**Healthcare Fraud Prevention Partnership**

**Special Session on Marketplace Fraud and Opioids**

**October 20, 2016**

**Executive Notes**

The Healthcare Fraud Prevention Partnership (HFPP) Special Session on Marketplace Fraud and Opioids was held on October 20, 2016, in Woodlawn, MD at the Centers for Medicare & Medicaid Services (CMS), Center for Program Integrity (CPI) Command Center. A total of 58 participants across 26 federal, state, public, and private organizations, including CMS, attended the event.

This special two-part meeting included data and information sharing, education, and networking. The sessions focused on the following areas that Partners identified as growing causes of concerns: Marketplace agent-broker misconduct and enrollment fraud; Provider fraud in the Marketplace involving drug screening labs, prescribing physicians and substance abuse facilities and their relationships with recruiters and non-clinical sober homes; Feedback on 10 opioid abuse prevention strategies and Best practices payers can implement to address prescription opioid abuse.

**Opening Remarks**

Mary Beach, Trusted Third Party (TTP), opened up the morning session by thanking Partners for their engagement and contributions to the HFPP. Mary provided meeting logistics, reviewed the agenda, and reminded attendees to provide their feedback on the assessment forms to improve the reporting process.

Shantanu Agrawal, CPI, CMS, welcomed Partners and discussed the overarching objectives of the HFPP Opioids Abuse White Paper that will further guide the broader effort undertaken by CMS and Health & Human Services (HHS). The White Paper’s intent is to identify additional best practices that Partners can take to effectively identify, address, and minimize opioid prescription abuse and inappropriate payments while ensuring access to medically necessary therapies. Shantanu Agrawal encouraged Partners to share their significant strategies and best practices, so the White Paper accurately represents the concerted efforts of the Partnership.

**Marketplace Session**

Morgan Burns, CPI, CMS, kicked off a collaborative information sharing session that enabled Partners to discuss their experiences, information, and questions around investigative activities and cases involving their organizations. She prepared Partners for their sessions by giving an overview of common fraud schemes including sober homes, drug screening labs, and substance abuse facilities.

She led two breakout sessions that focused on non-provider schemes (recruiters/agents and sober homes) and provider schemes (labs, physicians, and substance abuse facilities). The sessions provided an interactive opportunity for Partners to convene into working groups to discuss:

* Substance abuse facilities that may be exposing their patients to physical or other harm, submitting claims, including lab claims for services not rendered and for medically unnecessary services.
* Physicians who appear to be referring Marketplace members to facilities, as well as other individuals who may be paid by substance abuse facilities to sign individuals up for coverage.
* People who are paying premiums for multiple consumers to enroll in plans or are otherwise connected to these substance abuse facilities, physicians, and labs.
* Actions and best practices that plans have taken to mitigate and resolve the potential patient harm and inappropriate payments.

Additional discussions included enforcement of Prescription Drug Monitoring Program (PDMP) mandates, fraudulent enrollment credentials, breakthrough pain treatments without a cancer diagnosis, and a variety of clinic ownership arrangements likely to violate state laws. HFPP Partners provided real life examples of pharmacy “bad actors,” pill mills, emerging lab schemes, drug waste/inventory, and third party billing.

Despite the fact that neither the False Claims Act nor the Anti-Kickback Statute applies to Marketplace claims, Department of Justice (DOJ) representatives, Ian DeWaal and Denise Simpson, cited the following statutes under which Marketplace fraud may be prosecuted:

**18 U.S. Code § 1347- Health Care Fraud:**

1. Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice—(1) to defraud any health care benefit program; or (2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program, in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 10 years, or both. If the violation results in serious bodily injury (as defined in section 1365 of this title), such person shall be fined under this title or imprisoned not more than 20 years, or both; and if the violation results in death, such person shall be fined under this title, or imprisoned for any term of years or for life, or both.
2. With respect to violations of this section, a person need not have actual knowledge of this section or specific intent to commit a violation of this section.

**18 U.S. Code § 24 - Definitions:**

1. As used in this title, the term “Federal health care offense” means a violation of, or a criminal conspiracy to violate — (1) section 669, 1035, 1347, or 1518 of this title or section 1128B of the Social Security Act (42 U.S.C. 1320a–7b); or (2) section 287, 371, 664, 666, 1001, 1027, 1341, 1343, 1349, or 1954 of this title section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331), or section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131), or section 411, 518, or 511 of the Employee Retirement Income Security Act of 1974, [1] if the violation or conspiracy relates to a health care benefit program.
2. As used in this title, the term “health care benefit program” means any public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract.

**18 U.S. Code § 669 - Theft or embezzlement in connection with health care:**

1. Whoever knowingly and willfully embezzles, steals, or otherwise without authority converts to the use of any person other than the rightful owner, or intentionally misapplies any of the moneys, funds, securities, premiums, credits, property, or other assets of a health care benefit program, shall be fined under this title or imprisoned not more than 10 years, or both; but if the value of such property does not exceed the sum of $100 the defendant shall be fined under this title or imprisoned not more than one year, or both.
2. As used in this section, the term “health care benefit program” has the meaning given such term in [section 24(b) of this title](https://www.law.cornell.edu/uscode/text/18/lii:usc:t:18:s:24:b).

(Added [Pub. L. 104–191, title II](http://www.gpo.gov/fdsys/pkg/PLAW-104publ191/html/PLAW-104publ191.htm), § 243(a), Aug. 21, 1996, [110 Stat. 2017](http://uscode.house.gov/statviewer.htm?volume=110&page=2017).)

**18 U.S. Code § 1035 - False statements relating to health care matters:**

1. Whoever, in any matter involving a health care benefit program, knowingly and willfully—

(1)  falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or

(2)  makes any materially false, fictitious, or fraudulent statements or representations, or makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 5 years, or both.

1. As used in this section, the term “health care benefit program” has the meaning given such term in [section 24(b) of this title](https://www.law.cornell.edu/uscode/text/18/lii:usc:t:18:s:24:b).

(Added [Pub. L. 104–191, title II](http://www.gpo.gov/fdsys/pkg/PLAW-104publ191/html/PLAW-104publ191.htm), § 244(a), Aug. 21, 1996, [110 Stat. 2017](http://uscode.house.gov/statviewer.htm?volume=110&page=2017).)

**18 U.S. Code § 1518 - Obstruction of criminal investigations of health care offenses:**

1. Whoever willfully prevents, obstructs, misleads, delays or attempts to prevent, obstruct, mislead, or delay the communication of information or records relating to a violation of a Federal health care offense to a criminal investigator shall be fined under this title or imprisoned not more than 5 years, or both.
2. As used in this section the term “criminal investigator” means any individual duly authorized by a department, agency, or armed force of the United States to conduct or engage in investigations for prosecutions for violations of health care offenses.

(Added [Pub. L. 104–191, title II](http://www.gpo.gov/fdsys/pkg/PLAW-104publ191/html/PLAW-104publ191.htm), § 245(a), Aug. 21, 1996, [110 Stat. 2017](http://uscode.house.gov/statviewer.htm?volume=110&page=2017).)

**Opioids Session**

Mary Beach kicked off the afternoon Special Session on Opioids. She expressed her gratitude for Partner contributions, provided meeting logistics, and an overview of the afternoon agenda.

Shantanu Agrawal welcomed new and returning Partners to the meeting. He began by setting the context for the development of the HFPP Opioids Abuse White Paper and how CMS is currently engaged in confronting the nationwide opioid epidemic. The White Paper will synthesize Partner themes and the broader work done by CMS and the Department of Health and Human Services (HHS), including the following suggestions:

* Implement more effective person-centered and population-based strategies to reduce the risk of opioid use disorders, overdoses, inappropriate prescribing, and drug diversion
* Expand the use and distribution of naloxone
* Expand screening, diagnosis, and treatment of opioid use disorders, to include increasing access to Medication-Assisted Treatment (MAT)
* Increase the use of evidence-based practices for acute and chronic pain management

Mary Green, CPI, CMS briefed Partners on the recent work in progress by HHS and CMS on Opioids Abuse. She discussed CMS’s goal to decrease opioid overdosing and how to make an impact for the future. Mary emphasized the need to look at improving the quality of care and addressing program coverage, i.e. the need to identify those prescribers who are not doing the right thing. CMS identified several priority areas which included: clean-management by prescribers; education and technical assistance; best practices for acute and chronic pain; and distributing this information through peer group networks.

Tim Carrico, TTP, talked about the themes that will be present throughout the HFPP Opioids Abuse White Paper, which are described below. Tim introduced David Rein, National Opinion Research Center (NORC) at the University of Chicago, also a part of the TTP, who facilitated the afternoon session. David provided attendees with a thorough overview of the White Paper objectives, goals for the session, including soliciting individual Partner discussion and input on Value Statements and Strategies.

The afternoon then culminated into a robust discussion on opioids among private payer, state, association, a federal agency, and law enforcement Partners who volunteered as “Champions” to help develop and promote the HFPP Opioids Abuse White Paper. A goal of the afternoon session was to obtain specific Partner input on the White Paper Value Statements and Strategies.

Attendees provided insights, best practices, and lessons learned on strategies implemented within their organizations to address inappropriate prescribing or dispensing of opioids. The key strategies below were identified that payers could implement to curtail the inappropriate prescribing and dispensing of opioid medications.

* Manage formularies to control for abusive practices and reduce barriers to safer alternatives
* Engage with providers, and educate them about the risks of prescribing opioids, the best practices in providing care and managing treatment, and the value of cross-provider communication
* Engage with patients to inform them about the safe drug use and assess risk factors for opioid abuse
* Encourage use of safe alternatives to opioids such as non-opioid analgesics and non-pharmacological treatments
* Provide access to opioid abuse treatment interventions, such as Methadone or Buprenorphine regimens, inpatient or outpatient therapies, etc.
* Improve access to, and information about, Naloxone and Narcan
* Build coalitions focused on identifying and implementing solutions
* Improve data sharing and utilization (e.g. encourage participation in and use of prescription drug monitoring programs’ databases, conducting utilization reviews)
* Improve prescribing systems and monitoring processes (e.g. require the use of electronic prescribing, implementing point of sale edits, limiting prescribing privileges when needed)
* Implement and streamline patient review, case management and restriction programs (aka “Lock-in” programs)

**HFPP White Paper Value Statements and Insights**

* Value Statement One: Improve Care and Outcomes. Encourage practices that connect patients to the level of care best suited for their needs and provide them the best possible outcome.
* Value Statement Two: Monitor and Control for Fraud, Waste, and Abuse. Inhibit inappropriate opioid use through the identification and mitigation of potentially fraudulent, abusive, or wasteful activities.
* Value Statement Three: Promote Innovation and Information Sharing. Engage in innovative studies and information sharing techniques within the HFPP to identify and share effective opioid abuse mitigation strategies.

Note: Language discussed at the session may have been adjusted over the course of the development of and as a result of Partner comments on the HFPP Opioids Abuse White Paper.

**Partner Perceived Value**

Marketplace attendees provided feedback through an assessment form at the conclusion of the session. The feedback obtained indicated many Partners are building their knowledge regarding the Marketplace. Overwhelmingly, the Partners reported the meeting objectives were met, and reflected high engagement and enthusiasm about the HFPP’s vision and strategy. Partners reported they were able to take away critical information from the session. Results from the assessment have shown that 24 attendees provided feedback and all of the respondents confirmed their organization would attend again.

**Key Takeaways**

Shantanu Agrawal encouraged Partners to continue sharing their thoughts and feedback on organizing themes around the HFPP White Paper and thanked attendees for their contributions.

In closing, Merri-Ellen James, CPI, CMS, thanked Partners for their engagement, participation, and for their invaluable insights towards the culmination of the HFPP White Paper, which will further demonstrate the value of the partnership’s collective efforts.