

FUNCTION: Management of Human Resources

TITLE: False Claims Act

SCOPE: Exeter Health Resources, Inc. and its Affiliates

DEVELOPED BY: Administration

APPROVED BY: _____

REVIEWED BY: _____

EFFECTIVE DATE: 6/2008

ORIGINAL DEVELOPED DATE: 12/2006

REVIEWED DATE(S): 3/2007, 6/2008, 1/2011

REVISION DATE(S): 3/2007, 6/2008

PURPOSE:

As part of the federal Deficit Reduction Act of 2005, all healthcare providers receiving Medicaid funding over \$5,000,000 annually are required to inform staff, contractors, and agents about (1) Federal and State False Claim Acts, (2) protections as whistleblowers, and (3) the organizations' policies and procedures for detecting and preventing fraud, waste and abuse. This policy serves to inform employees, contracted staff, and agents the details, remedies and whistleblower protections associated with the Federal and State False Claims Act as well as remind employees and inform agents of the Exeter Health Resources and affiliates Compliance Program.

DEFINITIONS:

1. "Abuse" generally includes provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost, or in reimbursement for services that are above those actually rendered, or that are not medically necessary.
2. "Fraud" means an intentional deception or misrepresentation to achieve an unauthorized benefit.
3. The terms "knowing" and "knowingly" generally means that a person, with respect to information;
 - has actual knowledge of the information;
 - acts in deliberate ignorance of the truth or falsity of the information; or
 - acts in reckless disregard of the truth or falsity of the information,and no proof of specific intent to defraud is required.
4. "Claim" includes any billing to the Medicare, Medicaid, or other state of federal programs.
5. "Person" means any natural person or organization.
6. Generally speaking, a claim submitted to the Government with false or fraudulent information is considered a false claim. Some classic examples of false claims include: billing for having provided tests that were never actually performed; billing for services that are medically unnecessary; or billing for services that are not appropriately documented.

BACKGROUND:

I. FEDERAL FALSE CLAIMS ACT

The Federal False Claims Act became law in 1863, during the Civil War, when the government needed a tool to deal with the fraudulent billing practices of the suppliers of horses and equipment to the Union Army. Today the False Claims Act is the primary enforcement mechanism employed by the Government to combat healthcare fraud. The False Claims Act allows the government to bring civil or criminal actions in cases where false claims are made with actual knowledge, reckless disregard, or conscious disregard for the falsity of the claim. The penalties for such false claims can be quite substantial.

Illegal Actions under the False Claims Act

Any person who –

- (1) knowingly presents, or causes to be presented, to the Government a false or fraudulent claim for payment;
- (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
- (3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;

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- (4) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

may be liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person. Since violations of the law are also felonies, those responsible may also be prosecuted and subject to criminal penalties. The government decides in each case whether to pursue civil or criminal remedies based on the situation.

Qui Tam and Whistleblower Provisions

The Federal False Claim Act includes an important provision that allows private citizens to file a civil lawsuit on behalf of the government and to request that the government join in the suit. In return, the citizen may share a percentage of any recovery or settlement provided to the government. These types of actions are also referred to as 'qui tam' ("who as well") actions, and the individual who brings forth evidence of the offense is considered a "whistleblower".

The False Claims Act provides protection to employees who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against by his or her employer because of lawful acts done by the employee in furtherance of a qui tam action, including investigation for, initiation of, testimony for, or assistance in a qui tam action filed. The Act entitles employees to relief to "make them whole", including restatement with the same seniority status they would have had but for the discrimination, twice the back pay, interest on back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

II. MEDICAID FRAUD AND FALSE CLAIMS – NH RSA 167:58-67e

In addition to the Federal False Claims Act, New Hampshire also has a false claims act that has both civil and criminal exposure for violators. The following are some of the general elements.

Prohibited Acts under the NH False Claims Act

No person shall:

- Knowingly make, present or cause to be made or presented, any false or fraudulent claim for payment for any good, service, or accommodation.
- Knowingly make, present, or cause to be made or presented, any false or fraudulent statement or representation for use in determining rights to benefits or payments;
- Knowingly make, present, or cause to be made or presented, any false or fraudulent report or filing which is or may be used in computing or determining a rate of payment for goods, services, or accommodations;
- Knowingly make, present, or cause to be made or presented, any claim for payment, for any good, service, or accommodation for which payment may be made, which is not medically necessary in accordance with professionally recognized standards;
- Knowingly make or cause to be made, any false or fraudulent book, record, document, data, or instrument, which is required to be kept as documentation;
- Knowingly make or cause to be made, with intent to defraud, any false or fraudulent statement or record, document, data, or instrument to any law enforcement officer, including any employee or agent of the attorney general, or the department of health and human services, in connection with any audit or investigation involving any claim for payment or rate of payment for any good, service, or accommodation;
- Destroy or conceal or cause to be destroyed or concealed any book, record, document, data, or instrument required to be kept or which is kept as documentation for any good, service, or accommodation;
- Knowingly make, present, or cause to be made or presented, any claim for payment which may only be furnished by a person who is licensed by an appropriate licensing authority, and the person who furnished the good, service, or accommodation:
 - (1) Was not licensed by the appropriate licensing authority; or
 - (2) Was licensed by the appropriate licensing authority but such license was obtained through a misrepresentation of material fact, including cheating on any examination required for licensing;
- Knowingly solicit or receive any remuneration, including any bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind, in return for purchasing, leasing, ordering, or arranging for or recommending the purchase, lease, or ordering of any good, service, accommodation or facility, or knowingly offer or pay any remuneration, to induce a person to purchase, lease, order, or arrange for or recommend the purchase, lease, or ordering of any good services, or accommodation;

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- Knowingly charge, solicit, accept or receive, in addition to any amount otherwise required to be paid, any gift, money, donation, or other consideration either as a precondition of admitting or expediting the admission of a patient to a hospital, skilled nursing facility, or intermediate care facility.

Remedies

Any person or organization who violates any provision of this section shall be guilty of a felony. The penalties for violating the NH Medicaid Fraud and False Claims Act may include a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages that the state sustains, in addition to potential criminal prosecution.

Whistleblower Protection Under the NH False Claims Act

Protection is available under NH law (RSA 275-E), the “Whistleblowers’ Protection Act” to employees who report violations of law, such as the False Claims Act, or who refuse to execute illegal directives, or who participate in governmental investigations or hearings.

An employer cannot discharge, threaten, or discriminate against any employee who:

- In good faith, reports or causes to be reported a matter that the employee has a reasonable basis to believe is a violation
- Participates in an investigation, hearing, or inquiry conducted by any government entity or any court
- Refuses to execute a directive that violates a law

The protections above are available to employees only if they first brought the alleged violation to the attention of a person within their organization with supervisory authority, unless the employee believes reporting to the employer is futile.

III. POLICY STATEMENT- COMPLIANCE PROGRAM

Exeter Health Resources and its affiliates are committed to conducting their businesses ethically and in conformance with all federal and state laws, regulations, and the Code of Conduct. To support this commitment, the Compliance Program was adopted in 1997. The intent of the Compliance Program is to comply with applicable federal and state standards, decrease the risk of fraud and abuse, as well as reaffirm the key organizational themes of quality, customer services, and ethical business practices.

For the purposes of detecting and preventing fraud, waste and abuse, the Compliance Program consists of the following key elements:

- (1) Policies and procedures, including the Code of Conduct
- (2) Compliance Officer and Compliance Committee
- (3) Open lines of communication (e.g. Compliance Hotline)
- (4) Training and education
- (5) Auditing and monitoring
- (6) Response to detected deficiencies, and
- (7) Enforcement of disciplinary standards

If at any time you suspect fraud or abuse is occurring within the organization for which you work, you should report the concern immediately to your Compliance Officer or through the Compliance Hotline, so that the matter can be investigated and rectified if necessary.

A strict non-retaliation policy exists to protect any employee, contracted employee, or medical staff member who, in good faith, reports a possible violation of these laws, organizational policies and procedures, or the Code of Conduct.

REFERENCES:

1. NH Medicaid Fraud and False Claims, RSA167:58 to 167:61-e
2. NH Whistleblowers’ Protection Act, RSA 275-E
3. Federal False Claims Act, 31 U.S.C 3729-3733
4. Deficit Reduction Act, Section 6033
5. Non-Retribution/Non-Retaliation Policy EHR(CC).013