

## Attachment 2

### **Mandatory Information Sharing via Written Case Notifications and Referrals to OPM-OIG**

#### **Case Notifications**

FEHB Carriers are required to submit a written notification to OPM-OIG within 30 working days when there is a reportable FWA that has occurred against the FEHB Program. Potential FWA issue becomes reportable to the OIG if, after a preliminary review of the allegation and/or complaint, the Carrier takes an affirmative step to expand, further investigate, develop and/or close an allegation/complaint.

Exception to the above noted reporting requirements:

- Carriers reporting a patient harm case must further explain the relation to an FWA or other criminal violation(s);

Some examples of FWA reportable to the OIG include:

- the identification of emerging fraud schemes,
- internal fraud, waste, or abuse by Carrier employees, contractors, or subcontractors,
- fraud by providers who supply goods or services to FEHB Program members,
- fraud by individual FEHB Program members, and
- Carrier participation in class action lawsuits.

Carriers shall ensure that all evidence related to an FWA case including but not limited to checks issued in payment of claims, hard copy claims, explanation of benefits, investigative notes, emails, taped statements, written statements, original receipts, customer service call sheets, and original documents submitted in support of or in opposition to a claim submitted for reimbursement by a provider, member, or third party, are identified, collected, and preserved in order to be turned over to the OPM-OIG or any law enforcement agency requesting such information.

The format for case notifications and status updates can be found in **Attachment 3**.

Written notifications are generally expected to include

(but are not limited to) the following information:

- 1) Complete identification on file for the health care provider(s) or FEHB enrollee(s), including but not limited to full name(s), business name(s), address(es), telephone

- number(s), date(s) of birth, social security number(s) (if available), enrollee/member number(s), tax identification number(s), and universal provider identification number(s);
- 2) A comprehensive written description of the nature of the FWA;
  - 3) A written summary of the evidence the Carrier has reviewed which caused the Carrier, after a preliminary review, to suspect FWA may have occurred;
  - 4) A written analysis of any suspected fraudulent claims pattern, specific CPT, ICD-10, and other types of codes utilized in the scheme (ex: of 1900 billed services, 800 of them were not performed equating to 42% of the claims being false);
  - 5) How the case was identified (ex: internal source such as customer service, medical review staff, pre-certification, proactive computer software/analysis, or external source such as enrollee complaint, anonymous letter, Federal Bureau of Investigation, National Health Care Anti-Fraud Association (NHCAA), or law enforcement Requests for Investigative Assistance Subpoena, etc.);
  - 6) Total FEHB Program Billed and Paid Amount for a Three Year Time Period (summary exposure, not detailed claim information)
  - 7) Fraud Type Indicator: Examples include:
    - Billing for Services Not Rendered
    - Ineligible Spouse
    - Up coding
    - Unbundling
    - Misrepresentation of Services
    - Medically Unnecessary Services
    - Stolen Health Benefit Card
    - Forged Prescription
    - False Application (SF-2809)
    - False Diagnosis
    - Waiver of Co-pay
    - Altered Prescription
    - Identity Theft
    - Other
  - 8) Provider Type Indicator: An identification to include:
    - Ambulance
    - Billing Company
    - Chiropractor
    - Dentist
    - Doctor Shopper
    - DME
    - Home Health
    - Hospital
    - Laboratory
    - Member
    - Nursing Home
    - Nurse Practitioner
    - Outpatient Surgery Center
    - Pharmacy
    - Physical Therapy
    - Physician,
    - Physician Asst.
    - Psychiatric
    - Other
  - 9) If a provider, whether the provider is an in-network/participating or non-network/non-participating provider;
  - 10) If FEHB Program member or family member, the Carrier should provide the member's employer information and/or a copy of the members SF-2809 Health Benefit Election Form;
  - 11) Carrier contact information for specific SIU or other Carrier personnel responsible for notification;
  - 12) Any specific knowledge of patient harm that could be a result of the suspect activity;

- 13) If applicable, contact information for any Federal and/or State law enforcement/oversight agency, investigator, and/or attorney with whom the Carrier is coordinating its investigation; and
- 14) If the Carrier has provided a referral to another law enforcement/oversight agency, a copy of the referral is to be included and made available with the case notification to OPM-OIG.

### **OPM-OIG Response to Case Notifications**

Upon receipt of a case notification, OPM-OIG may share information from the case notification with other FEHB Carriers potentially affected by the suspected fraud. If the Carrier making the notification has reason to believe that such information sharing may jeopardize an on-going investigation conducted by another law enforcement agency, the Carrier should so inform the OIG in the initial case notification.

During the time the Carrier is waiting for an OIG response to the case notification, the Carrier should continue developing and investigating the allegations and continue to report updated findings to the OIG. If the Carrier has not received a response from the OIG within 90 days, the Carrier may proceed under the assumption that the OIG has declined to investigate.

When the OIG declines to investigate, the Carrier shall proceed with its investigation and no further communication with the OIG about the case is required, unless a triggering event occurs which warrants a status update. Triggering events are:

- a. If the Carrier develops significant new information and believes OPM-OIG should reconsider the declination; the Carrier shall submit a status update that provides a brief summary of the new information;
- b. If a case declined by OPM-OIG is subsequently accepted for investigation by another Federal, state and/or local law enforcement agency, the Carrier shall submit a Status Update to OPM-OIG advising OPM-OIG of the identity of the investigating law enforcement agency;
- c. If a case declined by OPM-OIG is subsequently accepted for prosecution at the Federal level, such as by a United States Attorney's Office or U.S. Department of Justice;
- d. If the Carrier enters into a settlement agreement with \$20,000 or more of FEHB program funds<sup>1</sup>. (See section below: Notification of Carrier Settlement Agreements.)

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<sup>1</sup> If the FEHB identified loss is \$20,000 or more, this would be a triggering event to provide information or a status update to the OPM-OIG prior to settlement approval.

### **Status Updates: Information Sharing After Initial Case Notification**

To further facilitate information sharing between the Carriers and OPM-OIG, in certain instances specifically defined below, Carriers shall provide OPM-OIG with status updates on cases that OPM-OIG has indicated that it is monitoring or investigating the FWA issue. The Status Updates shall:

- 1) be in writing;
- 2) follow the same general format as the initial notification;
- 3) clearly indicate that it is a status update rather than an initial notification;
- 4) provide a brief summary of new information; and
- 5) be sent to either the assigned OPM-OIG agent or reviewing supervisor as indicated in the OPM-OIG response.

The Carrier shall submit a status update to OPM-OIG in the following instances:

- 1) The Carrier develops significant new information;
- 2) The Carrier determines that the allegations have no merit and/or no false or fraudulent activity took place as alleged;
- 3) When the OPM-OIG specifically requests a status update within a specified timeframe (typically 90 days);
- 4) The Carrier closes their investigation or inquiry and the OIG has either accepted, requested a referral, or advised the Carrier it is Monitoring its case;
- 5) The Carrier wishes to proceed with administrative debt collection, recovery or settlement of an FEHB Program overpayment in reference to the section below “Carrier Settlement Agreements.”

### **Referral Process**

When OPM-OIG requests a referral based on a case notification or status update, the Carrier shall submit a written referral as defined below within 90 days of OPM-OIG’s request for referral.

If the Carrier is unable to provide the full referral within 90 days, the Carrier is required to provide monthly status updates in writing beginning on the 91<sup>st</sup> day. The status updates shall indicate not only the current status of the case, but shall also provide the OPM-OIG with an estimated date on which the OPM-OIG will receive the full referral.

If the Carrier determines the allegation(s) have no merit and/or no false or fraudulent activity took place as alleged at any point after the OPM-OIG has requested a referral the Carrier shall promptly provide the OIG with an update explaining the Carrier's final conclusion/disposition of the allegations(s) in lieu of the requested referral.

Referrals to OPM-OIG must be in writing and shall include, but are not limited to, the following:

- 1) Complete identification on file for the suspected health care provider(s) or member(s), including name(s), business name(s), address(es), telephone number(s), dates of birth, social security number(s) if available, enrollee/member identifying number(s) and a copy of the member SF-2809 form, tax identification number(s), participating network/non-participating non-network provider status, and universal provider identification number(s);
- 2) A comprehensive written description of the nature of the suspected FWA;
- 3) A written summary of the evidence the Carrier has reviewed which has caused the Carrier to suspect FWA has occurred;
- 4) A written analysis of any suspected fraudulent claims pattern, specific CPT, ICD-10, and other types of codes utilized in the scheme (i.e., of 1900 billed services, 800 of them were not performed equating to 42% of the claims being false);
- 5) How the case was identified (i.e., internal source such as customer service, medical review staff, pre-certification, proactive computer software usage/analysis, etc., or external source such as enrollee complaint, anonymous letter, FBI, NHCAA, etc.);
- 6) At least three examples of suspected false claims including copies of the submitted claim(s) (electronic or hard copy), explanation of benefits, and copies of the front and back of any issued check or automated clearing house for payment to the suspected provider;
- 7) A copy of any Carrier specific medical policy statements that guides the Carrier in processing claims related to the suspected fraudulent or misrepresented claims submitted by the subject provider;
- 8) A three year claims history, unless otherwise specified by OPM-OIG for the provider or enrollee in electronic format using the "Standard OIG Format";
- 9) Copies of any and all relevant or supporting documents obtained or produced by the Carrier or the Carrier's SIU during the preliminary investigation (i.e., internal provider audits, medical review findings, Carrier cease and desist letters, medical records, provider applications, network provider agreements, provider relation's contacts, customer service records of contact, patient surveys, interview reports, Reports of Investigation, etc.);
- 10) Any and all research performed, including any background information obtained via investigative databases, information found on the internet, and/or other medical procedure research performed;
- 11) Any and all State and Federal laws researched that are relevant to the allegations;
- 12) Any specific knowledge of patient harm that could be a result of FWA;
- 13) Contact information for the Carrier personnel or SIU investigator responsible for preparing the referral; and,

- 14) If applicable, contact information for the Federal and/or State law enforcement/oversight agency, investigator, and/or attorney with whom the Carrier is coordinating its investigation.

### **Carrier Settlement Agreements**

Reference is made to the provisions in this letter concerning mandatory information sharing via written case notifications to OPM-OIG, specifically the requirement to notify OPM-OIG of all cases where reportable FWA has occurred. No case involving recovery of FEHB Program overpayments which result from a reportable FWA should reach the settlement stage without prior communication with OPM-OIG regarding the allegations. This does not include subrogation and reimbursement settlements reached in accordance with the FEHB contract clause Section 2.5 Subrogation and Reimbursement.

In cases where OPM-OIG has requested a referral from the Carrier and/or has advised the Carrier that OPM-OIG has an open investigation, the Carrier may not enter into a Settlement Agreement for the recovery of FEHB Program funds without communicating with and obtaining authorization from OPM-OIG.

In cases where OPM-OIG has advised a Carrier that OPM-OIG is monitoring the allegations, prior to recovering FEHB Program funds, the Carrier shall send OPM-OIG a status update to advise OPM-OIG of the Carrier's intent to proceed with a settlement agreement, or any other form of debt collection or recovery.

In cases that OPM-OIG has declined, and the total FEHB Program potential loss is less than \$20,000, the Carrier may proceed with any resolution the Carrier deems appropriate, to include pursuit of a settlement agreement. The Carrier is reminded to report any such recoveries to OPM on their annual FWA Reports.

When a Carrier (as a sole participant<sup>2</sup>) resolves claims with any type of health care services provider or manufacturer for recovery of overpayments which resulted from apparent or suspected false, fictitious, fraudulent, or misleading claims submitted to the Carrier AND at least \$20,000 of the identified overpayments is money paid through the FEHB program, then the Carrier must:

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<sup>2</sup> The requirement to include specific language in settlement agreements does not apply to Class Action Lawsuits, because the Carrier is not the "sole participant" in such litigation.

1. Notify the OPM-OIG and provide a five (working) day timeframe for the OIG to notify the Carrier if they determine whether they agree with the terms of the settlement, and
2. not include a confidentiality clause in the settlement agreement which restricts the Government's access to the agreement,

Language for the settlement agreement: *“This settlement agreement in no way waives the rights of the United States Government under any Federal statute to pursue civil and/or criminal fines, penalties, recoveries, etc., for claims submitted to the Carrier under the Federal Employees Health Benefits (FEHB) Program.”* The requirement to include specific language in settlement agreements does not apply to Class Action Lawsuits, because the Carrier is not the “sole participant” in such litigation.

If a Carrier enters into negotiations with a provider such as those described above and there were monies identified paid through the FEHB Program, but the FEHB Program overpayments were excluded from the final settlement agreement for any reason, the Carrier must send notification to the OPM-OIG without delay.

### **Response to OPM-OIG Requests for Information**

Upon request, all Carriers must furnish the OPM-OIG with FEHB claims information and supporting documentation relevant to open criminal, civil, or administrative investigations. Such request will be transmitted to Carriers by “OPM/OIG Exposure Data Request Form” (Attachment 4) and /or written correspondence on agency letterhead.

- 1) In response to exposure requests, Carriers must furnish a claims history via electronic media for the subject of the exposure request. The scope of the claims history required will be specified by OPM-OIG Special Agent on the exposure request.
- 2) Absent extenuating circumstances, Carriers are expected to furnish requested data within 30 calendar days from the date of the request.
- 3) Unless directed otherwise, Carriers must comply with the standard data format established by OPM-OIG. A list of the specific data fields required is attached.
- 4) Any spreadsheets or documents containing sensitive or proprietary data forwarded to OPM-OIG by the Carrier via email must be encrypted.
- 5) Any sensitive or proprietary data sent via mail or delivery service should, at a minimum, be password protected.
- 6) Any request from OPM-OIG marked “Confidential” or similar language, **MUST NOT BE SHARED** with Private Lines of Business, Local Carriers, or the Public. Contact the OIG Agent/Analyst directly before engaging in any investigative activities.

During the course of an investigation, OPM-OIG may require, and Carriers shall provide additional documentation (i.e. hard copy claims, checks, correspondence, etc.) and/or investigative support in the form of data analysis, prosecutorial witnesses, discovery documentation, medical expertise, provider applications/contracts, etc.

**OPM-OIG Contact Information for Notifications:**

Please send all case notifications to the OPM/OIG designated Secure File Transport Protocol (SFTP ) server site. In the absence of SFTP, please send all case notifications to:

[OIGCaseNotifications@opm.gov](mailto:OIGCaseNotifications@opm.gov)

If you want to discuss any FWA guidance issue related to the enclosed guidelines please contact:

Scott A Rezendes, Special Agent in Charge

Office of Personnel Management – OIG

Field Operations

Email: [scott.rezendes@opm.gov](mailto:scott.rezendes@opm.gov).

If your Carrier needs to set up the SFTP to securely transfer data and case notifications to the OIG, please contact Assistant Inspector General For Investigations Drew Grimm at

[drew.grimm@opm.gov](mailto:drew.grimm@opm.gov).