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# THE FRAUD, WASTE, AND ABUSE VACCINE

PROTECTING YOUR ACO AND THE INDUSTRY

Do you know what quality measures ACO-14 (Prev-7) and ACO-15 (Prev-8) are? They are preventative care measures related to Influenza Immunization and Pneumonia Vaccination. Although vaccinations have become increasingly controversial in our society, our industry recognizes their importance in preventative care and such care goes unquestioned. Vaccines not only protect the individual patient, but herd immunity protects our society as a whole. You choose to receive a vaccination because you wish to avoid an unwanted illness or disease. The same is true for ACOs. Through operational and compliance strategies ACOs can proactively “vaccinate” themselves against FWA concerns. This vaccination, in turn, protects the industry and the reputation of ACOs as a whole from concerns of beneficiary harm, fraud, and numbers gaming.

As ACOs become more sophisticated, many are moving past strategies aimed at low hanging fruit and are now digging into the billing practices of Participants and Provider/Suppliers. Analysis of billing and coding is exceedingly beneficial in identifying gaps in care and care delivery efficiencies which can ultimately lower costs while maintaining the quality of care provided to beneficiaries. Unfortunately, such detailed analysis can also identify potential violations of state and federal FWA laws leaving ACOs wondering what to do next.

Under Section 425.300(a)(5) of the Medicare Shared Savings Program Final Rule and Section XVII.A.(1)(e) of the Next Generation ACO Model Participation Agreement, ACOs are required to report probable violations of law to an appropriate law enforcement agency. If your ACO’s research into provider billing practices identifies a probable violation of law, there is no grey area. You must follow your ACOs policies and make a report. Your Compliance Officer and/or Legal Counsel should make a determination as to whether the facts meet the threshold to be considered a “probable violation”.

More often, however, ACOs are likely to identify patterns or concerns that do not constitute a “probable violation”. The question then becomes: What should an ACO do when faced with a set of facts that suggest a possible (but not probable) violation, and what should we do, as an industry, to ensure that ACOs are moving in the right direction?

The relationship that ACOs currently share with the Centers for Medicare & Medicaid Services (CMS) is one of cooperation and we, as an industry, should do everything in our power to maintain that relationship. CMS, the Department of Justice (DOJ) and the Office of Inspector General (OIG) should see ACOs as their boots on the ground; their teammate on the front lines working to implement value based care. To this end, it is essential that ACOs work to ensure that there is open communication between the Compliance Team and CMS. Especially when the facts are unclear.

This is not to suggest that ACOs should make a formal report of every potential concern. You should, however, be vigilant in protecting your beneficiaries, your ACO, and our industry. There are a few things your ACO should consider as part of your FWA Vaccine:

- Ensure your ACO Compliance Training covers relevant State and Federal FWA laws.
- Ensure anyone working to review billing practices and ACO analytics is trained on how to identify red-flags for FWA and how to make a report to the ACO Compliance Officer and/or the ACO’s Anonymous Reporting Tool.

- Ensure ACO Leadership and your ACO Compliance Training encourage reporting of all potential concerns.
  - Include reassurances that the individual will not be retaliated against for any report made in good faith.
- Provide necessary authority to the ACO Compliance Officer and/or Legal Counsel to ensure the ability to properly investigate reported concerns and implement necessary corrective actions.
- Ensure the ACO has policies in place for proper investigation of reports made to compliance.
  - Include processes for documentation of any concerns reported to compliance, the investigation performed and any follow-up actions taken.
- Ensure the ACO has policies in place which detail the requirement to report probable violations of law to an appropriate law enforcement agency.
  - Include processes for documentation of any reports made under this policy.
- Implement an effective Monitoring and Oversight Program to help identify and correct FWA concerns.

## ABOUT WILEMS RESOURCE GROUP

Wilems Resource Group is a boutique consulting firm specializing in Compliance and Engagement solutions for the Medicare Shared Savings Program and Next Generation ACO Model. We measure success on our ability to help our clients understand program requirements, determine the appropriate level of acceptable compliance risk, and create programming that meets all regulatory requirements. We build customized compliance and engagement programs for ACOs, physicians, practice managers, and beneficiaries. We are #raisingourlegacy.

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