

2019 Broker/Agent  
**Fraud, Waste and Abuse, and  
General Compliance Training**

Protecting the Health Care Investment

# Purpose

**Sutter Health Plus (SHP)** takes its responsibilities toward reducing cost, preventing waste and uncovering potential fraud very seriously. SHP empowers all of its brokers and agents to find, reduce, eliminate, or report fraud, waste and abuse (FWA).

This course will help you better understand what constitutes FWA and what you can do to prevent it.

Since FWA can happen in any part of our business, this course is important for **everyone**.

For information on Sutter Health's ***Standards for Business Conduct***, visit the Broker Portal, Forms and Resources.

# Training Objectives

- Meet the regulatory requirement for training and education
- Provide information on the scope and impact of FWA
- Provide information on laws pertaining to FWA
- Explain the obligation of everyone to detect, prevent and correct FWA
- Provide information on how to report FWA

# Where Do I Fit In?



**As a person who provides health or administrative services to a SHP member you are either a:**

- **SHP Employee**
- **First Tier Entity**  
Pharmacy benefit manager, a claims processing company, contracted sales agent
- **Downstream Entity**  
Physician contracted through a provider group contract or pharmacy
- **Related Entity**  
Any entity that is related to SHP by common ownership or control

# Why Do I Need Training?

## **SHP is required to review certain information with you every year**

- Health care laws and regulations change frequently
  - Existing policies are updated
  - New policies are developed
- Brokers and agents must follow the laws and regulations that apply to our business
- Every year billions of dollars are improperly spent because of FWA and it affects everyone, including you
- This training will help you detect, correct and prevent FWA
- You are part of the solution

# What Are My Responsibilities

## You are vital to prevent, detect and report non-compliance, as well as possible FWA

- First, you are required to comply with all applicable statutory, regulatory, and other state and federal requirements
- Second, you have a duty to SHP to report any violations of laws that you may be aware of
- Third, you have a duty to follow the SHP Code of Business Conduct that articulates the commitment you and SHP have to the conduct and ethical rules of behavior

Every health plan, first tier, downstream and related entity must have policies and procedures in place to address FWA. These procedures should assist you in detecting, correcting, and preventing FWA. Make sure you are familiar with the SHP policies and procedures.

# Broker/Agent Role in Compliance



## Detect

Know regulations and standards

Recognize potential compliance issues



## Prevent

Follow regulations and standards

Do the right thing every time



## Report

Report potential compliance issues

Every broker/agent has an obligation to report questions and concerns about compliance issues

## What Should I Report?

Compliance training is to help you identify potential compliance issues by knowing what to look for.  
*When in doubt, ask.*

# Understanding FWA



# Fraud

**Fraud** is knowingly and willfully executing, or attempting to execute, a scheme or artifice to defraud any health care benefit program; or 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.



## Examples of actions that may constitute fraud include:

- Identity theft
- Marketing or sales techniques that coerce, mislead, or confuse potential enrollees
- Falsification of a member or employer group's information
- Bribery or kickbacks

# Waste

**Waste** is overutilization of services, or other practices that, directly or indirectly, result in unnecessary costs to the health plan. Waste is generally not considered to be caused by criminally negligent actions but rather the misuse of resources.



## Examples of actions that may constitute waste include:

- Conducting excessive office visits or writing excessive prescriptions
- Prescribing more medications than necessary for the treatment of a specific condition
- Ordering excessive laboratory tests

# Abuse

**Abuse** includes actions that may, directly or indirectly, result in unnecessary costs to the health plan. 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 facts to obtain payment.



## Examples of actions that may constitute abuse include:

- Billing for unnecessary medical services
- Billing for brand name drugs when generics are dispensed
- Charging excessively for services or supplies
- Misusing codes on a claim, such as upcoding or unbundling codes

# Differences Between FWA



## Fraud

A primary difference is *intent and knowledge*

Fraud requires the person to have an intent to obtain payment and the knowledge that their actions are wrong



## Waste and Abuse

May involve obtaining an improper payment, but *does not* require the same intent and knowledge

# Recognizing FWA

# Recognizing FWA in Health Care

Now that you know what FWA is, you need to be able to recognize the signs of someone committing it. The following slides present potential FWA issues that may occur within a managed care organization.

Each slide provides areas to keep an eye on, depending on your role in working with SHP and the Sutter Health system.



# Managed Care Organizations

## Common Managed Care Organizations (MCO) violations include:

- Use of deceptive, misleading or coercive marketing materials and tactics
- Engaging in discriminatory marketing and enrollment
- Un-enrolling or refusing to re-enroll individuals needing costly services
- Inappropriately withholding or delaying coverage of services
- Failing to provide timely, accurate and complete data as required
- Offering or accepting inappropriate discounts or kickbacks for the referral of government program business

# Sales and Marketing

## Common Sales and Marketing violations include:

- Bribery and/or kickbacks - offering cash inducements to potential members to join a plan or insurer
- Bait and Switch - leading a potential member to believe that the cost of benefits are one price, only for the potential member to find out that the actual costs are higher once enrolled
- Unlicensed insurance Broker/Agent
- Failure to disclose information that can affect conditions of coverage
- Selling non-existent health plans or insurance policies



# Conflicts of Interest

## Conflict of Interest

- A conflict of interest exists when an outside interest may influence or appear to influence your ability to be objective or to meet your broker or agent responsibilities
- A conflict of interest is a type of fraud and can result in being unable to render impartial assistance or advice, having impaired objectivity, or an unfair competitive advantage in the business relationships of the company

## Examples of Conflict of Interest

- An agent selling a product for a company in which they have ownership regardless of the product meeting the need of the client or buyer
- Steering beneficiaries into products that are not in their best interest
- If you believe you may have a conflict of interest, discuss it with your broker or SHP
- Conflicts of interest can sometimes be resolved if appropriate controls are put in place

# Other Examples of FWA



## Potential Member Issues

- Identity theft
- Doctor shopping
- Excessive distance between potential member and insurance service area
- Misrepresentation of status



## Potential Provider Issues

- Billing for services not rendered and/or supplies not provided
- Misrepresenting the dates services were rendered
- Offering, soliciting, or receiving a bribe, kickback, or rebate
- Using unlicensed staff
- Drug diversion



## Potential Pharmacy Issues

- Drug shorting
- Dispensing expired drugs
- Prescription splitting
- Billing for brand when generics are dispensed
- Dispensing drugs that were not prescribed

# Summary

- Make sure you are up-to-date with laws, regulations and policies
- Verify information provided to you
- Ensure data is both accurate and timely
- Be on the lookout for suspicious activity

# Consequences for Committing FWA

# Consequences



**The following is a list of potential penalties depending on the violation:**

- Criminal conviction/fines
- Civil prosecution
- Imprisonment
- Loss of license to sell insurance
- Loss of license to practice medicine
- Exclusion from federal health care programs

# Laws and Regulations



**Fraud is constantly evolving. The following slides provide high-level information about some of the federal and state laws that are in place to combat FWA in the health care industry:**

- California Insurance Fraud Laws
- Civil False Claims Act, Health Care Fraud Statute, and Criminal Fraud
- Anti-Kickback Statute
- Exclusion

*For details about the specific laws, such as safe harbor provisions, consult the applicable statute and regulations.*

# Laws and Regulations

## California Insurance Fraud Laws

California's insurance fraud laws seek to prevent and punish false claims intended to generate payments to consumers or other payees of insurance companies.

*For more information refer to CA Insurance Code Sections 1871-1871.9*

### Damages and Penalties:

- Insurance fraud prosecuted as a misdemeanor in California may result in a sentence of up to one year in county jail, a fine of up to \$10,000, or both
- Insurance fraud prosecuted as a felony can result in a term of imprisonment for two, three, or five years
- Fines may be imposed in an amount up to \$50,000 or double the value of the defrauded amount, with the court choosing the greater of the two amounts
- For many types of insurance fraud, a previous felony conviction for insurance fraud may result in a sentencing enhancement that adds two years for each prior offense to the defendant's term of imprisonment
- Possible restitution to the victim

# Laws and Regulations

## Civil False Claims Act (FCA)

The civil provisions of the FCA make a person liable to pay damages to the government if he or she knowingly:

- Conspires to violate the FCA;
- Carries out other acts to obtain property from the government by misrepresentation;
- Knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay the government;
- Makes or uses a false record or statement supporting a false claim; or
- Presents a false claim for payment or approval

*For more information refer to 31 United States Code (U.S.C.) Sections 3729-3733*

### Damages and Penalties:

- Any person who knowingly submits false claims to the government is liable for three times the government's damages caused by the violator plus a penalty
- The Civil Monetary Penalty (CMP) may range from \$5,500 to \$11,000 for each false claim



# Laws and Regulations

## Health Care Fraud Statute

- The Health Care Fraud Statute states that “Whoever knowingly and willfully executes, or attempts to execute, a scheme to defraud any health care benefit program shall be fined or imprisoned not more than 10 years, or both”
- Conviction under the statute does not require proof that the violator had knowledge of the law or specific intent to violate the law

*For more information, refer to 18 U.S.C. Section 1346*

## Criminal Fraud

- Persons who knowingly make a false claim may be subject to criminal fines up to \$250,000; imprisonment for up to 20 years; or both
- If the violations resulted in death, the individual may be imprisoned for any term of years or for life

*For more information, refer to 18 U.S.C. Section 1347*

# Laws and Regulations

## Anti-Kickback Statute

- The Anti-Kickback Statute prohibits knowingly and willfully soliciting, receiving, offering, or paying remuneration (including any kickback, bribe, or rebate) for referrals for services that are paid, in whole or in part, under a federal health care program (including the Medicare Program)

*For more information, refer to 42 U.S.C. Section 1320A-7b(b)*

## Damages and Penalties

- Violations are punishable by: a fine of up to \$25,000; imprisonment for up to 5 years; or both

*For more information, refer to the Social Security Act, Section 1128B(b)*

# Laws and Regulations

## Exclusion

- No federal health care program payment may be made for any item or service furnished, ordered, or prescribed by an individual or entity excluded by the OIG
- The OIG has authority to exclude individuals and entities from federally funded health care programs and maintains the List of Excluded Individuals and Entities (LEIE)
- You can access the LEIE at [exclusions.oig.hhs.gov](https://www.exclusions.oig.hhs.gov)
- The United States General Services Administration (GSA) administers the Excluded Parties List System (EPLS), which contains debarment actions taken by various federal agencies, including the OIG
- You may access the EPLS at [sam.gov](https://sam.gov)
- If looking for excluded individuals or entities, make sure to check both the LEIE and the EPLS since the lists are not the same

*For more information, refer to 42 U.S.C. Section 1320a-7 and 42 Code of Federal Regulations Section 1001.1901*

# Summary

- Remember, SHP requires all brokers and agents to comply with all applicable federal, state and local laws, regulations and program requirements
- If you have any questions regarding the law or program requirements that apply to your job, you should consult your supervisor, manager or the SHP Compliance Officer

# SHP Privacy Training

## Brokers/Agents

# What is HIPAA?

## Health Insurance Portability and Accountability Act of 1996

- Privacy protection of health care data
- Created greater access to health care insurance
- Promoted standardization and efficiency in the health care industry
- HIPAA applies to
  - Health plans
  - Health care clearinghouses
  - Health care providers
  - Business associates

## Damages and Penalties

- Violations may result in civil monetary penalties; in some cases, criminal penalties may apply

For more information, visit [hhs.gov/ocr/privacy](https://www.hhs.gov/ocr/privacy)

# What is HITECH?

## Health Information Technology for Economic and Clinical Health

- Increased HIPAA enforcement
  - Department of Health and Human Services
  - Office of Civil Rights
  - State Attorney General
- Added significant penalties for HIPAA noncompliance
- Requires business associates to comply with HIPAA
- Expands individuals' rights to their own information
- Provides breach notification laws

# CA State Privacy Laws



## Sutter Health is also regulated by state privacy laws

- Different Breach Notification Standards
- Different Breach Notification Timelines

*Please contact the SHP Privacy Officer if you have any questions regarding state privacy regulations*



# Safeguard What Information?

## Confidential Information Includes:

- Protected Health Information (PHI)
- Personally Identifiable Information (PII)
- Member or Patient Information

## Applies to All Formats of Information Sharing



**Oral**  
*Spoken*



**Written**



**Electronic**  
*ePHI*

# What is PHI?

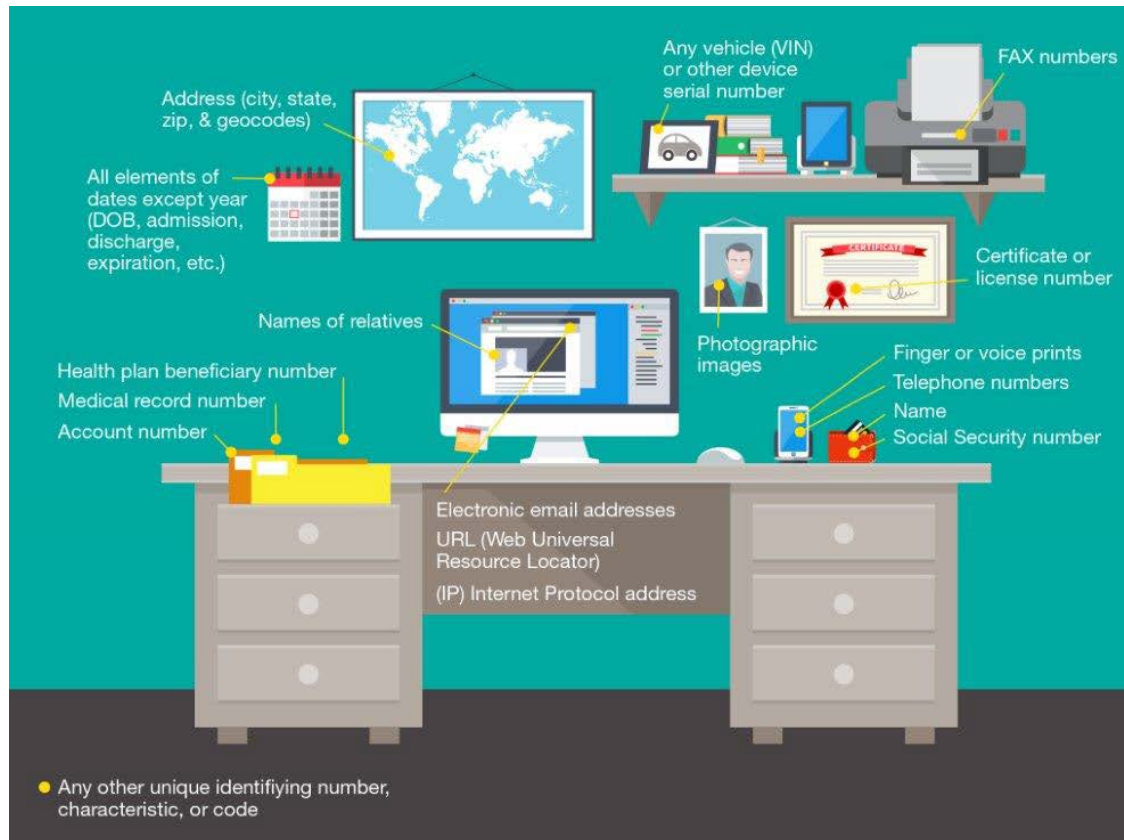
**PHI is information that identifies the individual or could reasonably be used to identify the individual**

**PHI is information, including demographic data, which relates to the:**

- Individual's past, present or future physical or mental health or condition
- Health care provided to the individual
- Past, present or future payment for health care provided to the individual

# PHI

Protected Health Information is anything that can be used to identify an individual.



# Examples of PHI Data

- ✓ Account Number
- ✓ Address
- ✓ Alternative Member Identifier (AMI)
- ✓ Benefit Coverage Information
- ✓ Birth Date
- ✓ Certificate/License Numbers
- ✓ Claim Numbers/Data
- ✓ Date of Service
- ✓ Device Identifiers
- ✓ Eligibility/Enrollment Data
- ✓ Email and IP Address
- ✓ Employer's Name
- ✓ Finger and Voice Prints
- ✓ Full Face Photo
- ✓ Health Plan Beneficiary Numbers
- ✓ Medical Information  
*Medical Records, Lab Values, Health Risk Assessments*
- ✓ Medical Record Number
- ✓ Name
- ✓ Names of Relatives and Employers
- ✓ Social Security Number (SSN)
- ✓ Telephone and/or Fax Numbers
- ✓ URL or Web Address
- ✓ Vehicle Identifiers and Serial Numbers
- ✓ X-Rays
- ✓ ZIP Code

# Protecting PHI

The data in the previous slide could be PHI either alone, or if combined, would allow for an individual to be identified

Examples of information SHP brokers and agents hold:

- **ZIP Code** alone would not be PHI, but combined with address and phone number would be PHI; the combination of these data elements could be used to identify an individual
- **Birth Date** alone would not be PHI, but combined with a name could result in identification of an individual and would be considered PHI
- **Social Security Number** alone would be PHI as this data element can be used to identify an individual

*The context and combination of the data elements will determine whether information is PHI. If you have any questions about what is or is not PHI, check with the SHP Privacy Officer.*

# Why Protect PHI?



## Penalties may be imposed for improperly using, accessing or disclosing PHI

- An individual can be criminally liable for violating HIPAA and HITECH laws
- Audit by Department of Health and Human Services

# Protecting PHI

## Additional Requirements for Protecting PHI

### Safeguarding Protected Health Information

- Brokers and agents must employ the appropriate administrative, technical and physical safeguards to protect the privacy of protected health information

### Use and Disclosure of Information

- Member information cannot be disclosed to others without the individual's written authorization except for the purposes of treatment (providing care), payment (claim payment) or health plan operations (examples include, but are not limited to, audits and fraud and abuse detection)

### Minimum Necessary

- When collecting, accessing, using or disclosing PHI, brokers and agents must make reasonable efforts to limit the use and disclosure to the minimum necessary to accomplish the intended purpose

### Theft Prevention

- Never leave a laptop, paper PHI or other devices containing member PHI in a vehicle unattended; electronic devices are especially attractive to thieves

# Protecting PHI

## Frequently Asked Questions Regarding Transmitting PHI

### PHI Sharing via the Internet

- Per Business Associate Agreement, email communications must utilize an email encryption process

### PHI Sharing via Fax

- Verify you are dialing the correct fax number
- Report all misdirected faxes immediately through the Sutter Health Confidential Message Line or to SHP Privacy Officer



# Protecting PHI

If a broker or agent becomes aware of a potential violation of the HIPAA Privacy Rule, Security Rule or HITECH Act, report this immediately to the SHP Privacy Officer.

For more information on any of the SHP privacy practices, please refer to the Sutter Health Standards for Business Conduct.

# What Can I Do to Protect PHI?

- Shred all PHI when no longer needed
- Encrypt all PHI emails you send
- Lock up paper PHI
- Lock your computer when leaving
- Do not leave your laptop in your car unattended
- Ensure your computer has a passcode required to access
- Contact the SHP Privacy Officer as soon as a concern arises

***Implement Best Practices for Using, Accessing, and Disclosing PHI***

# How Do I Report FWA, Compliance, and Privacy Concerns?

# Reporting FWA



- **Everyone** is required to report suspected instances of FWA
- The Sutter Health Standards for Business Conduct states this obligation
- Neither Sutter Health, nor SHP, will retaliate against you for making a good faith effort in reporting
- You may also choose to report suspected instances of FWA anonymously through the Sutter Health Confidential Message Line for reporting FWA, compliance, ethical, or privacy issues/concerns

# Reporting FWA

- Every DMHC-licensed health plan is required to have a mechanism in place in which potential FWA may be reported by employees, first tier, downstream, and related entities
- Each health plan must be able to accept anonymous reports and cannot retaliate against you for reporting
- Review SHP materials for the ways to report FWA
- When in doubt, call the Confidential Message Line Compliance Officer
- Do not be concerned about whether it is FWA; report any concerns to the SHP Compliance Department or you may report to the anonymous Sutter Health Confidential Message Line
- The SHP Compliance Officer will investigate and make the proper determination

# Reporting Potential Compliance Issues

*The best way to report issues, if you're comfortable doing so, is to report the issue directly (by phone) to the SHP Compliance or Privacy Officer, or another SHP leader (manager/director/VP); it helps your compliance or privacy officer to know who to go to if additional information is needed in order to resolve the issue.*

## Call the Confidential Message Line: 800-500-1950

- An external company manages our Confidential Message Line, which has been designed to make it easy for you to report any issue or instance of misconduct
- An operator is available 24/7
- You can also submit your concern via the web at [www.sutterhealth.org/report-it](http://www.sutterhealth.org/report-it)

## Email [shpcompliance@sutterhealth.org](mailto:shpcompliance@sutterhealth.org) and include the following information:

- Date suspected fraud occurred
- Date suspected fraud was discovered
- Where the suspected fraud occurred
- A description of the incident or suspected fraud
- A list of all persons engaged in the suspected fraud
- How you became aware of the suspected fraud
- A list of any individuals who have attempted to conceal the issue, and the steps they took to conceal it

# Compliance and Privacy Officer



**Michael Poole**

SHP Compliance Officer  
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916-643-1348



**Christine Jensen**

SHP Privacy Officer  
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# Summary

- As a person who provides health or administrative services to a potential SHP member, you play a vital role in preventing FWA
- Conduct yourself ethically, stay informed of your organization's policies and procedures and keep an eye out for indicators of potential FWA
- Report potential FWA
- Every health plan sponsor must have a mechanism for reporting potential FWA and must be able to accept anonymous reports and cannot retaliate against you for reporting
- Promptly correct identified FWA with an effective corrective action plan



# Congratulations!

You have completed the SHP Fraud,  
Waste and Abuse, and General  
Compliance Training