

Southwest Michigan Behavioral Health (SWMBH)

Corporate Compliance Training

Overview

- Medicaid Program Administration
 - The Centers for Medicaid and Medicare Services (CMS) administers the Medicare and Medicaid programs and provides operational direction and policy guidance to health care providers and suppliers.
 - The Medicaid program is directly administered and managed by the States with approval by CMS but jointly funded by both the federal and state governments.

Overview

- Medicare and Medicaid Oversight
 - Program oversight is accomplished through the Office of Inspector General (OIG) through its charge to investigate suspected fraud and abuse.
 - The OIG may impose civil monetary penalties and other administrative actions such as program exclusion against health care providers for fraud and abuse.
 - The OIG refers cases of fraud to the U.S. Department of Justice and other federal agencies for further criminal and/or civil action.

Overview

- Fraud defined:
 - An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to his/herself or some other person. It includes any act that constitutes fraud under applicable Federal or State law including but not limited to the Federal False Claims Act and the Michigan False Claims Act.
 - Michigan law permits a finding of Medicaid fraud based upon “constructive knowledge.” This means that if the course of conduct reflects a systematic or persistent tendency to cause inaccuracies” then it may be fraud, rather than simply a good faith error or mistake.

Overview

- Abuse defined:
 - Practices that are inconsistent with sound fiscal, business, or medical practices and that result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary, or that fail to meet professionally recognized standards for healthcare.
- Waste defined:
 - Overutilization of services, or other practices that result in unnecessary costs. Generally not considered caused by criminally negligent actions but rather the misuse of resources.

Deficit Reduction Act 2005 – Effective January 1, 2007

- Contains three provisions targeted at Medicaid program integrity and fraud and abuse:
 - Section 6031
 - Creates cash incentives for a State to establish fraud and abuse laws. If a State enacts a False Claims Act modeled on the federal version, the federal government will increase the State share of amounts recovered under that law by ten (10) percent.
 - The intention is to create increased and joint oversight between the Federal and State governments.

Deficit Reduction Act 2005 – Effective January 1, 2007

- Contains three provisions targeted at Medicaid program integrity and fraud and abuse:
 - Section 6032
 - Requires any entity that receives from or makes payment to the State Medicaid Program of at least \$5 million annually to develop and implement policies/procedures and provide education to its employees, contractors, and agents consistent with the Federal False Claims Act.

Deficit Reduction Act 2005 – Effective January 1, 2007

- Contains three provisions targeted at Medicaid program integrity and fraud and abuse:
 - Section 6034
 - Establishes the Medicaid Integrity Program (MIP) and dramatically increases resources available to CMS to combat fraud, waste, and abuse in the Medicaid program.
 - Medicaid Integrity Program operational roles:
 - Review provider activities
 - Audit claims
 - Identify overpayments
 - Conduct provider education

Deficit Reduction Act 2005 Compliance Program Requirements

- Education and training for employees, contractors and agents that contains “detailed” information about the Federal False Claims Acts, whistleblower provisions, and information on the roles of such laws and provisions in preventing and detecting fraud, waste, and abuse in the Federal health care programs.

Deficit Reduction Act 2005 Compliance Program Requirements

- Written policies that include “detailed provisions” consistent with the State and Federal False Claims Acts, administrative remedies under the Act, applicable State laws, and Whistleblower provisions.
- Include in the employee handbook: State and Federal laws, rights as employees to be protected as Whistleblowers, any related policies and procedures.

Federal False Claims Act

- The False Claims Act is a federal statute that covers fraud involving any federally funded contract or program, including the Medicaid program.
- The Act establishes liability for any person who
 - Knowingly presents, or causes to be presented...a false or fraudulent claim for payment or approval;
 - Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved;
 - Conspires to defraud by getting a false or fraudulent claim allowed or paid; or
 - Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the Government.

Federal False Claims Act

- Definition of “knowingly”
 - Has actual knowledge of the information;
 - Acts in deliberate ignorance of the truth or falsity of the information; or
 - Acts in reckless disregard of the truth or falsity of the information.
- No proof of specific intent to defraud is required.

Federal False Claims Act Penalties

- Health care providers and suppliers who violate the False Claims Act may be subject to:
 - Civil monetary penalties ranging from \$5,500 to \$11,000 for EACH false claim;
 - Treble damages – three times the amount of damages incurred by the federal government related to the fraudulent or abusive conduct;
 - Exclusion from participation in State and Federal programs;
 - Federal criminal enforcement for intentional participation in the submission of a false claim.

Qui Tam “Whistleblower” Provisions

- The qui tam “*whistleblower*” law is a federal law that applies nationally. The qui tam law is designed to protect against the fraudulent use of public funds by encouraging people with knowledge of fraud against the Government to blow the whistle on the wrongdoers. The law provides for whistleblowers to receive a reward in the form of a share of the recovery.
- A qui tam lawsuit must be filed within the latter of the following: (1) six years from the date of the FCA violation; or (2) three years after the Government knows or should have known about the material facts concerning the FCA violation, but in no event longer than ten years.
- Anyone initiating a qui tam case may not be discriminated or retaliated against in any manner by their employer. The employee is authorized under the FCA to initiate court proceedings to make themselves whole for any job related losses resulting from any such discrimination or retaliation.

SWMBH Standards of Business Code of Conduct

The State of MI has placed SWMBH in a position of trust with respect to many external organizations and agencies. Additionally, all SWMBH Board Members, administration, staff, Participant CMHSPs, and providers have a responsibility to the government, taxpayers, and consumers to use such funds prudently, ethically and for the purposes for which they are designated. Ethical conduct has been and continues to be the foundation of this organization.

SWMBH Standards of Business Code of Conduct

- 1) Compliance with Laws, Contract and Grant Obligations
 - SWMBH will maintain compliance with statutory and regulatory requirements.
 - SWMBH will advise and train its personnel and contractors about the applicable laws and requirements.
 - SWMBH Board Members, administration, staff, Participant CMHSPs and providers are expected to assume role-based responsibility and accountability for understanding relevant laws, regulations, and contract and grant requirements for ensuring compliance.
 - SWMBH management is committed to informing those under their supervision that they must comply with the applicable standards and, if they do not comply, appropriate disciplinary action will be taken.
 - SWMBH is committed to ongoing development and enculturation into an environment of compliance.

SWMBH Standards of Business Code of Conduct

- 2) Compliance with Standards of Integrity and Quality
 - All SWMBH Personnel, including contractual staff, are expected to comply with the Code of Conduct. Participant CMHSPs and contracted service providers are expected to have their own internal Code of Conduct of Ethics and likewise are expected to comply. This Code serves to advise employees of the standards they are expected to follow and the consequences of their failure to do so or report violations as required.

SWMBH Standards of Business Code of Conduct

3) SWMBH's Responsibilities

- SWMBH is committed to the following:
 - Providing role-based training and education for Board Members, SWMBH Personnel, and contracted providers in performing governance or daily activities within appropriate ethical and legal standards.
 - Establishing a culture that promotes prevention, detection, and resolution of instances of misconduct in order to conform to applicable laws and regulations.
 - Educating SWMBH Personnel, contract providers, and, as appropriate, Board Members and stakeholders, of their responsibilities and obligations to comply with applicable local, state, and federal laws and regulations.

SWMBH Standards of Business Code of Conduct

3) SWMBH's Responsibilities

- SWMBH is committed to the following:
 - Encouraging the highest level of ethical and legal behavior from all SWMBH Personnel.
 - Reducing exposure to civil and criminal sanctions.
 - Reducing the possibility of misconduct and violations through surveillance and early detection.
 - Distributing the Code of Conduct to all SWMBH Personnel. All Personnel shall certify that they have received, read, and will abide by the organization's standards of conduct.
 - Using due care not to delegate substantial discretionary authority to individuals whom they know, or should have known through due diligence, has a propensity to engage in illegal activities.

SWMBH Standards of Business Code of Conduct

3) SWMBH's Responsibilities

- SWMBH is committed to the following:
 - May perform criminal records checks on potential personnel, and avoid placing untrustworthy or unreliable employees in key positions.
 - Consulting the National Practitioner Data Bank and the OIG Cumulative Sanctions List to determine whether any current or prospective employees or contractors have been excluded from participation in Federal Health Care Programs.
 - Providing personnel training on the SWMBH Corporate Compliance Plan and key policies at orientation and annually thereafter.

SWMBH Standards of Business Code of Conduct

3) SWMBH's Responsibilities

- SWMBH is committed to the following:
 - Provide ready access to easily understood guidance of documents and policies.
 - Keeping open lines of communication between the Chief Compliance Officer and SWMBH personnel, Participant CMHSPs and contracted service providers, as applicable.

SWMBH Standards of Business Code of Conduct

4) Individual Responsibilities

- Ethics and integrity are the responsibility of each individual. Therefore, all SWMBH Board Members, administration, personnel, Participant CMHSPs and providers, and any other person acting on behalf of SWMBH, is responsible for ethical conduct consistent with this Code and with SWMBH's policies. They shall individually and collectively abide by the following:

SWMBH Standards of Business Code of Conduct

4) Individual Responsibilities

- Understand and comply with Code of Conduct
- Participate in training/educational programs
- Obtain guidance for resolving business practice and compliance concerns
- Behave honestly and with integrity
- Recognize and report violations
- Cooperate fully in any investigation
- Act with care and diligence

SWMBH Standards of Business Code of Conduct

4) Individual Responsibilities

- Treat everyone with respect and courtesy
- Comply with all applicable laws and regulations, policies and guidelines
- Comply with reasonable direction given by someone who has authority to give direction
- Maintain appropriate confidentiality
- Disclose, and take reasonable steps to avoid any conflict of interest (real or apparent)

SWMBH Standards of Business Code of Conduct

4) Individual Responsibilities

- Use SWMBH's resources in a proper manner
- Not make improper use of: (a) inside information, or (b) the employee's duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person
- Conduct business with integrity and maintain the good reputation of SWMBH

SWMBH Standards of Business Code of Conduct

5) Reporting Suspected Violations

- All SWMBH personnel and Board Members have the responsibility of ensuring the effectiveness of the organization's compliance efforts by actively participating in the reporting of suspected violations of the Compliance Plan and the standards in the Code of Conduct.
- It is the responsibility of each SWMBH personnel to reduce the possibility of and to report suspected criminal conduct per policy; to identify potential risk areas, including health care fraud and abuse and to respond accordingly; and to protect SWMBH from financial loss.

SWMBH Standards of Business Code of Conduct

5) Reporting Suspected Violations

- SWMBH personnel and Board Members who are aware of a suspected compliance violation are required to report it to the SWMBH Chief Compliance Officer through one of the reporting mechanisms.
- Failure to report a compliance violation may lead to disciplinary action.
- Retaliation for reporting an alleged compliance violation is strictly prohibited and may lead to disciplinary action.

SWMBH Standards of Business Code of Conduct

5) Reporting Suspected Violations

- All SWMBH personnel must review and comply with SWMBH's policies and procedures.
- Anyone that knows or has reason to believe that SWMBH does not comply with all requirements must report such matters within 24 hours of awareness to the following:
 - A supervisor; or
 - Corporate Compliance email address compliance@swmbh.org
 - Chief Compliance Officer in writing, in person, or anonymously; or
 - SWMBH's Compliance Hot Line: 1-800-783-0914

SWMBH Standards of Business Code of Conduct

- Enforcement and Discipline

- Policy

- Enforcement and discipline standards contained or referenced in the SWMBH Compliance Plan are to be consistently enforced through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the culpable or otherwise accountable failure to detect an offense. Thus, it is the policy of SWMBH that officers and managers are accountable for the foreseeable behavior of their subordinates. Adequate discipline of individuals responsible for an offense is a necessary component of enforcement; however, the form of discipline that will be appropriate will be case specific.

SWMBH Standards of Business Code of Conduct

- Enforcement and Discipline
 - Procedure
 - 1) The discipline shall be consistent. Therefore, departmental managers and human resources will coordinate their disciplinary and performance evaluation policies and procedures to assure that they are consistent between departments.
 - 2) There shall be fair and uniform mechanisms for the discipline. The Department of Human Resources, Chief Compliance Officer (CCO) and the Corporate Compliance Committee (CCC) shall:
 - Assure that there is a uniform procedure for determining if a regulatory compliance policy has been violated;
 - Articulate the range of punishments for violating these policies;
 - Articulate factors that may affect the degree of punishment; and
 - Describe the operational procedures for finding a violation and determining application of the punishment, including a reasonable dispute resolution process and/or fair opportunity for appeal.

SWMBH Standards of Business Code of Conduct

- Enforcement and Discipline
 - Procedure
 - 3) There shall be discipline for those who culpably, whether negligently, recklessly, or intentionally, fail to detect an offense committed by someone else.
 - 4) There shall be discipline for those who actually commit an offense and such punishment will vary in proportion to the severity and/or extent/volume of the infraction(s). The administration of discipline for violations of SWMBH's Compliance Policies shall be administered in accordance with those SWMBH Human Resource and Personnel Policies otherwise applicable, including any regarding:
 - Documentation,
 - Progressive Discipline, and
 - Goals, Rewards, and Evaluations.

SWMBH Standards of Business Code of Conduct

- Enforcement and Discipline
 - Procedure
 - 5) If an employee of SWMBH violates the compliance program and/or any SWMBH policies or procedures, that employee may be subject to disciplinary action. The specific action will depend on the nature and severity of the violation. Discipline may include:
 - Counseling
 - Verbal warning
 - Written warning
 - Unpaid Suspension
 - Termination



Thank You

SWMBH Program Integrity and Compliance
Office