

Combating Fraud, Waste & Abuse Medicare Advantage (Parts C & D)

Delta Dental of Virginia

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Why do I need training?

- Every year billions of dollars are improperly spent because of fraud, waste and abuse (FWA). It affects everyone — including you.
- This training will help you detect, correct, and prevent FWA. You are part of the solution.



Why do I need training?

Combating FWA is everyone's responsibility! As an individual who provides health or administrative services for Medicare enrollees, every action you take potentially affects Medicare enrollees, the Medicare Program or the Medicare Trust Fund.

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Course objectives

When you complete this course, you should be able to correctly:

- Recognize FWA;
- Identify the major laws and regulations pertaining to FWA;
- Recognize potential consequences and penalties associated with violations;
- Identify methods of preventing FWA;
- Identify how to report FWA; and
- Recognize how to correct 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.
- In other words, fraud is intentionally submitting false information in order to get money or a benefit.

Waste and abuse

- Waste includes overusing services, or other practices that, directly or indirectly, result in unnecessary costs to the Medicare Program. Waste is generally not considered to be caused by criminally negligent actions but rather by the misuse of resources.
- Abuse includes actions that may, directly or indirectly, result in unnecessary costs to the Medicare Program. Abuse involves payment for items or services when there is not legal entitlement to that payment and the provider has not knowingly and/or intentionally misrepresented facts to obtain payment.

Waste and abuse

For the definitions of Fraud, Waste and Abuse, refer to Chapter 21, Section 20 of the United States Department of Health and Human Services “Medicare Managed Care Manual” on the United States Department of Health and Human Services (HHS) website and Chapter 9 of the “Prescription Drug Benefit Manual” on the Centers for Medicare & Medicaid Services (CMS) website.

Differences among fraud, waste and abuse

- There are differences among FWA. One of the primary differences is intent and knowledge.
- Fraud requires intent to obtain payment and the knowledge that the actions are wrong.
- Waste and abuse may involve obtaining an improper payment or creating an unnecessary cost to the Medicare Program, but does not require the same intent and knowledge.

Understanding FWA

- To detect FWA, you need to know the law.
- The following slides provide high-level information about the following laws:
  - Civil False Claims Act, Health Care Fraud Statute, and Criminal Fraud;
  - Anti-Kickback Statute;
  - Stark Statute (Physician Self-Referral Law);
  - Exclusion; and
  - Health Insurance Portability and Accountability Act (HIPAA).



Understanding FWA

For details about the specific laws, such as safe harbor provisions, which is a legal provision that protects individuals or organizations from liability or penalties under certain conditions, consult the applicable statute and regulations.

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Examples of FWA

Examples of actions that may constitute Medicare **fraud** include:	Examples of actions that may constitute Medicare **waste** include:	Examples of actions that may constitute Medicare **abuse** include:
• Knowingly billing for services not furnished or supplies not provided, including billing Medicare for appointments that the patient failed to keep; • Billing for non-existent prescriptions; and • Knowingly altering claim forms, treatment records, or receipts to receive a higher payment.	• Scheduling unnecessary office visits or writing excessive prescriptions; • Prescribing more medications than necessary for the treatment of a specific condition; and • Ordering excessive laboratory tests.	• Billing for unnecessary dental services; • Billing for brand name drugs when generics are dispensed; • Charging excessively for services or supplies; and • Misusing codes on a claim, such as upcoding or unbundling codes.



False Claims Act (FCA)

- Knowingly submitting a “false or fraudulent” claim for payment.
- “Knowingly” means:
  - Actual knowledge,
  - Deliberate ignorance,
  - Reckless disregard.

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False Claims Act (FCA)

- Simple error is not enough, intent is generally required; however, failing to follow procedures, or failing to question something that doesn't seem right may be found to be deliberate ignorance or reckless disregard.
- For more information, refer to 31 United States Code (U.S.C.) Sections 3729-3733* on the internet.

*www.gpo.gov/fdsys/pkg/USCODE-2013-title31/pdf/USCODE-2013-title31-subtitleIII-chap37-subchapIII.pdf

Example of false claims

- A dental group paid $5.1 million to settle a case alleging that they:
  - Upcoded Simple Tooth Extractions (D7140) and improperly billed Surgical Extractions (D7210).
  - Improperly billed for scaling and root planing when they were either not performed or not medically necessary.
- A dental group paid $23.9 million to settle a case alleging that they billed for:
  - Procedures that were not medically necessary including pulpotomies, tooth extractions and stainless steel crowns.
  - Procedures that were never actually performed.

Other examples of FCA

- Unbundling of claims.
- Submitting false information or documents to the government.
  - This includes requests for pre-determination of benefits.
- Remember, that while the FCA requires intent, failing to ask questions or failing to abide by Delta Dental of Virginia policies and procedures could be seen as willful ignorance or reckless disregard.

FCA (continued)

Whistleblowers

- A whistleblower is a person who exposes information or activity that is deemed illegal, dishonest or violates professional or clinical standards.
  - **Protected:** Persons who report false claims or bring legal actions to recover money paid on false claims are protected from retaliation.
  - **Rewarded:** Persons who bring a successful whistleblower lawsuit receive at least 15% but not more than 30% of the money collected.

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 up to $250,000 … 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* on the internet.

*www.gpo.gov/fdsys/pkg/USCODE-2013-title18/pdf/USCODE-2013-title18-partI-chap63-sec1346.pdf



Criminal Fraud

In a criminal case, a prosecuting authority brings the case to court. Guilt must be proven beyond a reasonable doubt.

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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 a term of years or for life.
- For more information, refer to 18 U.S.C. Section 1347* on the internet.

*www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap63-sec1347.pdf

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)* on the internet.

*www.gpo.gov/fdsys/pkg/USCODE-2013-title42/pdf/USCODE-2013-title42-chap7-subchapXI-partA-sec1320a-7b.pdf

Example of Anti-Kickbacks

- A dental group paid $8.45 million dollars to settle a case alleging that they:
  - Paid parents of Medicaid patients to bring their children to the dental group.
  - Paid marketing companies to refer Medicaid patients to the dental group.
- Offering gifts to patients worth more than $15 (or $75 in the aggregate annually) can be seen as an inducement.
- Routinely waiving co-payments or co-insurance obligations, regardless of whether the patient can pay.
- Providing additional services to a patient which are not billed.



Penalties for Anti-Kickbacks

Penalties for individuals and/or entities submitting false claims include:

- Criminal prosecution,
- Fines up to $20,000/claim,
- Treble damages (three times the actual damages),
- Suspension or exclusion from participation in the Medicare and Medicaid programs.

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Penalties for Anti-Kickbacks

Penalties for network providers and their employees:

- Employees can also face disciplinary action up to and including termination.
- Providers can also face the termination of their provider agreement.

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Civil Monetary Penalties Law

- The Office of Inspector General (OIG) may impose civil penalties for a number of reasons, including:
  - Arranging for services or items from an excluded individual or entity;
  - Providing services or items while excluded;
  - Failing to grant OIG timely access to records;
  - Knowing of an overpayment and failing to report and return it;
  - Making false claims; or
  - Paying to influence referrals.
- For more information, refer to the Act, Section 1128A(a)* on the internet.

*www.ssa.gov/OP_Home/ssact/title11/1128A.htm

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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.
- 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 www.sam.gov.

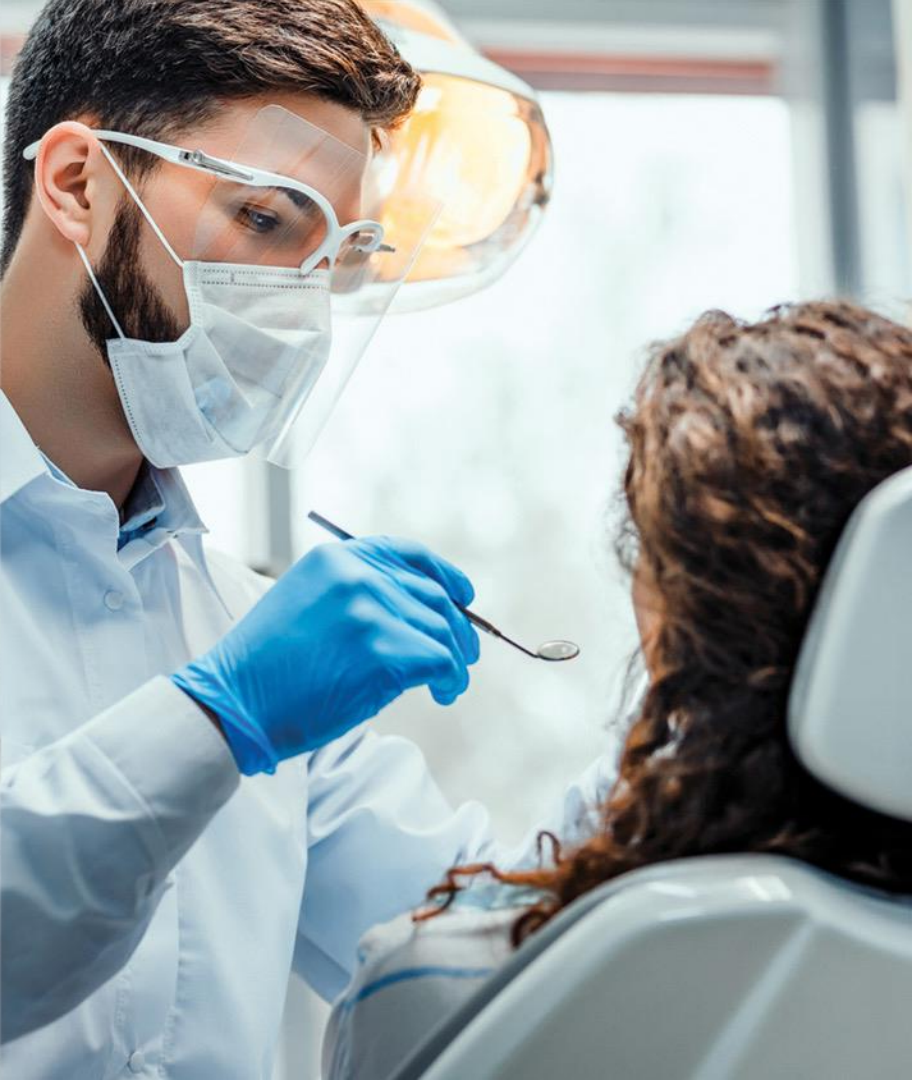
Exclusion

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** on the internet.

*www.gpo.gov/fdsys/pkg/USCODE-2013-title42/pdf/USCODE-2013-title42-chap7-subchapXI-partA-sec1320a-7.pdf
**www.gpo.gov/fdsys/pkg/CFR-2014-title42-vol5/pdf/CFR-2014-title42-vol5-sec1001-1901.pdf

Health Insurance Portability and Accountability Act (HIPAA)

- HIPAA created greater access to health care insurance, protection of privacy of health care data and promoted standardization and efficiency in the health care industry.
- HIPAA safeguards help prevent unauthorized access to protected health care information. As an individual with access to protected health care information (PHI), you must comply with HIPAA.
- For more information, visit www.hhs.gov/ocr/privacy.



Example

- A former dental office employee pleaded guilty to criminal HIPAA charges after obtaining PHI with the intent to use it for personal gain. The individual was sentenced to 12 months and one day in prison.
- **Damages and penalties**
  - Violations may result in civil monetary penalties. In some cases, criminal penalties may apply.

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Your role in the fight against FWA

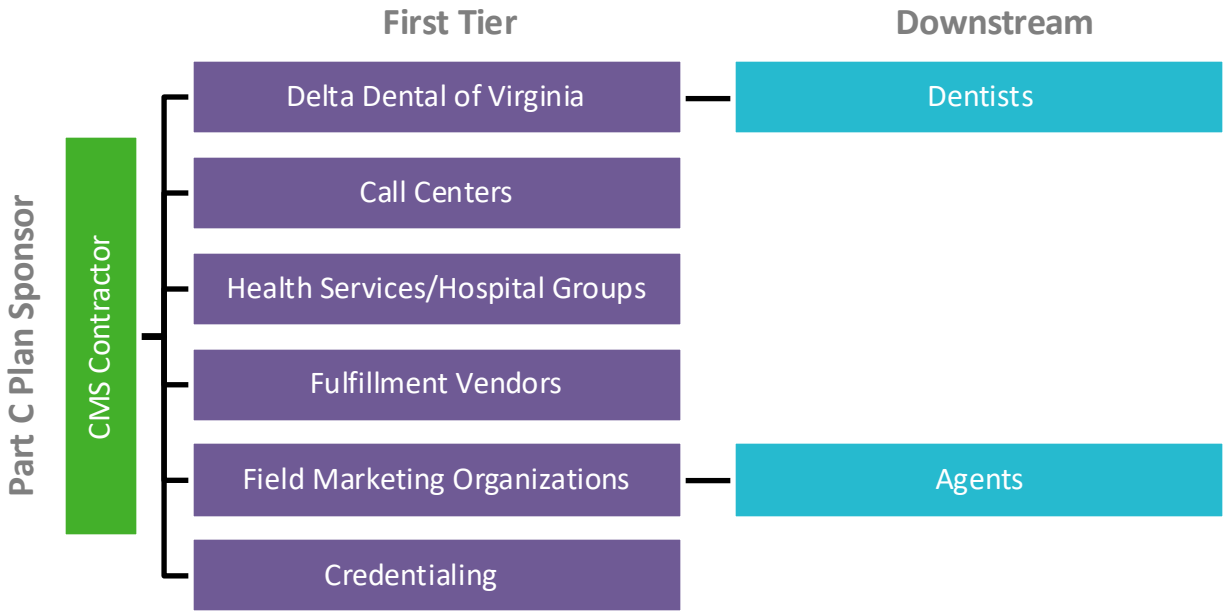
This training explains the role you can play in fighting against fraud, waste and abuse (FWA), including your responsibilities for preventing, reporting and correcting FWA. Upon completing the lesson, you should be able to correctly:

- Identify methods of preventing FWA.
- Identify how to report FWA.
- Recognize how to correct FWA.

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Where do I fit in?

As a person who provides health or administrative services to a Medicare Part C or Part D enrollee, you are either an employee of a:



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What are your responsibilities?

You play a vital part in preventing, detecting, and reporting potential FWA, as well as Medicare non-compliance.

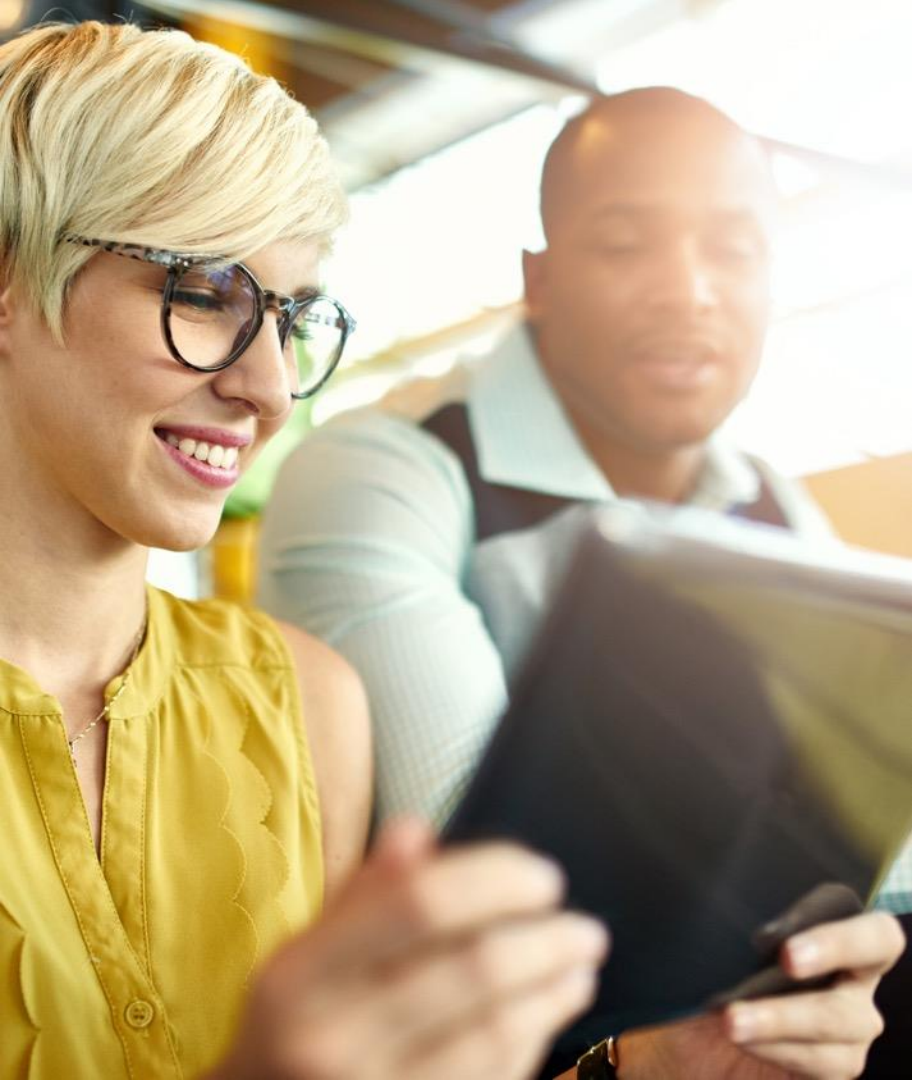
- **FIRST,** you must comply with all applicable statutory, regulatory, and other Medicare Part C or Part D requirements, including adopting and using an effective compliance program.
- **SECOND,** you have a duty to the Medicare Program to report any compliance concerns, and suspected or actual violations that you may be aware of.
- **THIRD,** you have a duty to follow your organization's code of conduct that articulates your and your organization's commitment to standards of conduct and ethical rules of behavior.

How do you prevent FWA?

- Look for suspicious activity.
- Conduct yourself in an ethical manner.
- Ensure accurate and timely data/billing.
- Ensure you coordinate with other payers.
- Keep up to date with FWA policies and procedures, standards of conduct, laws, regulations, and the Centers for Medicare & Medicaid Services (CMS) guidance.
- Verify all information provided to you.

Stay informed about policies and procedures

- Familiarize yourself with your entity's policies and procedures.
- Every Sponsor and First-Tier, Downstream, or Related Entity (FDR) must have policies and procedures that address FWA. These procedures should help you detect, prevent, report, and correct FWA.
- Standards of conduct should describe the Sponsor's expectations that:
  - All employees conduct themselves in an ethical manner.
  - Appropriate mechanisms are in place for anyone to report non-compliance and potential FWA.
  - Reported issues will be addressed and corrected.



Stay informed about policies and procedures

Standards of conduct communicate to employees and FDRs that compliance is everyone's responsibility, from the top of the organization to the bottom.

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Reporting FWA

- Everyone must report suspected instances of FWA. Your Sponsor's code of conduct should clearly state this obligation. Sponsors may not retaliate against you for making a good faith effort in reporting.
- Do not be concerned about whether it is fraud, waste or abuse. Just report any concerns to your compliance department or your Sponsor's compliance department. Your Sponsor's compliance department area will investigate and make the proper determination. Often, Sponsors have a Special Investigations Unit (SIU) dedicated to investigating FWA. They may also maintain a FWA hotline.



Reporting FWA

- Every Sponsor must have a mechanism for reporting potential FWA by employees and FDRs. Each Sponsor must accept anonymous reports and cannot retaliate against you for reporting. Review your organization’s materials for the ways to report FWA.
- When in doubt, call your compliance department or FWA hotline.

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Reporting FWA outside your organization

- If warranted, Sponsors and FDRs must report potentially fraudulent conduct to Government authorities, such as the Office of Inspector General, the Department of Justice, or CMS.
- Individuals or entities who wish to voluntarily disclose self-discovered potential fraud to OIG may do so under the Self-Disclosure Protocol (SDP). Self-disclosure gives providers the opportunity to avoid the costs and disruptions associated with a government-directed investigation and civil or administrative litigation.

Details to include when reporting FWA

When reporting suspected FWA, you should include:

- Contact information for the source of the information, suspects and witnesses.
- Details of the alleged FWA.
- Identification of the specific Medicare rules allegedly violated.
- The suspect's history of compliance, education, training, and communication with your organization or other entities.

Where to report FWA

HHS Office of Inspector General:

- Phone: 800-HHS-TIPS (1-800-447-8477) or TTY 1-800-377-4950
- Fax: 800-223-8164
- Online: oig.hhs.gov/fraud/report-fraud/

For all other Federal health care programs:

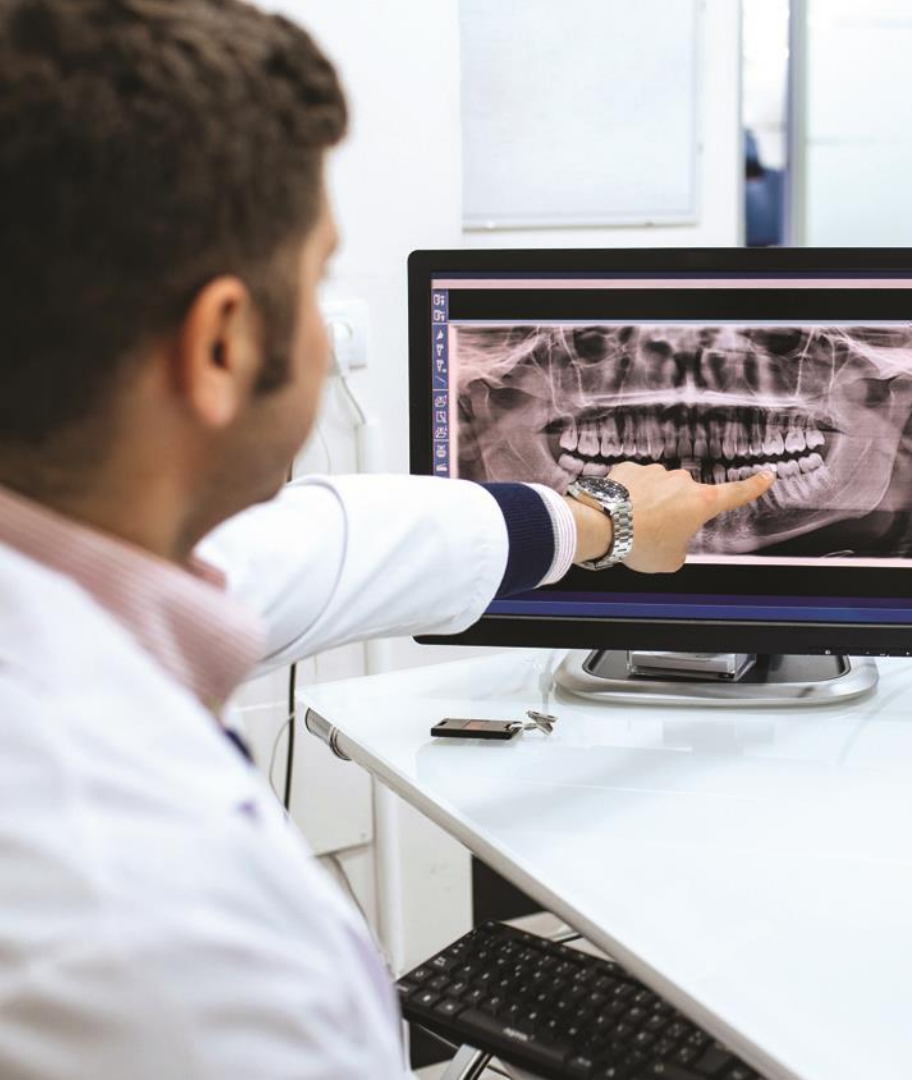
- CMS Hotline at 800-MEDICARE (800-633-4227) or TTY 877-486-2048
- Online: www.cms.gov/medicare/medicaid-coordination/center-program-integrity/reporting-fraud

Where to report FWA (continued)

Delta Dental of Virginia

- Phone: 888-227-6004
- Online: DeltaDentalVA.com
  - Click link at bottom of opening page “File a Complaint”

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Correcting FWA

Once fraud, waste or abuse has been detected, it must be promptly corrected. Correcting the problem saves the government money and ensures you are in compliance with CMS requirements.

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Correcting FWA

Develop a plan to correct the issue. Consult your organization's compliance officer to find out the process for the corrective action plan development. The actual plan is going to vary, depending on the specific circumstances. In general:

- Design the corrective action to correct the underlying problem that results in FWA program violations and to prevent future non-compliance
- Tailor the corrective action to address the particular FWA, problem, or deficiency identified. Include timeframes for specific actions
- Document corrective actions addressing non-compliance or FWA committed by a Sponsor's employee or FDR's employee and include consequences for failure to satisfactorily complete the corrective action
- Once started, it is your responsibility to continuously monitor corrective actions to ensure they are effective.

Corrective action examples

Corrective actions may include:

- Adopting new prepayment edits or document review requirements.
- Conducting mandated training.
- Providing educational materials.
- Revising policies or procedures.
- Sending warning letters.
- Taking disciplinary action, such as suspension of marketing, enrollment, or payment.
- Terminating an employee or provider.

Key indicators: Potential beneficiary issues

- Does the prescription, treatment record, or any other documentation look altered or possibly forged?
- Does the beneficiary's dental history support the services requested?
- Have you filled numerous identical prescriptions for this beneficiary, possibly from different doctors?
- Is the person receiving the dental service the actual beneficiary (identity theft)?

Congratulations!

You have completed the Combating Fraud, Waste and Abuse for Medicare Parts C and D training.

Next steps

1. Log in to the dentist portal at **DeltaDentalVA.com**.
2. Navigate to the **Forms & Resources** section under the **Documents** tab.
3. Download and complete the **Fraud, Waste and Abuse Attestation** form.
4. Email the completed form to **ProviderRelations@deltadentalva.com**.

Note: This form is required annually for each Tax ID Number associated with your office.

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