COMPLIANCE TRAINING

Greater Columbia Behavioral Health

Topics In This Module

- Compliance plans
- Fraud, waste, and abuse
- Laws and penalties
- Reporting, and how you're protected if you do

Compliance Plan

A series of internal controls and measures to ensure the plan sponsor follows applicable laws and regulations that govern Federal programs, like Medicaid.

The Seven Fundamental Elements of a Compliance Plan

1. Implementing written policies, procedures, and standards of conduct
2. Designating a compliance officer and compliance committee
3. Conducting effective training and education
4. Developing effective lines of communication
5. Conducting internal monitoring and auditing
6. Enforcing standards through well-publicized disciplinary guidelines
7. Responding promptly to detected offenses, undertaking corrective action, and reporting to the Government

Why is a Compliance Plan Needed?

- The adoption and implementation of a compliance program significantly reduces the risk of fraud, waste, and abuse in health care settings, while providing quality services and care to patients.

- Organizations contracting directly or indirectly with the federal government are obligated to:

  - Report fraud, waste, and abuse

  - Demonstrate their commitment to eliminating fraud, waste, and abuse

  - Implement internal policies and procedures to identify and combat health care fraud

Fraud

An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to themselves of some other person. It includes any act that constitutes fraud under applicable Federal or State law.

Waste

The extravagant, careless, or needless expenditure of healthcare benefits or services that result from deficient practices or decisions.

Abuse

Practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, reimbursement for services that are not medically necessary, or that fail to meet professionally recognized standards for health care.

Examples of Fraud, Waste, and Abuse

- Billing for services not performed
- Double billing
- Unnecessary services
- Unbundling
- Upcoding
- Falsification of health care provider credentials
- Failure to follow all applicable professional standards, practices, or ethical guidelines
- Falsification of provider financial solvency
- Intentional improper billing
- Related party contracting
- Incentives to limit services or referrals
- Embezzlement and theft
- Kickbacks
- Billing Medicaid enrollees for GCBH covered services

Laws and Penalties

- Because fraud, waste, and abuse drain Medicaid funds and can impact patient care, laws and penalties have been put in place to hold violators liable.

- Three commonly cited fraud, waste, and abuse laws:
  - The False Claims Act
  - Anti-Kickback Statute
  - Physician Self-Referral Law

The False Claims Act

The False Claims Act states that any person or entity who knowingly defrauds government programs will be held liable

The False Claims Act

The False Claims Act makes it illegal to:

- Knowingly present, or cause to be presented, to an officer or employee of the United States Government a false or fraudulent claim for payment or approval.
- Knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government
- Conspiring to defraud the Government by getting a fraudulent claim allowed or paid
- Act in deliberate ignorance of the truth or falsity of the information
- Act in reckless disregard of the truth or falsity of the information; no proof of specific intent to defraud is required

The False Claims Act Penalties

- The submitter of the false claim/statement is liable for a civil penalty, regardless of whether the submission of a claim actually causes the Government any damages and even if the claim is rejected

- The submitter of the claim is liable for damages that the government sustains because of the submission of the false claim

- Under the False Claims Act, those who knowingly submit or cause another person to submit false claims for payment by the government are liable for three times the Government's damages plus civil penalties of $5,000 to $10,000 per false claim

Anti-Kickback Statute

The federal Anti-Kickback Statute prohibits the exchange, or offer to exchange, of anything of value in an effort to induce, or reward, the referral of federal healthcare program business.

Anti-Kickback Statute

The Anti-kickback Statute makes it a criminal offense to knowingly and willfully solicit, receive, offer, or pay remuneration (including any kickback, bribe, or rebate) in return for:

- Referrals for the furnishing or arranging of any items or service reimbursable by a Federal Health Care Program
- Purchasing, leasing, ordering, or arranging for any items or service reimbursable by a Federal Health Care Program

Remuneration is defined as the transfer of anything of value, directly or indirectly, overtly or covertly, in cash or in kind.

Anti-Kickback Statute Penalties

Conviction of a single violation of the anti-kickback statute may result in a fine up to $25,000 and imprisonment for up to five years, as well as mandatory exclusion from participation in federal health care programs.

The government may also assess civil money penalties, which could result in treble damages (compensatory damages awarded to plaintiff x 3) plus $50,000 for each violation of the Anti-Kickback Statute.

Physician Self-Referral Law

The Physician Self-Referral Law, also known as the Stark law, prohibits a physician from making referrals for certain designated health services to an entity with which they, or an immediate family member, has a financial relationship (ownership, investment, or other compensation arrangement), unless an exception applies

Physician Self-Referral Law

There is an inherent conflict of interest when physicians refer to an entity in which they have with a financial interest

- Physician self-referral can encourage overutilization, leading to higher healthcare costs
  - Does the patient actually need the service they are being referred for?
  - Does the referral benefit the patient or the physician?
- Self-referral can also create a captive referral system
  - A captive referral system limits competition with other providers by only referring patients to a specific provider

Physician Self-Referral Law Penalties

- Denial of payment for designated health services provided
- Refund monies received by physicians and facilities for amounts collected
- Civil penalties up to $15,000 for each service that a person "knows or should know" was provided in violation of the law, plus 3x the amount of improper payment received
- Exclusion from participation in federal healthcare programs
- Civil penalties up to $100,000 for each attempt to circumvent the Stark law

Reporting

Any person associated with GCBH (consumers, employees, subcontractors, and others) may report a concern, or request information about fraud, waste, and abuse

Reporting

- A person who provides their name when reporting suspected fraud, waste, or abuse is entitled to know whether an investigation has occurred
- If a person provides their name when reporting, there is no guarantee of anonymity
  - The CCO will try to protect a person's identity at their request, but may choose to disclose it if it becomes necessary
- A person who reports in good faith is covered under the Whistleblower Protection Act

Whistleblower Protection Act

- The Whistleblower Protection Act of 1989 protects employees who have reported a compliance issue from retaliation. If any retaliation does occur, the employee has a right to obtain legal counsel to defend their actions.

- A whistleblower is someone, such as an employee, who reports suspected misconduct that would be considered an action against company policy, federal laws, or regulations.

Ways To Make Reports

- Contact GCBH's Corporate Compliance Officer, Sindi Saunders:
  - In person
  - By e-mail: sindis@gcbh.org
  - By fax: (509) 783-4165
  - By phone, on an anonymous basis if so desired: (509) 737-2475 or (800) 795-9296
  - By mailing a written concern to:

    Corporate Compliance Officer, Sindi Saunders
    Greater Columbia Behavioral Health
    101 N. Edison Street
    Kennewick, WA 99336

More Ways To Make Reports

Reports can also be made anonymously outside of GCBH:

- To the State of Washington's Department of Social and Health Services
  - 1-800-562-6906, extension 2
  - E-mail HotTips@hca.wa.gov

- Office of the United States Inspector General National Fraud Hotline
  - 1-800-447-8477

Disciplinary Action

Disciplinary action will be taken:

- Against any person whose conduct appears to have been intentionally or willfully indifferent to, or in reckless disregard of, state and federal laws
- When someone makes a report with the intent to harm another
- When someone retaliates in any manner against another person who reported a concern in good faith

GCBH is obligated to protect those who report legitimate concerns and penalize malicious reporting

Preventing Potential FWA

- Read and take time to understand your organization's fraud, waste, and abuse policies and procedures
- Know where to find your organization's compliance hotline
- Participate in training and education
- Follow standards of conduct
- Get to know your compliance officer, and don't hesitate to report concerns
- Help conduct internal monitoring and auditing, including detection through medical review and data analysis
- Maintain confidentiality of protected health information (PHI)