MODULE 11: NEW YORK STATE SENIOR MEDICARE PATROL (SMP) – HEALTHCARE FRAUD, WASTE AND ABUSE

SMP Project Goals

- Empowering seniors to prevent healthcare fraud.
- To raise awareness of and prevent Medicare and Medicaid fraud and abuse.
- To ensure that beneficiaries of these programs receive both quality care and appropriate services.
- To share the SMP message of "Protect, Detect and Report."

Training Objectives

As a result of this training session, Health Insurance Information, Counseling, and Assistance Program (HIICAP) counselors will be able to:

- Understand and describe the mission of SMP.
- Understand and explain healthcare fraud and abuse.
- Provide information to identify and report healthcare fraud and abuse including NYS's SMP's toll-free phone number **1-800-333-4374**.
- Provide information about the existence, extent, and cost of Medicare and Medicaid fraud and abuse.
- Educate the community to protect, detect, and report healthcare fraud and abuse.

Overview

SMP is a long-term initiative to fight fraud and abuse in Medicare and Medicaid. It officially started on April 1, 1995 as a two-year demonstration project that developed innovative ways to fight fraud, waste, error and abuse in the five states with the largest Medicare and Medicaid benefit payments. The five states included in the initial demonstration were New York, California, Illinois, Florida, and Texas. These states together accounted for 33 percent of all people with Medicare and 38 percent of all Medicare payments in the United States. The five targeted states contained 38 percent of all Medicaid recipients and 41 percent of all Medicaid payments in the United States. As we know it today, SMPs are grant-funded projects of the federal U.S. Department of Health and Human Services (HHS), U.S. Administration for Community Living (ACL).

SMP represents the introduction of the partnership model in fighting fraud and abuse in Medicare and Medicaid. SMP established alliances with the New York State's Department of Health, Office of Children and Family Services, Attorney General's Office, Division of Criminal Justice, Office of the Comptroller, Medicaid Inspector General, Department of Financial Services, and the Medicare contractors and carriers. Partnerships establish methods for more efficient, global volunteer efforts; and they ensure advocacy with a unified voice for policy improvements in the State's healthcare system, including solutions for healthcare system problems.

SMP also combines the efforts of three agencies within the U.S. Department of Health and Human Services–the Centers for Medicare & Medicaid Services (CMS), the Administration on Aging (AoA), and the Office of Inspector General (OIG) and several other federal agencies, including the

Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), United States Attorney's Offices and Medicare contractors.

SMP continues to exist as a focused effort to eliminate fraud and abuse in the Medicare and Medicaid programs. SMP is designed to educate and empower the public and the aging network about how to protect, detect and report Medicare and Medicaid fraud and abuse. New York State will continue to identify, prevent and eliminate fraud and abuse in the Medicare and Medicaid programs, and educate people with Medicare and the public to avoid abuse in these programs.

There are now SMP projects in every state, and Washington D.C., Puerto Rico, the U.S. Virgin Islands, and Guam.

In New York State, **New York StateWide Senior Action Council serves as SMP.** Clients can call 1-800-333-4374 with any SMP related inquires. If your client suspects Medicare fraud, he or she may call SMP at **1-800-333-4374.**

For additional information on SMP, to report suspected fraud or abuse, to request a speaker about Medicare and Medicaid fraud, or to ask about becoming an SMP volunteer, you may also contact SMP at **1-800-333-4374.**

HOW MUCH MONEY IS LOST TO MEDICARE FRAUD AND ABUSE?

The U. S. Office of Inspector General estimates that Medicare and Medicaid lose billions of dollars each year due to errors, fraud, waste, and abuse. Both the multiple systems for disbursing funds and the magnitude of healthcare expenditures increase the probability of errors and create opportunities for fraud and abuse. The good news is that due to a joint initiative between the Department of Justice and the Department of Health and Human Services the government has recovered billions of taxpayer dollars.

Fighting healthcare fraud and abuse saves money and protects patients. We all share a practical interest in the preservation of the Medicare program - we want Medicare to be there for us when we need it.

Remember that people with Medicare are among the most vulnerable - the elderly and the disabled.

WHAT IS MEDICARE FRAUD AND ABUSE AND WHAT IS THE DIFFERENCE?

Fraud

Medicare Fraud is defined as Knowingly and Willfully executing, or attempting to execute, a scheme or ploy to defraud the Medicare Program or obtaining information by means of false pretense, deception or misrepresentation in order to receive inappropriate payment from the Medicare program.

CMS further defines fraud as the "intentional deception or misrepresentation that the individual knows to be false or does not believe to be true" and that is made "knowing that the deception could result in some unauthorized benefit to himself or herself or some other person".

Examples of fraud are:

- Billing for services or supplies that were not provided
- Incorrect reporting of diagnoses or procedures to obtain a higher payment (upcoding)
- Billing for covered services when non-covered services were provided
- Giving or getting kickbacks, bribes, rebates
- Violating the participating provider agreement with Medicare by refusing to bill Medicare for covered services or items and billing the beneficiary instead
- Offering or receiving a kickback (bribe) in exchange for their Medicare or Medicaid number

It may not be fraud if:

- A doctor took a sample or specimen and sent it to a laboratory
- Your client had X-rays and a doctor is reading the X-ray

Suspect fraud if:

- Your client is offered free testing or screening in exchange for their Medicare number.
- Your client is offered free medical equipment in exchange for their Medicare number.
- A provider routinely waives the 20 percent (20%) coinsurance or the deductible amount.
- Your client is offered free goods, such as a microwave oven, television, or cell phone in exchange for their Medicare number.
- Someone comes to your client's door claiming to represent Medicare and offers them free services or goods in exchange for their Medicare number.
- Phone scams, including **robo calls**. The callers may identify themselves as employees of Medicare, the Social Security Administration (SSA) or a National Health Card**.** The caller usually is trying to get your client's **MEDICARE** or **Social Security** number**. Please note that Medicare numbers are no longer a beneficiary's Social Security Number, they are now computer generated with a mix of numbers and letters.**

Is this fraud?

Q. You and your wife, who uses a cane, attend a free healthcare screening at the local mall. In return for giving the staff your Medicare numbers, you get your blood pressure tested and receive some nutritional counseling information. A week later you get a call from a supplier who tells you that Medicare will give your wife a free wheelchair. The supplier tells you, "Don't worry, we will get Medicare to approve it, and it won't cost you or your wife a cent." Is this fraud?

A. This is definitely a fraudulent situation. A basic rule is to NEVER give your Medicare number out in return for a "free" service. This supplier is trying to make money by providing something the person does not really need. Only your physician can legitimately write a prescription for a wheelchair or other piece of durable medical equipment. In addition, using equipment that is not necessary and ordered by a physician might lead to diminished physical capacity and stamina and could even cause harm.

Q. Your neighbor spends seven days in the hospital for surgery. After he is discharged, he gets a statement from a radiologist for interpretation of X-rays while he was in the hospital. The statement says that Medicare has been billed for the service. "This is fraud!" your neighbor angrily yells, "I never saw any radiologist while I was in the hospital! I'm going to call Medicare and tell them not to pay this bill." Is the radiologist guilty of fraud?

A. There are times when physicians provide diagnostic and interpretative services to hospital patients even though the patient never sees them. If this radiologist's bill shows services provided during the same time frame as the hospital stay, it is probably legitimate. However, as always, you should review all bills and the Medicare Summary Notice, and if you have any questions call Medicare.

Abuse

Medicare abuse involves payment for items or services when there is no legal entitlement to that payment and the provider has not knowingly and/or intentionally misrepresented the facts to obtain payment.

Medicare abuse is further defined as incidents or practices by providers that are inconsistent with accepted sound medical, business or fiscal policies. These practices may directly or indirectly result in unnecessary costs to the program, improper payment or payment for services that fail to meet the professionally recognized standards of care or that are medically unnecessary.

Examples of abuse are:

- Unnecessary or excessive services
- Increasing charges to people with Medicare but not to other patients
- Improper billing practices:
  - Billing Medicare instead of a primary payer
  - Exceeding the limiting charge allowance

People with Medicare usually owe 20 percent (20%) of the approved amount. Not accepting assignment means the provider does not accept Medicare's approved amount as payment in full. A provider cannot, however, charge whatever he or she chooses to people with Medicare. Federal and New York State laws usually limit how much a doctor may charge in excess of Medicare's approved amount.

WHAT CAN YOUR CLIENT DO TO HELP?

- Only give out their Medicare number to their known health care professionals
- Protect their Medicare card as they would their credit card
- Read their Medicare Summary Notice (MSN)and Explanation of Benefits (EOB) carefully – report any discrepancies to the NYS SMP at 1-**800-333-4374**
- Keep a record of their doctor/lab appointments (SMP has a monthly Personal Health Care Journal-a record for checking your health care statement) to compare to their MSN, or Explanation of Benefits (EOB)
- Do not answer phone calls from phone numbers you do not recognize. If you answer the phone, do not engage with the caller. Do not give out your Medicare Number, or Social Security Number or personal information in response to unsolicited calls, texts, emails or booths at health fairs and other public venues. If your personal information is compromised, it may be used in other fraud schemes as well. Call the NYS SMP at 1-800-333-4374 to report a compromised Medicare number.
- Beware of offers for free services or equipment – only their Doctor should prescribe Durable Medical Equipment for your client
- Take special notice of claims from out of state – did they receive that service?

- Call Medicare if their provider bills for a covered service when a non-covered service was provided – Medicare does not pay for acupuncture or cosmetic surgery
- Beware of advertising that promises Medicare will pay for certain care or devices
- If someone comes to your client's door claiming to be from Medicare, remember that Medicare does not send representatives to their home
- Question phone calls or robo calls stating they are from Medicare, Social Security or another government office.
- If your client is offered "free" diagnostic tests, including stroke prevention studies or genetic testing, remember that all diagnostic tests should be ordered by their doctor
- Ask questions if:
  - your client does not understand the charges billed
  - your client does not think they received the service
  - your client feels the service was unnecessary

Medicare Drug Integrity Contractor (MEDIC)

The Centers for Medicare & Medicaid Services (CMS) has partnered with a Medicare Drug Integrity Contractor (MEDIC), Health Integrity, LLC, to fight fraud, waste and abuse in the Medicare Advantage (Part C) and Prescription Drug (Part D) programs.

The MEDIC is committed to partnering with you to prevent inappropriate activity in the Medicare Part C and D programs.

The National Benefit Integrity (NBI) MEDIC, Health Integrity, handles activities such as:

- Criminal violations of law
- Kickbacks, fraud schemes
- Billing for services not rendered
- Requests for data or information to support ongoing law enforcement investigations

If you wish to report an incident of fraud, waste, and abuse associated with Medicare Part C or Part D, please contact the NBI MEDIC at 1-877-7SafeRx (1-877-772-3379) to report complaints about one of these issues or a related complaint.

To protect beneficiaries against prohibited and high-pressure marketing tactics, CMS needs your help monitoring and preventing inappropriate marketing activities like these:

Public/Marketing Sales Events

- Plan representatives communicating incorrect information about their plan type (MAPD HMO/PPO, PDP, Special Needs Plans, etc.)
- A plan or agent using pressure tactics (for example, requiring a beneficiary to provide contact information to attend a public marketing/sales event)
- Meals served at public sales events to entice beneficiaries to enroll in a plan

Newspaper/Print Ads

- Ads conveying inaccurate information, using inappropriate language or absolute statements without supporting data (e.g., Plan X is the "best" or "highest ranked" plan in the nation)
- Ads missing the required material ID number and CMS approval (e.g., "Y1234_drugx38 CMS Approved MMDDYYYY" or "H1234_0021 File & Use MMDDYYYY")

Social Media Marketing (Agent Blogs, Facebook, Twitter, YouTube, etc.)

- Steering beneficiaries into a particular plan when information on multiple plan sponsors is available
- Asking beneficiaries for banking information on social media networking sites (Facebook, Twitter, etc.)

Note: Social Media sites regularly ask for personal information, but NOT banking information. We're specifically looking for people using social media to solicit personal banking information from beneficiaries.

Rogue Agent/Broker Behavior

- Asking for personal or Medicare information through unsolicited telephone calls or home visits
- Marketing plans or conducting enrollments during educational events like health fairs and conferences
- Selling non-health-related products, like an annuity or life insurance policy, while marketing a Medicare health or drug plan

How to Report Suspicious Marketing Activities

- **E-mail your CMS Regional Office SHIP (State Health Insurance Assistance Program) Liaison or CMS Regional Office DFS (Department of Financial Services) Liaison** detailing the observation or activity (who, what, where, when, and how). If it's online or in a newspaper/print ad, provide the website address or the newspaper name and date, as well as the information marketed and requested; OR
    - **Complete and submit the Targeted Observation (TO) tool to your DFS Liaison.** Fill in all applicable fields and provide details of your observations. For an electronic copy of the TO tool, contact your DFS Liaison, Thomas Bane (Thomas.Bane@cms.hhs.gov) or e-mail Surveillance@cms.hhs.gov

Additional Resources

New York State SMP Contact Information:

- New York StateWide Senior Action Council
  275 State St.
  Albany, NY 12210
  www.nysenior.org
  SMP HELPLINE 1-800-333-4374

- SMP Resource Center
    - https://www.smpresource.org/

Publications:

- *Protecting Yourself & Medicare from Fraud* (CMS 10111)
    - https://www.medicare.gov/Pubs/pdf/10111-Protecting-Yourself-and-Medicare.pdf
- *You Can Help Protect Yourself and Medicare from Fraud Committed by Dishonest Suppliers* (CMS 11442)
    - https://www.medicare.gov/Pubs/pdf/11442-Protect-Yourself-from-Fraud-Committed.pdf
- *4 R's for Fighting Medicare Fraud* (CMS 11610)
    - https://www.medicare.gov/Pubs/pdf/11610-4R-for-Fighting-Fraud.pdf