

# ***Fraud & Abuse: Prevention, Detection and Reporting***

## **Staff Training on BCN's Fraud & Abuse Compliance Program**



Presented to BCN Staff

Work Site: \_\_\_\_\_

Date: \_\_\_\_\_

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## **Sources**

- Centers for Medicare and Medicaid Services (CMS)
- United States Government Accountability Office (GAO)
- National Health Care Anti-Fraud Association (NHCAA)
- State of Oregon Departments of Human Services (DHS) and Medical Assistance Programs (DMAP)
- MVBCN policy: "Prevention and Detection of Fraud and Abuse"

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## Training Overview

- BCN's commitment and policy
- Definitions, examples of fraud and abuse
- Federal and state laws, personal liability for knowingly engaging in fraud or abuse
- Employee rights as "whistleblowers"
- BCN's program to prevent and detect fraud and abuse
  - Disciplinary guidelines for employees and contractors whose actions constitute fraud or abuse
- How to report fraud or abuse
- Authority of Oregon DHS and health oversight entities to pursue legal redress
- Final comments

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## Our Commitment

**BCN is committed to conducting business in an ethical and legal manner.**

To this end, we have established a program to prevent and detect fraud and abuse, and to report fraud, waste and abuse. This program applies to all of our business activities, without exception.

This program is designed to meet federal and state Medicaid requirements and to protect BCN employees, BCN OHP members, contractors, and other business partners.

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## Our Policy

**BCN must fully comply with federal and state laws and rules that relate to the prevention and detection of fraud and abuse.**

We have developed a policy that identifies our responsibilities for the prevention and detection of fraud and abuse as well as those of our contracted OHP mental health provider agencies and sub-regions (LMHAs).

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## What is Fraud?

“An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him/herself or some other person.”

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## *Examples of Fraud*

- A provider submits a claim for services or supplies that were not provided
- An employee falsifies client medical records in order to gain reimbursement for services
- A person applying for OHP benefits reports their household income as \$500 per month when it's actually \$2,000 per month

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## **What is Abuse?**

“Provider practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to BCN or OHP, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes OHP Member practices that result in unnecessary cost to BCN or OHP.”

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## *Examples of Abuse*

- A provider orders diagnostics that are not medically necessary
- A provider provides and bills for a power wheelchair for a client who only met the coverage criteria for a manual wheelchair

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- Fraud and abuse is estimated to account for 3% to 10% of annual healthcare costs
  - For 2002, the FBI estimates 10% of each dollar spent on Medicaid was lost to fraud and abuse. This equals more than \$10 billion in losses to US taxpayers.
- Taxpayers pay higher taxes because of fraud in the public sector
- Employers and individuals pay higher private health insurance premiums because of fraud in the private sector

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## Federal Laws

**It is a crime for a person to knowingly engage in actions that are fraud or abuse.**

- **Federal False Claims Act (31 USC 3729-3733)**
  - Penalties and triple damages against anyone who knowingly submits or causes to submit false or fraudulent claims for Medicaid and other federal funds.
  - *Quid tam* provisions: A “whistleblower” can file suit in federal court, on behalf of the federal government, against the alleged fraudsters and then share in any money recovered by the government.

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- **Program Fraud Civil Remedies Act (31 USC Chapter 38)**
  - Also referred to as “administrative remedies for false claims and statements”
  - Anyone who knowingly submits or causes to submit false, fictitious or fraudulent claims, or omits a material fact, for Medicaid and other federal funds is subject to a penalty of up to \$5,000 per claim plus up to twice the amount of each submitted claim.
  - Investigations conducted by US Inspector General; enforcement can start with an administrative law hearing.
  - Government can recover penalties by lawsuit or by offset against “clean” claims.
- **Definition of fraud, waste and abuse (42 USC 1320a-7b)**

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## State Laws

**It is a crime for a person to knowingly engage in actions that are fraud or abuse.**

- Oregon laws pertaining to civil or criminal penalties for false claims and statements:
  - ORS 411.670 to 411.690: Submitting wrongful claim or payment prohibited; liability of person wrongfully receiving payment; amount of recovery
  - ORS 646.505 to 646.656: Unlawful trade practices
  - ORS Chapter 162: Crimes related to perjury, false swearing and unsworn falsification

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- ORS Chapter 164: Crimes related to theft
- ORS Chapter 165: Crimes involving fraud or deception, including but not limited to falsification of business records (ORS 165.080) and false claims for health care payment (ORS 165.690 to 165.698)
- ORS 166.715 to 166.735: Racketeering - civil or criminal
- ORS 659A.200 to 659A.224 and ORS 659A.230 to 659A.233: Whistleblowing
- OAR 410-120-1395 to 410-120-1510: DMAP program integrity, sanctions, fraud and abuse
- Common law claims founded in fraud, including Fraud, Money Paid by Mistake and Money Paid by False Pretenses

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## “Whistleblower” Protections

**Employees who report fraud or abuse are protected by federal and state laws.**

- Federal False Claims Act (31 USC 3729-3733)
  - Significant penalties to an employer who is found to have fired, demoted, suspended, threatened, harassed, or otherwise discriminated against an employee for his/her lawful acts under the False Claims Act
  - Relief to the employee includes reinstatement with the same seniority status, twice the back pay, interest on the back pay, and compensation for legal fees

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- Oregon Whistleblower Law (ORS 659A.200-224)

It is unlawful employment practice for any public employer to:

(1) prohibit an employee from disclosing, or take or threaten disciplinary action for disclosure, any information that the employee reasonably believes is evidence of:

- a violation of federal or state law, rule or regulation;
- mismanagement, gross waste of funds or abuse of authority, or action that results in substantial danger to public health and safety; or
- the fact that a person receiving services has an arrest warrant

(2) require any employee to give notice prior to disclosing the information described in #1

(3) discourage, restrain, dissuade, coerce, prevent, or otherwise interfere with disclosure or discussion described in #1

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- Oregon law pertaining to an employee initiating or aiding in a legal proceeding (ORS 659A.230-233 -

Whistleblowing)

It is unlawful employment practice for any employer to discharge, demote, suspend, or in any manner discriminate or retaliate against an employee for the reason that the employee has in good faith:

- reported criminal activity by any person
  - caused a complaint to be filed against any person
  - cooperated with law enforcement in a criminal investigation
  - brought a civil proceeding against the employer
  - testified at a civil proceeding or criminal trial
- There may be other legal protections for whistleblowers

## BCN's Program to Prevent and Detect Fraud and Abuse

*Our program consists of the following elements:*

- Credentialing of out-of-panel providers according to BCN's credentialing policy
- Requirement for employees and contractors to be eligible for participation in Medicaid programs (DHHS OIG) and federal procurement activities (EPLS)
- Requirement for employees and contractors to disclose any conflict of interest in providing and paying for OHP services
- Grievance and Appeal procedures for BCN OHP members and their representatives
- Complaint and appeal procedures for providers

- Monitoring of provider billings and claims for patterns and anomalies that may indicate fraud or abuse
- Controls on employee and contractor access to clinical records, billing and accounting records, service authorization records, and eligibility data
- Procedures to request refunds from providers for payments made in error and to adjust that data
- Procedures for reporting cases of suspected fraud or abuse involving BCN funds
- Disciplinary guidelines for employees and contractors whose actions constitute fraud or abuse

## *Disciplinary Guidelines for Employees*

- Governed by Marion County's employee ethics policy as well as BCN's fraud and abuse policy
- Subject to disciplinary action as described in the applicable collective bargaining agreements (Units 4 and 6) and personnel rules (Unit 2)
- Steps of progressive discipline may be omitted depending on the severity of the employee's misconduct; immediate dismissal may be required
- Discipline carried out by BCN does not alter the employee's personal liability under federal and state laws
- BCN shall pursue all available means to recover funds lost due to the employee's actions
- Conviction may render the employee ineligible to work for federally-funded agencies, including Medicaid programs (eg, BCN)
- Oregon DHS and health oversight entities can pursue legal redress to the fullest extent of the law

## Disciplinary Guidelines for Contractors

- Subject to termination according to the contractor's BCN contract
  - *For credentialed provider agencies:* Termination-with-cause provides a two-tiered approach for the contractor to attempt to cure the breach, or permits the contractor to terminate the contract.
- Termination of the contractor's BCN contract does not change the contractor's professional or personal liability under federal and state laws
- BCN shall pursue all available means to recover funds lost due to the contractor's actions
- Conviction may render the contractor ineligible to contract with or work for federally-funded agencies, including Medicaid programs (eg, BCN)
- Oregon DHS and health oversight entities can pursue legal redress to the fullest extent of the law

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## How to Report Fraud or Abuse

**Anyone who suspects or knows about fraud or abuse can report it.**

- BCN employees and contractors
- Employees and contractors of BCN member counties and provider agencies
- Individual providers
- OHP members
- Employees and contractors of BCN business partners and affiliates
- Members of the public

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*There are several ways to report suspected fraud or abuse; choose the way that works best for you.*

- Talk directly with BCN's Fraud and Abuse Compliance Officer (Cheryl Henning)
- Call BCN's fraud and abuse reporting line: 866-370-5525 \*
- Fill out BCN's reporting form and mail it to the BCN office

Your report can be anonymous if you wish. You don't need to give your contact information to the Compliance Officer.

Information given in a report may be shared with Oregon DHS and other government agencies as allowed by law.

Visit BCN's website [www.mybcn.org/fraud](http://www.mybcn.org/fraud) for more information.

\* When you call the reporting line, your phone number is not displayed on BCN's caller ID.

*What happens with a report to BCN about suspected fraud or abuse?*

- BCN's Compliance Officer reviews the information given in the report and does some preliminary fact-finding.
- If the suspected fraud or abuse meets certain criteria and involves BCN or a provider agency, then the case is referred to the Oregon Department of Justice Medicaid Fraud Control Unit (MFCU) for investigation.
  - If the case is about suspected fraud or abuse by an OHP member, then the case is referred to the DHS Fraud Investigation Unit for investigation.
  - DHS Addictions and Mental Health Division is notified about cases referred to MFCU.
  - BCN must not notify or otherwise advise a contractor of an MFCU or DHS fraud investigation so as not to compromise the investigation.
- If the suspected fraud or abuse is confirmed by MFCU's investigation, then the employee or contractor is subject to the disciplinary guidelines previously described.

***Fraud and abuse reporting structure for BCN's network of OHP mental health provider agencies:***

- Suspected fraud or abuse about services provided to a BCN member in a hospital or residential treatment facility is reported to BCN.
- Suspected fraud or abuse about services provided to a BCN member at a mental health clinic or in a provider's private practice office is reported to the fraud investigator for the county where the BCN member lives.
  - If the case is probable or confirmed, then the county fraud investigator refers it to BCN for further investigation, corrective action and/or referral to MFCU.
- If the person making the report isn't sure which county to contact or has reason to believe that the county cannot respond appropriately, then the report is made to BCN.

Neither BCN's Compliance Officer nor the counties' fraud investigators can give out information about the status of or findings from reports or investigations.

## **Legal Redress by Oregon DHS and Health Oversight Entities**

**Oregon DHS and health oversight entities are not limited in their authority to pursue legal redress for fraud and abuse to the full extent of the law.**

## Final Comments

- Contact Cheryl Henning with questions. If she doesn't know the answer, she'll find it!
- This training is required for all BCN employees (existing and for new hires) and is made available to BCN contractors.