



FRAUD WASTE & ABUSE

Practitioner Overview

Fraud, Waste & Abuse (FWA): History, Oversight & Why It Matters

History of FWA Regulation

- Federal program-integrity laws were created to protect public funds, beginning with the False Claims Act (FCA)
- Oversight expanded as Medicaid and managed care programs grew and became more complex
- States are required to operate fraud control, audit, and recovery systems as a condition of receiving federal Medicaid funds

Why FWA Matters

- Protects Medicaid funding and long-term program sustainability
- Ensures members receive medically appropriate and quality care
- Noncompliance can result in recoupments, civil penalties, exclusion from Medicaid, or criminal liability
- Most findings arise from documentation, credentialing, and billing failures not intentional fraud

False Claims Act

What it is

- Federal law prohibiting knowingly submitting false or fraudulent claims for payment to the government.

Why it matters

- Primary enforcement tool for Medicaid and Medicare fraud.
- Allows treble damages and civil penalties per claim.
- Includes whistleblower (qui tam) provisions.

Key FWA connection

- Fraud is defined by knowledge or reckless disregard, not just intent.
- Repeated billing errors ignored after notice can trigger FCA risk.

Anti-Kickback Statute

What it is

- Prohibits offering, paying, soliciting, or receiving anything of value to induce referrals for federally funded healthcare services.

Why it matters

- Applies even if the service was medically necessary.
- Criminal statute with civil penalties and exclusion risk.

Key FWA connection

- Focuses on improper financial influence, not billing errors.
- Violations often overlap with FCA exposure.

Stark Law (Physician Self-Referral Law)

What it is

- Prohibits physicians from referring patients to entities with which they have a financial relationship, unless an exception applies.

Why it matters

- Strict liability statute—intent is not required.
- Technical noncompliance still creates repayment risk.

Key FWA connection

- Often categorized as abuse, but escalates quickly.
- Drives overutilization and improper billing.

Office of the Inspector General (OIG) Overview



Fraud

- An intentional or deliberate act to deprive another of property or money by deception or other unfair means.
- An attempt to obtain something valuable through intentional misinterpretation.
- Knowingly billing for services that were not provided.
- Wrongful or criminal deception intended to result in financial or personal gain.
- Fraud includes false representation of fact, making false statements, or by concealment of information.



Examples of Fraud

- Billing for services not rendered.
- Knowingly billing for a non-covered service as a covered service.
- Misrepresenting dates of service.
- Misrepresenting locations of service.
- Misrepresenting provider of service.
- Misrepresenting duration of service.
- Incorrect reporting of diagnoses or procedures (includes unbundling).
- Corruption (kickbacks and bribery).

Example of Fraud

A news release about an addiction treatment center accused of healthcare fraud was issued by the USDOJ in 2023. According to the documents included in the press release, Brier, Bruining and RCCA operated a chain of addiction treatment centers but failed to provide patients with the required therapy and counselling sessions. In addition, they commonly submitted claims for 45-minute counselling sessions to Medicare, Medicaid and other health care payers, even though the sessions typically lasted 10 minutes or less. There have been times when the available therapist could not have finished the total quantity of treatment sessions in a 24-hour period due to the volume of sessions being billed at this rate.

Waste

- Practices that, directly or indirectly, result in unnecessary costs to federally funded programs, such as overusing services.
- Generally not considered to be caused by criminally negligent actions .
- Thoughtless or careless expenditure, mismanagement, or abuse of resources to the detriment of the U.S. government.
- Incurring unnecessary costs resulting from inefficient or ineffective practices, systems or controls.



Examples of Waste

- Providing services not medically necessary.
- Failure to adhere to the requirements of the service definition.
- Excessive testing
- Overutilization of services providing more sessions or treatments than are medically necessary
- Waste refers to overusing services or other practices that, directly or indirectly, result in unnecessary costs to Medicaid. Waste is generally not caused by criminally negligent actions but by the misuse of resources.

Abuse

- Actions that may, directly or indirectly, result in unnecessary costs to federally funded programs.
- Involves paying for items or services when there is no legal entitlement to that payment.
- Excessive or improper use of a thing, or to use something in a manner contrary to the natural or legal rules for its use.



Examples of Abuse

- Billing for services that exceed what is medically necessary
- Upcoding (billing a higher level of service than supported by documentation)
- Billing more units than are typically required for the service
- Using incorrect modifiers to bypass system edits
- Billing separately for services that should be bundled
- Copy and paste documentation
- Uncredentialed or under credentialed provider

Oregon Example

A Prineville, Oregon woman was sentenced to federal prison for using stolen identities to submit fraudulent health care claims resulting in over \$1.5 million in misappropriated funds from the Oregon Health Authority (OHA) Medicaid Program and filing false tax returns that failed to report earnings she received.

<https://www.justice.gov/usao-or/pr/prineville-woman-sentenced-federal-prison-multi-million-dollar-drug-treatment-fraud>

Differentiating Between Fraud Waste and Abuse

Waste and Abuse: A Thin Line

- Waste and abuse often involve similar behaviors (inefficiency, improper billing, or misuse of resources).
- The key difference is usually intent, which is often hard to prove.
- Many actions start as unintentional mistakes (waste) but can cross into abuse if they continue after education, notice, or correction.
- Documentation gaps, misunderstanding of rules, or outdated practices commonly blur the line.
- Regulators often evaluate patterns over time, not single events.

Fraud: Easier to Identify

Indicators are more concrete and objective, such as:

- Billing for services not rendered
- Falsified or altered documentation
- Misrepresentation of provider credentials
- Identity misuse or kickbacks
- Fraud often involves deliberate concealment or deception.
- Evidence tends to be clearer through records, claims data, or investigative findings.

The Importance of Documentation



Importance of Policy

- Policies define expected behavior and establish organizational standards.
- They translate laws and regulations into practical, day-to-day guidance.
- Policies promote consistency and fairness in decision-making.
- They serve as the first line of defense against fraud, waste, and abuse.
- Policies support billing accuracy and documentation integrity.
- Clear policies reduce individual discretion that can lead to risk.
- They provide a foundation for training, oversight, and accountability.
- Policies demonstrate good-faith compliance during audits and investigations.
- They enable early correction of errors before issues escalate.
- Policies protect staff by clearly defining roles, responsibilities, and limits.

Hotline

Call the Fraud, Waste & Abuse Hotline toll free 1-866-685-8664.

(877) 877-9392 or online at www.oregonconsumer.gov.

You may also contact the Centers for Medicare & Medicaid Services (CMS) at

(800) 633-4227, TTY: (877) 486-2048.

To make a report anonymously by phone call **1-844-773-7237**

www.gobhi.ethicspoint.com

FRAUD, WASTE & ABUSE (FWA) OVERVIEW

FRAUD



Intentional deception for financial or personal gain.

Examples:

- Billing for services not provided.
- Misrepresenting dates/locations of service.
- Kickbacks and bribery.

WASTE



Unnecessary costs due to inefficient or ineffective practices.

Examples:

- Providing medically unnecessary services.
- Overutilization of services.
- Failure to adhere to service requirements.

ABUSE



Improper use of resources resulting in unnecessary costs.

Examples:

- Using higher-cost treatments when lower-cost are effective.
- Insufficient documentation.
- Billing for more therapy hours than provided.

KEY TAKEAWAYS

FWA laws protect public funds and ensure quality care.

Noncompliance leads to severe penalties.

Documentation and compliance programs are crucial for prevention.