Attachment 1

FEHB Fraud and Abuse Definitions

All definitions apply to Federal Employees Health Benefit Program (FEHB Program) Fraud, Waste, and Abuse (FWA) cases, not the Carrier's entire commercial book of business[1]. Data must be reported by Contract Number – data cannot be shared among Contract Numbers even if a central SIU handles FWA for more than one Contract. The Annual FWA Report is subject to audit by Office of Personnel Management (OPM), OPM-Office of the Inspector General (OIG) and/or its appointed agent.

I. Overarching Definitions

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. Fraud can be committed by a contractor, a subcontractor, large provider, a provider, and/or a FEHB Program beneficiary/enrollee. It includes any act that constitutes fraud under applicable Federal and/or state law.

Examples include but are not limited to the following schemes:

- billing for services that were never rendered,
- misrepresenting who provided the services,
- altering claim forms, electronic claim records or medical documentation, and
- falsifying a patient's diagnosis to justify tests, surgeries or other procedures that are not medically necessary.

Waste is the expenditure, consumption, mismanagement, use of resources, practice of inefficient or ineffective procedures, systems, and/or controls to the detriment or potential detriment of entities. Waste is generally not considered to be caused by criminally negligent actions but rather the misuse of resources. Waste can be committed by a contractor, a subcontractor, large provider, a provider, and/or a FEHB Program beneficiary/enrollee.

Examples include but are not limited to the following schemes:

- performing a large number of laboratory tests on a patient when the standard of care indicates that only a few tests were sufficient for treatment and/or diagnosis,
- medication and prescription refill errors, and
- failure to implement standard industry waste prevention measures.

[1] With the exception of 'Number of Cases Opened'.

Abuse includes actions that may directly or indirectly result in unnecessary costs to the FEHB Program, improper payment, payment for services that fail to meet professionally recognized standards of care, or services that are medically unnecessary. 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. Abuse cannot be differentiated categorically from fraud because the distinction between "fraud" and "abuse" depends on specific facts and circumstances, intent and prior knowledge, and available evidence, among other factors. Abuse can be committed by a contractor, a subcontractor, large provider[2], a provider, and/or a FEHB Program beneficiary/enrollee.

Examples include but are not limited to the following schemes:

- misusing procedure or diagnosis codes on the claim (i.e., the way the service is coded on the claim does not comply with national or local coding guidelines or is not billed as rendered),
- waiving patient co-pays coinsurance, or deductibles and over-billing the FEHB Program Carrier, and
- billing for items or services that should not be paid for by the FEHB Program such as never events.

Allegation/Complaint: This is the first or initial phase of an FWA issue. There is no evidence to support the reported allegations or complaint to have potential to be related to FWA. An FWA allegation or complaint can include anything from a hotline call from a member or provider, an internal report or referral from another department within the Carrier, to a report or lead generated by the Carrier's Proactive Fraud Detection Software vendor. All allegations received within the Carrier's anti-fraud unit or SIU must be thoroughly vetted within a preliminary review phase prior to being considered a potential reportable FWA issue. Some exceptions include subpoenas received from a law enforcement or government regulatory agency, a law enforcement request for assistance, or other outside agency referral from a source that would otherwise be consistent with an already identified FWA issue.

Preliminary Review: This phase is also known as the "Triage Stage" of an allegation or complaint. The preliminary review stage or phase has no time limit and would include a limited or initial request for information, limited or initial medical review, research and/or other limited investigative activities to determine whether an allegation/complaint received by the Carrier's anti-fraud unit or SIU has the potential to be an FWA issue, and therefore reportable to the OPM-OIG. Activities include, but are not limited to as follows:

- Assessment/review of allegation(s),
- Obtaining claims data exposure,
- Obtaining background on subject(s),
- Reviewing benefit language,

[2] Per FAR 1602.170-16 Large Provider Agreement

- Determining network status,
- Identification of patterns according to allegation(s), additional suspect patterns,
- Researching Current Procedural Terminology (CPT) definitions, Carrier policies, and state regulations,
- Medical records request to provider(s),
- Questionnaires to member(s)/provider(s),
- Telephone interviews with member(s) or provider(s), and
- Request for information from Carriers support areas.

Affirmative Step: This is the "Decision Phase". Once the preliminary review is complete, and enough information and data is gathered to determine if the received allegation has the potential to be an FWA issue, the Carrier determines if the FWA-related allegation/complaint is reportable or not reportable to the OPM-OIG. If the Carrier SIU determines the FWA issue is reportable, an affirmative step may include expanding the preliminary review stage and/or assigning the issue for further review and investigation. Additionally, an affirmative step may also include that the Carrier decided to close the allegation or complaint and not investigate further, but an FWA issue still exists and is a reportable case. Therefore, closing a case is also considered a "decision" and an affirmative step. The affirmative step is the point at which the Carrier makes a decision on whether the received allegation is a potential FWA issue, and therefore, reportable; at which time the Carrier has 30 working days to report the issue to the OPM-OIG.

Provider: Any medical practitioner that acts and is licensed as a provider of medical services. This may include, but is not limited to a physician, hospital (inpatient or outpatient), chiropractor, physical therapist, nurse practitioner, physician assistant, laboratory, pharmacy, and more.

Member: Any eligible or ineligible subscriber to the FEHB Program including the contract holder, his or her spouse, and children.

Other: Include anything that does not fit into the provider or member categories, such as a Carrier employee, vendor employee, medical identity theft, or other thefts that occur by third parties, not associated with a provider of service or member.

Fraud, Waste and Abuse Report

The items below are requirements of the FWA Report. All Carriers must report this data.

II. Fraud, Waste and Abuses Cases

All fields must be completed.

Block 1 Number of Allegations/Complaints Opened/Received – Report all FWA allegations and/or cases the SIU received and entered into its FWA case tracking system within the reporting calendar year, regardless of whether a potential FWA has/had been determined or there was any

FEHB Program exposure for the Carrier's entire book of business (BoB). The Carrier should exclude from this number any allegation received as a data request from the OPM-OIG.
Note: Please do not include proprietary or personal identifiable information. Please provide only the aggregate number of cases that represent what the contracted Carrier received within its SIU for assessment related to the FEHB Program (regardless of whether FEHB Program exposure was found).

Block 2 Number of Allegations/Complaints/Cases where there is FEHB Program Exposure – Report the number of allegations/complaints/cases where there is FEHB Program exposure.

Note: All allegations and complaints where there is FEHB Exposure should be reported whether or not an affirmative step has been taken.

Block 3 Number of Cases Developed through Proactive Fraud Prevention/Detection Software – Only report cases that were opened, initiated, or developed as a result of using proactive fraud software programs; such as Stars, StarSentinel, FICO, or other software programs; plus, one of the following:

- cases investigated by the Carrier SIU that resulted in a case notification to OPM-OIG;
- referrals to other local, state, or Federal law enforcement agency; and/or
- cases that resulted in the Carrier SIU obtaining a negotiated settlement with a provider, member or pharmacy.

Note: Carriers are encouraged to utilize Fraud Prevention/Detection software. If a Carrier utilizes any FWA prevention and detection software, the Carrier must enter the name and description of the software they use along with the number of cases identified by the software.

Software can be an internal, customized off-the-shelf, or customized software detection system. The Carrier should not rely on the claims processing edit system as the only method to actively detect or prevent current FWA schemes.

Block 4 Number of Cases Referred to Local, State, or Federal Law Enforcement/Oversight Agencies – Report the number of cases referred to Local, State, or Federal law enforcement agencies, including state or Federal regulatory agencies, medical or pharmacy boards and oversight agencies, Attorney General offices, etc. Do not include case notifications/referrals sent to the OPM-OIG.

Note: Cases reported here should tie back to a case notification and/or referral. When a referral is sent to other local, state, or Federal agencies it would be considered a "triggering event" and a case notification, update or referral also should be submitted to the OIG.

Block 5 Number of Case Notifications/Referrals Sent to the OPM-OIG – Only report cases sent to the OPM-OIG Mandatory Information Sharing via Written Case Notifications and Referrals to OPM-OIG. Include only the first or initial case notification/referral for a specific case detected by the Carrier SIU. Do not report secondary or follow up case status report.

Note: The number will likely be less than the number of allegations/complaints/cases where there is FEHB Program exposure.

A **Case Notification** is the reporting of a potential FWA issue detected by the FEHB Program Carrier's SIU to provide an early warning alert to the OIG of a potential FWA issue. OPM-OIG considers reportable FWA as a situation where, after a preliminary review of the complaint, the Carrier takes an affirmative step to further investigate the complaint and determine whether potential FWA exists.

A **Referral** is a more comprehensive reporting of an FWA allegation whereby the Carrier has, in its view, conducted a complete investigation of FWA allegations and believes as a result, it has detected a confirmed criminal or civil FWA issue perpetrated against the FEHB Program.

- **Block 6 Number of Cases Resolved Administratively** – Report the number of cases resolved through negotiated settlement or other administrative action related to any provider, member, spouse, and/or children, or other category of FWA case, outside of or independent of law enforcement criminal or civil action. Examples include, but are not limited to:
- A pharmacy audit reveals erroneous payments and the Carrier obtains a chargeback.
- SIU performs a post-payment review based on an allegation, but the case is declined, and the Carrier recoups from the provider via chargebacks.

Note: A Carrier must have a case notification in order to resolve a case administratively, and notify the OIG with any updates until the issue has been resolved.

III. Fraud, Waste and Abuse Losses, Recoveries, and Savings

Block 7 Dollars Identified as Loss – Report all actual FEHB Program related financial losses identified as part of an SIU opened case or project with FEHB Program exposure regardless of whether or not the SIU assigned an investigator to pursue the case or the identified loss was pursued by the SIU as a recovery. The loss should be limited to the amount related to the allegations or the final case findings, not the total paid amount for all services associated with the subject. Evidence must exist to support this figure. This is not an estimate.

Block 8 Estimated Financial Losses – Report all estimated financial losses limited to no more than the most recent three-year period which the FWA issue was detected and determined to have occurred. This figure would be determined within the preliminary review stage of an allegation, complaint or case and would include all paid amounts based on the allegations. Evidence must exist to support this figure.

Note: This is the overall Estimate of Losses. It is not part of Dollars Identified as Loss.

Block 9 Non-Recoverable Loss – Only report amounts that were pursued by the Carrier's SIU that were ultimately not recovered as a result of circumstances outside the SIU's control. If the SIU does not pursue an identified FWA related loss, and it is written off, the amount should be included.

Note: If a Carrier SIU has an internal minimum threshold to pursue an SIU identified or potential FWA overpayment, please state the dollar figure.

"Outside of an SIU's control" means the dollars in question were not recovered because of actions taken by or circumstances related to individuals who do not work for the Carrier. Examples could be but are not limited to bankruptcy of a provider, death of a provider, or Federal Government/Department of Justice excluding the provider's claims.

This number is the amount of a Carrier's write-offs. A dollar amount must be reported in this field. The number should not be zero, especially if there are minimum thresholds that Carriers do not pursue. Evidence must exist to support this figure. Only Identified FEHB Program non-recoverable losses, which were FWA related, should be included. A case notification related to the identified FWA related issue sent to OPM-OIG would likely be required.

Block 10 Dollars Recovered by SIU – Only report FWA related FEHB Program dollars recovered and received within the calendar year as a direct result of the Carrier's SIU investigation, case action, and/or activity performed by the Carrier's SIU staff or the Carrier's contracted third party SIU/Vendor. **No recoveries should be included here which were the result of an OPM-OIG criminal or civil case or investigation whereby a recovery was reported to the Carrier by the OPM-OIG or OPM.** The recovery must be documented and tracked in the contracted Carrier's case tracking system and associated with an FWA allegation, open case or investigation performed by the Carrier's SIU. Recoveries can be actual dollars received as a result of a conviction, Carrier initiated negotiated settlement, future claims withholding or the Carrier returns the money itself. All SIU FWA case files resulting in a recovery must be retained by the SIU. Large dollar recoveries can result from provider settlements/law suits covering multiple years, entered into by the Carrier's legal department via the SIU.

Note: There are also some instances the SIU found there to be no reportable FWA issue to the OIG, but the SIU determined that the identified payments made to the investigated provider or member were made in a non-FWA related billing error. The dollar amount here must not include routine hospital/provider audits that do not directly tie to a case notification or referral.

Only identify cases tracked by the SIU with identified FWA should be reported here.

Block 11 Vendor Recoveries – Report all recoveries within the calendar year as a result of a Carrier and/or SIU vendor activity related to routine Hospital/Provider Audit recoveries which may be related to an identified "waste or abuse" but does not result in an actual FWA allegation or open/initiated case by the SIU. Evidence of the recovery and vendor activity can be supported by the Carrier SIU and should be tracked and documented as related to an SIU activity or project.

Note: This number should not be included in the ROI.

Block 12 Actual Savings – Only report FWA activities established in the Carriers FWA Detection Plan that are:

- Related FEHB Program Actual Saved dollars within the calendar year that were a direct result of an allegation received by an SIU investigation; and/or
- Case action activity performed by the Carrier's SIU staff or the Carrier's contracted third party SIU/Vendor.

The savings must be documented and tracked in the contracted Carrier's case tracking system and be associated with an FWA allegation, an open case, or an investigation performed by the Carrier's SIU:

- Associated with an FWA allegation;
- Open case; and/or
- Investigation performed by the Carrier's SIU.

Recoveries obtained by the Carrier's SIU should not be claimed as "actual savings."

Note: The claims reported in this section must have received their final determination. The denial must have been a direct result of actions or activities taken by the Carrier's SIU and reported during the same time period the claim received its final adjudication. The "Actual Savings" shall be the amount the Carrier would have paid had the claim not been denied, not the total billed amount.

Claims system edits **shall not** be reported as FWA "Actual Savings" unless the SIU detected an FWA issue that required an edit to be made, and the Carrier implemented the claim processing system edit as a result. The SIU may report annual savings for three consecutive years as a result. Evidence of the activity by the SIU must exist, and tracked within its case tracking system and

can be tied to an actual reported FWA cases. All reported FWA actual savings and the related case(s) must be appropriately documented and tracked to support the reported dollar amount, and written reports and the case files retained.

Actual savings should stem or result from current FWA related cases and SIU daily activities, such as SIU investigations, SIU related provider medical reviews/audits or hospital related audits, etc., whereby there is an alleged and documented FWA issue within the Carrier's SIU case tracking system.

Block 13 Prevented Loss – Only report dollar amounts associated with losses prevented on a pre-payment basis where an actual claim was not submitted as a result of SIU activity. The report must identify a quantifiable financial impact resulting from the direct actions or activity initiated by and completed by the SIU. The financial impact should be as a result of a change in behavior by a provider or an internal process improvement. The amount should be measured for a 12-month period only. Examples include:

a.) A change in the billing pattern resulting from SIU actions, and recorded for the lesser of the length of the scheme or 12 months from the resolution of the issue with the provider.

b.) A change resulting from the modification of internal policy, edit, or process because of actions taken or recommendations made by the SIU.

Note: An example of prevented loss is when the SIU uncovers a potential FWA and as a result of their investigation recommends an edit in the claims processing system that stops the provider payment. The amount of the stopped payment would be included in this category. Carriers would need to provide a tracked FWA case in the Carrier's case tracking system for such an activity.

IV. Law and Order

Block 14 Number of Criminal Convictions – The Carrier should report the number of criminal convictions that were a result of an SIU investigation that was referred to law enforcement or a regulatory/oversight agency; or that was the result of the SIU providing support to a law enforcement agency (other than OPM-OIG) whereby the Carrier was granted a restitution order or a notification identifying the Carrier as a victim on a criminal judgment.

Note: This definition includes "victim statements" received from the court system. While Carriers may not be able to track all cases through a conviction, a victim statement (whereby a Carrier receives a statement from a court naming the Carrier as a "victim" as a result of a court finding) is a positive indication that there was a conviction and the Carrier was impacted.

A restitution order would separately prompt reporting under the Recovery sections and possibly Identified Loss (if the amounts are not recovered).

V. Fraud Identification

Block 15 Prepayment Review – Only report the total number of providers the Carrier SIU placed on prepayment review within the calendar year as a direct result of a received FWA allegation.

Block 16 Fraudulent Schemes – Report areas in which you have found the most fraudulent behavior during the reporting period related to the FWA case notifications submitted to OPM-OIG.

Note: Medical examples: Billing for services that were never rendered, up-coding, misrepresenting services that were not medically necessary as medically necessary, misrepresenting non-covered treatments as covered, falsifying diagnoses, unbundling, waiving patient co-pays, coinsurances, or deductibles and over-billing the insurance Carrier.

Pharmacy examples: Doctor shopping, pill mills, forged prescriptions, ineligible member issues, etc.

This reported information helps OPM understand and develop appropriate action plans in response to the trends seen and the types of schemes the Carriers are identifying.

Block 17 Fraudulent Geographic Areas – Report what geographic area/region you have found the most fraudulent behavior during the reporting period.

Note: The standard geographic areas for reporting are Carrier-specific and are left to the discretion of the Carriers.

VI. Program Cost Evaluation

Block 18 FWA Program Costs – Report all related SIU Costs, including salaries, benefits for staffing, travel, and training, which are only related to your FEHB FWA program costs. If you contract any, all, or part of your SIU/ FWA FEHB Program function, you must provide the cost of the contracted program under "Vendor" and provide a separate summary listing all vendors and/or contractors and specific costs.

Note: This number should not be zero.

Block 19 Other Associated Costs of the FWA Program – Report all other related or associated costs, such as space, rent and related costs, proactive fraud detection software programs, costs of providing studies of potential FWA issues, costs associated with the Carrier PBM FWA component programs, other related subcontract provider FWA component, and any other funding provided for or in support of an FWA function.

Note: Costs included in "Program Cost" must not be included in this field.

Block 20 Return on Investment – (Dollars Recovered + Actual Savings via Claims Denied + Investigative Expenses Recovered) / Actual Fraud Expenses Incurred. Note: Carriers must have documentation to support this number. This number must be reported as a ratio and not a percentage.

(Example: Reported as $5 to $1. This ROI means your SIU returned $5 dollars for every $1 dollar spent on your FWA program).

Note:

- If savings are reported, corresponding FWA program costs must be reported.
- Program costs represent the expense of running an FWA program, such as salaries, benefits for staffing, travel, and training.

VII. Communication

Block 21 Best Practices – Describe in detail programs, processes, strategies, etc., that highlight your ability to prevent, limit, and capture instances of FWA. Please list any Proactive Fraud Detection Software the SIU or Carrier utilizes in support of detection and identification of FWA. If you are particularly proud of an SIU initiative, please share.

Block 22 If you would like to participate in the OPM-OIG FEHB Program Carrier Task Force Meetings – Please send an email to Scott Rezendes at Scott.Rezendes@opm.gov and list the contact (name, title, email, and phone number). You will be notified of the next meeting.