Managed Care Plans: Critical Partners in the Fight Against Fraud, Waste, and Abuse in Medicaid

Presentation

Objectives

At the conclusion of this presentation, learners will be able to:

- Recall three elements of an effective compliance program
- List three steps that a managed care plan (MCP) can take to prevent, detect, and report fraud, waste, and abuse
- Identify tools used to prevent excluded, debarred, and terminated providers from participating in the Medicaid program

COMPLIANCE PLANS

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Program Integrity Requirements

Many MCPs are required by law to:

- Have a compliance program
  - o 42 C.F.R. § 438.608
- Provide false claims and fraud prevention information to employees
  - o Social Security Act Section 1902(a)(68)

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Fraud, Waste, and Abuse Defined

Fraud, waste, and abuse can generally be defined as follows:
- Fraud includes intentional acts to obtain a benefit by deception
- Waste is overuse of services or other practices that results in unnecessary cost
- Abuse is non-deceptive provider conduct that is inconsistent with professional standards and leads to unnecessary cost

Whether a particular act constitutes fraud, waste, and abuse will depend on the specific circumstances.

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Why Should an MCP Have a Compliance Program if it is not Legally Required?

An MCP should have a compliance program even if it is not legally required because:
- All providers will eventually be required to have a compliance program
- A compliance program can help:
  o Decrease errors and improve the quality of care
  o Protect the MCP from significant monetary losses

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How Internal Fraud, Waste, and Abuse can Harm the Managed Care Plan

False statements by MCP officers have led to settlements in which MCPs paid:
- $137.5 million for officers' alleged over-reporting of expenditures for beneficiary medical needs
- $320 million for officers' alleged submission of false risk adjustment scores

Other risk areas that can cost the MCP money include underutilization, having officers or employees who are excluded, and paying or accepting kickbacks.

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Fraud, Waste, and Abuse in the Provider Network

Fraud, waste, and abuse in the provider network can expose the MCP to risk of losses in the form of:

- Damages under the False Claims Act
- Penalties under the Civil Monetary Penalties Law
- Fraudulent bills or encounter data from network providers

The compliance program should include measures to monitor provider claims for fraud, waste, and abuse.

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Reasons to Take a Fresh Look at Existing Compliance Programs

MCPs with existing compliance programs should re-examine those programs because:

- The programs may not be effective in protecting the MCPs against the risk of losses
- Government agencies are subjecting MCP compliance programs to increasing scrutiny and regulatory sanctions

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Compliance Program Requirements

Compliance programs must include the seven elements set forth in 42 C.F.R. § 438.608:

1. Written policies, procedures, and standards of conduct
2. Designation of a compliance officer and committee
3. Effective training and education
4. Effective lines of communication
5. Enforcement of standards
6. Internal monitoring and auditing
7. Prompt responses and corrective action

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Policies, Procedures, and Standards

Written policies, procedures, and standards should:

- Articulate the organization's commitment to compliance
- Identify applicable statutes, regulations, and contract requirements
- Describe how the compliance program will operate
- Prohibit retaliation against employees who report suspected wrongdoing

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Policies, Procedures, and Standards— False Claims

MCPs that meet a $5 million threshold must include in their policies detailed information on:

- The civil provisions of the False Claims Act
- Administrative remedies for false claims
- State civil and criminal laws pertaining to false claims
- Whistleblower protections
- The MCP's procedures for detecting and preventing fraud, waste, and abuse

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Compliance Officer and Committee

The compliance officer should:

- Be a full-time employee of the MCP
- Be a person of high stature in the organization
- Have demonstrated excellence in compliance and ethics

The compliance committee should:

- Include the compliance officer and senior representatives from relevant operational areas

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Compliance Officer and Committee—Duties

The compliance officer and committee should:

- Act independently of the operational and program areas in the organization
- Have clearly identifiable responsibilities and authority
- Provide periodic reports directly to the governing body
- Continually assess risk and measure for effectiveness

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Compliance and the Board of Directors

The board's compliance committee should:

- Evaluate the compliance program and program resources
- Review reports from the compliance officer
- Draw on the skills of an internal or external regulatory, compliance, or legal professional

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Training and Education—Subjects

Training and education should address:

- The compliance program
- Typical forms of provider and beneficiary fraud, waste, and abuse
- The employee code of conduct
- Relevant laws and policies, and the consequences of noncompliance

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Training and Education—Methods

For training and education to be effective, the MCP should:

- Use a blend of different media
- Update training materials periodically
- Assess participant knowledge before and after training
- Keep a record of the training completed

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Effective Communication

For effective lines of communication between the compliance officer and the organization's employees, the MCP should:

- Provide a mechanism to report compliance issues
- Provide several independent reporting paths
- Develop mechanisms to encourage open discussion

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Employee Discipline

MCPs can enforce standards by:

- Publicizing their disciplinary guidelines
- Imposing timely and consistent discipline
- Publicizing the results

MCPs can publicize their disciplinary guidelines by:

- Including them in an employee handbook, on bulletin boards, or on the company website
- Discussing them in training and staff meetings

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Internal Monitoring and Auditing

- MCPs should establish an internal monitoring and auditing system to detect fraud, waste, and abuse
- Monitoring consists of ongoing checks and measures to ensure that procedures are followed
- Auditing consists of periodic formal reviews to determine whether standards are met

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Internal Monitoring and Auditing—Exclusions

The MCP should screen all employees, officers, and directors for exclusion by checking the List of Excluded Individuals/Entities (LEIE)
- The LEIE is available at https://exclusions.oig.hhs.gov/ on the HHS-OIG website

MCPs should check the website:
- Upon hire
- Monthly thereafter

. . . EXCLUDED . . .   . . . NOT EXCLUDED . . .

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Internal Monitoring and Auditing for Debarment

- MCPs should screen their directors, officers, employees, network providers and other contractors for debarment
- MCPs should screen by checking the Advanced Search-Exclusions Database, located at:
  o https://www.sam.gov on the System for Award Management's (SAM) website

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Internal Monitoring and Auditing—Self-Audits

MCPs should perform self-audits by:
- Identifying the risks
- Auditing the risks
- Documenting the audit
- Reviewing and acting on the results
- Making written recommendations for corrective action

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Prompt Responses and Corrective Actions

MCPs should establish and implement procedures that require:
- Prompt assignment of a qualified person to investigate
- A timeline for completing the investigation and taking corrective actions
- Review of the relevant documents, and interviews of witnesses
- Evaluation of information obtained in light of applicable legal and policy provisions

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Corrective Action

An MCP should adopt a corrective action plan promptly upon completion of an investigation. The plan should include:
- Any appropriate employee or provider education or discipline
- Any necessary changes to policies to prevent recurrence of the violation
- Referral or self-disclosure, when appropriate
- A specific time frame for Implementation

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Prevention—Provider Screening

MCPs should ensure that each network provider has:
- A current license in good standing
- Active Drug Enforcement Administration (DEA) and National Provider Identifier numbers
- No uncollected debts
- No criminal record
- Not had billing privileges suspended or been excluded or debarred

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Prevention—Screening Employees of Network Providers for Exclusion

To protect themselves from false claims liability and civil penalties, MCPs should:
- Require network providers to screen their employees for exclusion
- Monitor the effectiveness of providers' screening process

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Prevention— Preauthorization and Claims Edits

In addition to screening providers, MCPs can prevent fraud, waste, and abuse by:
- Requiring preauthorization for procedures that are expensive or subject to fraud
- Using prepayment edits to detect and prevent payment for:
  o Duplicate payments
  o Procedures or services that are medically impossible or unlikely

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Detecting Fraud and Abuse—Reports from Outside the Managed Care Plan

To obtain additional information about possible fraud, waste, and abuse, MCPs should:

- Use a toll-free fraud and abuse report line
- Post a report form on the MCP's website
- Publicize the reporting options

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Detecting Provider Fraud and Abuse—Data Analysis

Effective data analysis includes:

- Using a data warehouse
- Using rule-based algorithms
- Data matching
- Comparing of claim patterns
- Monitoring complaints and social media
- Sampling and extrapolation
- Validation of encounter data

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Investigation of Suspected Fraud or Abuse—Preliminary Investigation

MCPs that discover indications of fraud, waste, and abuse or receive allegations of fraud, waste, and abuse should:

- Do a preliminary investigation to determine whether the allegation is plausible
- Seek immediate assistance if it appears:
  - o Patient safety is at risk
  - o Evidence may be destroyed
  - o Stolen funds are likely to be removed

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Investigation of Suspected Fraud or Abuse—Full Investigation

If the preliminary investigation shows the allegation of fraud to be plausible, the MCP should initiate a full investigation.

The MCP should have written policies that govern:

- Assignment
- Priority
- Referral

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Investigation of Suspected Fraud or Abuse—Gathering the Facts

MCPs should assign qualified staff to:

- Review relevant documents and databases
- Interview the source of the complaint
- Interview other persons with knowledge
- Obtain and analyze statistical samples of relevant claims

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Investigation of Suspected Fraud or Abuse—Analyzing the Facts

In addition to gathering the facts, the person assigned to conduct the investigation should:

- Analyze patterns in the relevant claims and medical records
- Develop a timeline
- Determine the extent of the loss
- Identify the laws, rules, and policies that appear to have been violated
- Determine the scope of the potential violations

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Why Should Managed Care Plans Make Referrals?

MCPs should refer fraud cases rather than simply terminating the provider because:

- A referral may lead to deterrence of remaining network providers who may be doing the same thing
- Referral may be required by State law or the MCP's contract

MCP referrals should follow the Centers for Medicare & Medicaid Services (CMS) standard for referrals from State Medicaid agencies (SMAs) to Medicaid Fraud Control Units (MFCUs).

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Referral—CMS Referral Elements

CMS requires that a referral from an MCP to a MFCU contain, at a minimum, information on:

- The subject
- The complaint
- All communications with the subject
- Estimated amount at stake
- Contact information

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Referral—Case Summary

The investigative report should start with or be preceded by a concise case summary that sets forth:

- How and when the violation was detected
- What statute, regulation, or policy was violated
- Proof of the violation
- Why the referral merits action by the receiving agency

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Referral—Additional Information

The investigative report should contain a detailed statement of facts in chronological order that includes the minimum items specified in the CMS standard, as well as the following:

- Any facts showing time sensitivity or political sensitivity
- Any previous investigations or litigation involving the subject
- Contact information for the source, the MCP investigator, and witnesses
- Witness interview summaries
- The identity of any other agencies contacted or involved

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Where Should Managed Care Plans Send Referrals?

MCPs should send referrals:
- To the SMA or other agency designated by contract or law

MCPs can obtain contact information for SMAs and MFCUs from CMS at the following link:
- https://www.cms.gov/medicare-medicaid-coordination/fraud-prevention/fraudabuseforconsumers/report_fraud_and_suspected_fraud.html

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What Should the Managed Care Plan do After the Referral?

After the referral, the MCP should:
- Check on the status of the referral
- Be prepared to respond to requests for follow up
- Share the results

If the referral is rejected, the MCP should determine why.

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Learning More about Program Integrity from Partners and Peers

MCP compliance personnel can learn more about compliance programs by:

- Meeting regularly with agency partners
- Communicating regularly with peers and subsidiary entities
- Participating in State and national meetings of compliance organizations

Learning More About Program Integrity—Internet Resources

MCPs should take advantage of program integrity materials posted on the Internet, including:

- CMS Medicaid Program Integrity Education products available at:
  o https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/edmic-landing.html
- HHS-OIG compliance and fraud publications, available at:
  o http://oig.hhs.gov/
- Material posted by State program integrity units and organizations dedicated to program integrity

Partners in the Fight Against Fraud, Waste and Abuse

The problem of fraud, waste, and abuse in the Medicaid program:

- Is serious
- Cannot be solved by government efforts alone
- Must be addressed by the joint efforts of government and all program stakeholders

The growth of managed care in Medicaid makes MCPs critical partners in the fight against fraud, waste, and abuse.

Questions

Please direct questions or requests to: MedicaidProviderEducation@cms.hhs.gov

To see the electronic version of this presentation and the other products included in the "Managed Care Plan Compliance" Toolkit, visit the Medicaid Program Integrity Education page at https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/edmic-landing.html on the CMS website.

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