assure Compliance to HIPAA laws…

- Speak quietly and only to those necessary when discussing member information or conditions.
- Never discuss member information or conditions in common areas.
- When appropriate and applicable, secure documents that contain PHI in locked offices and cabinets.
- Use passwords and other security measures on computers.
- Password protect all e-mails that contain PHI.
- Remove documents immediately from any commonly used areas.
- Only share PHI as allowed by law.
- Ensure our office has Business Associate Agreements and/or confidentiality agreements in place with applicable individuals and organizations.

Reporting FWA and HIPAA violations

Everyone is required to report suspected or known instances of Fraud, Waste, and Abuse and HIPAA violations.

Our Practice's Compliance Plan clearly states this obligation and outlines how suspected FWA and/or HIPAA violations are reported.

This organization has a zero tolerance position for retaliation for reporting violations.
This organization will not retaliate against anyone for making a good faith effort in reporting.

When reporting suspected or known violations you may remain anonymous if you choose.

To report suspected violations, contact one of the entities shown on the following screen.

To Report Suspected Violations Contact One of the Entities Shown Below. (**You May Remain Anonymous if you Choose.)**

US Office of Inspector General (OIG)
Compliance Hotline:
1-800-447-8477
Compliance Mailing Address:
US Department of Health & Human Services
Office of Inspector General
ATTN: OIG HOTLINE OPERATIONS
PO Box 23489
Washington, DC 20026

Centers for Medicare and Medicaid (CMS)
Compliance Hotline:
1-800-MEDICARE
1-800-633-4227
1-877-486-2048

Secretary, Department of Health and Human Services

Office of Civil Rights (OCR)

(HIPAA violations)

http://www.hhs.gov/ocr/privacy/hipaa/complaints

How to Detect/Prevent FWA and HIPAA violations

- **Know and adhere to our practice's FWA and HIPAA policies and procedures**
- **Always be on the lookout for suspicious activity and immediately report concerns to our compliance officer.**
- **Always verify insurance information provided by our patients.**
- **Help ensure that the information in the healthcare record is accurate and the information reported on claims is accurate.**
- **Conduct ongoing monitoring of healthcare records and claims data to assure accuracy of information. If we determine an inadvertent error, we will correct promptly! If we determine we have inadvertently reported inaccurate information on a claim form, we will promptly file a corrected claim to correct the error. If we receive payment for services we did not provide or to which we are not entitled, we will promptly refund the payor. Correcting the problem saves the government and payors money and ensures we are in compliance with CMS' and other requirements.**
- **Ensure the privacy and confidentiality of PHI.**
- **Ensure Business Associate Agreements are in place with applicable individuals and/or organizations.**
- **Stay up-to-date with laws, regulations and policies.**

In Summary

- An understanding of FWA and HIPAA laws will help ensure our commitment to ethical behavior as well as meeting the challenges posed by Federal and State regulatory agencies.
- Understanding FWA and HIPAA regulation increases awareness that can lead to early detection and prevention of violations.
- An effective FWA and HIPAA compliance program must be integrated into our systems, department policies and procedures and our everyday behavior.
- An effective FWA and HIPAA compliance program cannot operate without the cooperation and help of each physician and staff member.
- As part of our compliance program, we will complete this training each year.

Congratulations!

You have successfully completed our office's

Fraud, Waste, and Abuse and HIPAA Training

(Don't forget to print, sign and date the Compliance Certification shown on the next screen.)

Compliance Training Certification

I hereby certify that I have reviewed this Compliance Training Module, including training on Fraud, Waste and Abuse and HIPAA, and that I understand my responsibility to comply with the requirements addressed in this training.

Signature:_____
Date:_____

This page must be printed, signed and dated, and a copy must be retained by this office for a minimum of 10 years.

Always retain a copy of the actual training module (power point) as evidence of your compliance training material, together with the signed and dated compliance attestation certifications.