

**Centers for Medicare &  
Medicaid (CMS)-Mandated  
Training for First-Tier,  
Downstream, and Related  
Entities**

**Fraud, Waste, and Abuse (FWA)  
Training  
2011**

# Introduction

- PrimeWest Health is dedicated to maintaining excellence and integrity in all aspects of our operation and administration. We strive to achieve the highest quality of education and monitoring to emphasize prevention and early identification of fraud, waste, and abuse (FWA).
- Our Compliance program is designed to educate our board members, employees, vendors, and first-tier, downstream, and related entities about Federal and State laws and regulations and ethical rules that apply to our business, raise awareness about uncertain conduct, monitor compliance, and provide effective lines of communication for reporting suspected violations.
- PrimeWest Health has a dedicated compliance officer and compliance committee to monitor suspected violations and, when appropriate, oversee corrective actions to prevent future violations.

# Introduction

- PrimeWest Health contracts with the Centers for Medicare & Medicaid Services (CMS) to offer health and prescription drug coverage to eligible members. PrimeWest Health is referred to as a “Medicare Advantage (MA) Organization and Part D Plan Sponsor.” We also are known as a “Dual-Eligible Special Needs Plan.”
- PrimeWest Health must follow applicable laws, regulations, and guidance that govern MA Organizations and Part D Plan Sponsors.
- As an entity that contracts with PrimeWest Health to provide health, prescription, and/or administrative services on behalf of our members, ***your organization must*** meet the education and training requirements related to FWA outlined in Title 42 Code of Federal Regulations (CFR) Part 422.503(b)(4)(vi)(C) and/or 42 CFR 423.504(b)(4)(vi)(C).
  - The following slides provide learning objectives, regulations, relevant laws and definitions, examples of potential FWA, reporting and prevention mechanisms, attestation, information about training logs, and resources.
  - At the conclusion of this presentation, an authorized representative from your organization must complete the attached attestation and return it to PrimeWest health via email, fax, or mail.

# Learning Objectives

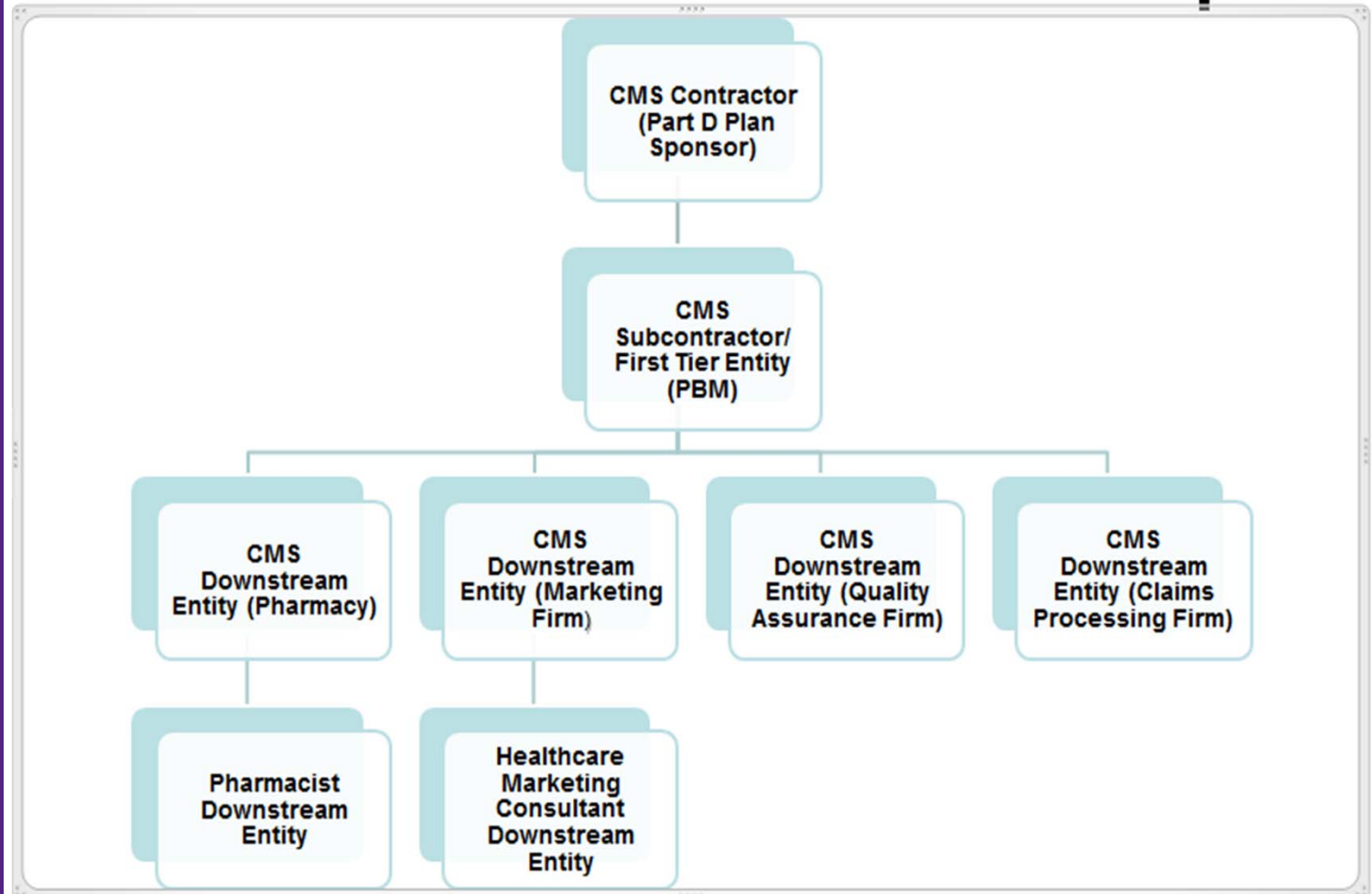
To better understand the following:

- Education and training regulations that govern MA and/or Part D Plan Sponsors
- Definitions used to help entities detect and prevent FWA
- Education and documentation needed to comply with the government requirements
- Relevant laws and examples of potential FWA
- Reporting and preventing potential FWA
- Attestation and training information
- Available resources

# Definitions

- **First-Tier Entity:** A party that enters into a written arrangement, acceptable to CMS, with a Plan Sponsor to provide administrative services or health care services for a Medicare-eligible individual under the MA or Part D programs.
  - Examples include Pharmacy Benefits Managers (PBMs), contracted hospitals, clinics, and allied providers.
- **Downstream Entity:** A party that enters into a written arrangement, acceptable to CMS, with persons or entities involved in the MA or Part D benefit, below the level of the arrangement between a Plan Sponsor and a first-tier entity. These written arrangements continue down to the level of the ultimate provider of both health and administrative services.
  - Examples include pharmacies, marketing firms, quality assurance companies, claims processing firms, and billing agencies.
- **Related Entity:** An entity that is related to the Plan Sponsor by common ownership or control and performs some of the Plan Sponsor's management functions under contract or delegation, furnishes services to Medicare enrollees under an oral or written agreement, or leases real property or sells materials to the Plan Sponsor at a cost of more than \$2,500 during a contract period.

# First-Tier and Downstream Entities: Example



# Definitions

- **Fraud:** An intentional act of deception, misrepresentation, or concealment in order to gain something of value. Examples include the following:
  - Billing for services that were never rendered
  - Billing for services at a higher rate than is actually justified
  - Deliberately misrepresenting services, resulting in unnecessary cost to the Medicare program, improper payments to providers, or overpayments
- **Waste:** Over-utilization of services and the misuse of resources
- **Abuse:** Program abuse that may be intentional or unintentional, and which directly or indirectly results in unnecessary or increased cost to the Medicare Program. Examples include the following:
  - Charging in excess for services or supplies
  - Providing medically unnecessary services
  - Providing services that do not meet professionally recognized standards

# Education Requirements

- According to CMS, PrimeWest Health is ultimately responsible for oversight and monitoring of education and training of first-tier, downstream, and related entities.
- As one of these entities, you have three options to comply with the FWA education and training requirements:
  1. Provide your own training in accordance with CFR 422.503(b)(4)(vi)(C) or 423.504(b)(4)(vi)(C)
  2. Take training from another MA and/or Part D Plan Sponsor
  3. Complete the training provided by PrimeWest Health
- Your organization **must** maintain internal training logs and submit the required attestation to PrimeWest Health.

# Documentation Requirements

- Your organization is required to complete the attestation on the last slide, which must be signed by an authorized representative. Upon request, your organization may be required to submit copies of training logs demonstrating that your employees received FWA training.
- If your organization has contracted with other entities to provide health and/or administrative services on behalf of PrimeWest Health members, you will need to obtain attestations from those entities that they have completed the FWA training. In addition, those entities will also need to provide your organization with copies of their training logs.

# The Federal False Claims Act

- This Act prohibits any person from knowingly presenting or causing to be presented a fraudulent claim for payment or approval (31 U.S.C. §3729 – 3733).
- Claims for payment include durable medical equipment (DME) supplier claims to an MA/Part D Plan organization and the claims that MA/Part D Plan organizations submit to Medicare Parts C and D.
  - This means if a DME supplier causes an MA/Part D Plan organization to submit a false claim, the DME supplier also may be liable.

# The Federal False Claims Act

The following are examples of activities that the government may allege ultimately caused the submission of a false claim:

- Products ordered due to inappropriate marketing efforts
- Services that a physician ordered due to an illegal kickback
- Drugs billed for that were not provided or were not furnished in accordance with the physician order

# The Anti-Kickback Statute

- This Statute makes it a crime to give anything of value to a referral source in exchange for a referral or the purchase of certain items or services.
  - Examples of prohibited items include:
    - Cash
    - Trips
    - Payment of seminar fees
  - An item of value includes expense relief
    - Expense relief is the payment of expenses, such as equipment or services, that are necessary for the operations of the referral source (e.g., providing fax machines or computer equipment)

# The Anti-Kickback Statute

- What is a referral source?
  - Any person who has the ability to influence a patient to select a particular provider
  - Any person who has the ability to influence the order or purchase of items or services that are covered by Federal health care programs
  - Examples: Physicians, MA/Part D Plan organization representatives, DME suppliers, discharge planners, and even patients
- A proposed payment, including a mere offer, is enough to violate the law.

# Stark Law

- The Stark Law generally prohibits physicians from referring Medicare/Medicaid patients to an entity with which the physician or the physician's immediate family member has a financial relationship.
- Thus, if a company has a financial relationship with a physician (or his/her immediate family members), then the company may be prohibited from accepting referrals of Medicare/Medicaid patients from that physician and may not bill MA/Part D Plan organizations for services provided.

# Examples of Potential FWA

- **Illegal payment schemes**
  - A plan representative is offered, paid, solicits, or receives a benefit, such as money or a free trip, to encourage the establishment of a preferred provider relationship with a particular DME supplier or pharmacy
- **Prescription drug switching**
  - Paying cash or other benefits, such as free office equipment, to encourage a physician to prescribe certain medications rather than others

# Examples of Potential FWA

- Inappropriate billing
  - Billing for services that are not provided or that are not supported by appropriate documentation
- Inappropriate manufacturer relationships
  - Participation in a manufacturer-sponsored contest in which an employee of a DME supplier may receive an award from the manufacturer for reaching certain goals related to the sale or use of the manufacturer's products

# Examples of Potential FWA

- Identity theft
  - Using a member's ID card that does not belong to that person to obtain prescriptions, services, equipment, supplies, doctor visits, and/or hospital stays.
- Doctor shopping
  - Visiting a number of doctors to obtain multiple prescriptions for painkillers or other drugs. This might point to an underlying scheme (stockpiling or black market resale).

# Examples of Potential FWA

- Payments for excluded drugs
  - Receiving payment for drugs not covered by the Plan Sponsor's formulary
- Marketing schemes
  - Offering beneficiaries a cash payment as an encouragement to enroll in a Medicare Plan
  - Unsolicited door-to-door marketing
  - Use of unlicensed agents
  - Enrollment of an individual in a Medicare Plan without such individual's knowledge or consent
  - Stating that a marketing agent/broker works for or is contracted with the Social Security Administration or CMS

# Reporting Potential FWA

If your organization or another downstream entity that you contract with to provide health, prescription, and/or administrative services on behalf of PrimeWest Health members identifies potential FWA, please contact PrimeWest Health's Corporate Compliance Officer.

- Call the Compliance Hotline at **1-866-763-2952** (toll free) or send an email to [compliance@primewest.org](mailto:compliance@primewest.org)

# FWA Resources

The following Federal government websites are sources of information regarding detection, correction, and prevention FWA:

- Department of Health and Human Services Office of Inspector General: <http://oig.hhs.gov/fraud.asp>
- CMS: [www.cms.gov](http://www.cms.gov)
- CMS information about the Physician Self-Referral Law: [www.cms.hhs.gov/PhysicianSelfReferral](http://www.cms.hhs.gov/PhysicianSelfReferral)

