



Policy Title: The Prevention and Detection of Health Care Fraud, Waste and Abuse	Policy # EH A3002
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Purpose:

- I. To help our employees, agents and contractors understand the methods to prevent and detect fraud, waste and abuse, including the basic provisions of the federal and state laws related to the submission of false claims for reimbursement and the right of individuals to report violations of these laws.

Definitions:

- I. An “agent” or a “contractor” includes any contractor, subcontractor, agent or other persons who furnishes, or otherwise authorizes the furnishing of, health care items or services, performs billing or coding functions, or is involved in monitoring of health services provided by Essentia Health.

Policy:

Essentia Health is committed to providing services in manner that meets the highest ethical standards and is in compliance with applicable laws, regulations and internal policies. Essentia Health will provide detailed information to its employees, agents and contractors regarding federal and state false claims laws, penalties, and non-retaliation protections, as well as Essentia Health’s Organizational Integrity & Compliance Program and its policies for preventing and detecting fraud, waste and abuse.

This information will be made available to employees, agents and contractors by posting a copy of this policy on the Essentia Health intranet, including the information in the Essentia Health Code of Integrity and on Essentia Health’s public vendor website at http://www.essentiahealth.org/for_vendors.html. In addition, employees will receive additional information through the compliance education program. Agents and contractors will be responsible for the dissemination of this information to its employees who provide services to Essentia Health.

I. Essentia Health’s Organizational Integrity & Compliance Program

Essentia Health’s Organizational Integrity & Compliance Program (“Program”) is a key component in our strategy to prevent and detect fraud, waste and abuse throughout our health system. Refer to the Program’s compliance plan and documents, as well as related policies and procedures for more information on the Program. Employees, agents and contractors are encouraged to contact their supervisor, administrative contact or regional/system compliance leader for additional information.

Employees, agents and contractors are required to immediately report any actual or potential ethical or compliance concerns immediately. Reports may be made to:

- Your supervisor or Essentia Health administrative contact;
- Your management team;
- Your Regional/Entity Compliance office;
- Essentia Health's Chief Compliance Officer;
- Essentia Health's General Counsel or
- Via Essentia Health's Integrity Action Line: Reports will not be traced and confidentiality of the reporter will be preserved up to the limits of the law and to the degree possible given the need to fully investigate the reported concern. Anonymous reports can be made. Reports can be made via phone at 1-800-711-5146 or on-line at <https://essentiahealth.alertline.com/gcs/welcome>

All reported concerns will be taken seriously and will receive prompt attention.

Essentia Health has a non-retaliation policy. Any retaliatory or discriminatory action against an employee, agent or contractor who reports actual or potential concerns in good faith will not be tolerated. If you believe you have been subject to retaliatory or discriminatory action because of reporting a compliance or ethics concern, please report the action immediately to any of the persons listed above.

II. Federal and State Laws

The federal and state governments have also taken steps to prevent and detect fraud, waste and abuse in the U.S. health system.

A. Federal Laws

1. The Federal False Claims Act ("FCA")

The FCA is a federal law aimed at discouraging and preventing fraud, waste and abuse in government programs, including Medicare, Medicaid and other federally-funded health care programs. The law covers claims and payments made by the U.S. Government or its contractors.

The FCA establishes liability for any person who knowingly:

- (1) submits, or causes another to submit, a false or fraudulent claim for payment;
- (2) makes, or causes to be made, a false statement or record in connection with a claim for payment; or
- (3) improperly avoids or decreases an obligation to repay the government (includes refund of overpayments).

The FCA specifically defines 'knowingly' to mean that a person or entity:

- (1) has actual knowledge of the false information;
- (2) acts in deliberate ignorance of the truth or falsity of the information; or
- (3) acts in reckless disregard of the truth or falsity of the information.

No proof of a specific intent to defraud the government is required.

An individual or entity that violates the FCA, may be liable for up to three times the government's damages plus per claim civil monetary penalties and may be excluded from participating in federally funded programs, such as Medicare and Medicaid.

The FCA allows any person with actual knowledge of allegedly false claims to file a lawsuit on behalf of the U.S. Government. Such persons are called "whistleblowers". If the government decides that the lawsuit has merit, the U.S. Department of Justice may choose to participate in the case. If the government chooses not to participate, the whistleblower can continue with the lawsuit on his or her own.

If the lawsuit is successful, the whistleblower may receive an award ranging from fifteen to thirty percent of the amount recovered. The whistleblower may also be entitled to reasonable expenses, such as attorney fees. If a court finds that the whistleblower planned or initiated the false claims, the award, if any, may be decreased. If the whistleblower is convicted of crimes related to the false claims, no award will be given.

The FCA contains important protections for whistleblowers who file claims in good faith. Depending on the circumstances, these protections may not apply to whistleblowers who file frivolous claims, file claims in bad faith or were directly involved in certain aspects of the claim. Retaliatory or discriminatory conduct against an employee who files a FCA lawsuit may result in additional relief, including: reinstatement of employment with comparable seniority, two times the amount of any back pay plus interest, and compensation for any special damages sustained, including litigation costs and attorneys fees.

2. The Program Fraud Civil Remedies Act of 1986 (“PFCRA”)

The PFCRA provides administrative remedies for making false claims and false statements in connection with claims to designated federal agencies, including the U.S. Department of Health and Human Services. These penalties are separate from and in addition to any liability that may be imposed under the FCA.

The PFCRA imposes liability on people or entities who file a claim that they know or have reason to know:

- (1) is false, fictitious, or fraudulent;
- (2) includes or is supported by any written statement that contains false, fictitious, or fraudulent information;
- (3) includes or is supported by a written statement that omits pertinent information, and the person or entity submitting the statement has a duty to include the omitted fact; or
- (4) is for payment for property or services not provided as claimed.

The remedies include an assessment of twice the amount of any unlawful claims, per claim civil monetary penalties and exclusion from government-funded healthcare programs.

3. The American Recovery and Reinvestment Act of 2009 (“ARRA”)

ARRA is a federal law that is designed to prevent the misuse of stimulus package funds and extends “whistleblower” protections to employees who reasonably believe they are being retaliated against for reporting misuse of ARRA funds by a non-federal employer. These penalties are separate from and in addition to any liability that may be imposed under the FCA.

ARRA prohibits retaliation against a non-federal employee who discloses information that the employee reasonably believes constitutes evidence of:

- (1) gross mismanagement of a contract or grant relating to stimulus funds;
- (2) gross waste of stimulus funds;
- (3) substantial and specific danger to public health or safety related to implementation of stimulus funds;
- (4) abuse of authority related to implementation or use of stimulus funds; or
- (5) violation of law, rule, or regulation related to a contract or grant relating to stimulus funds.

The above allegations must have been reported to at least one of the following to be granted possible protection: a person with supervisory authority over the employee (or another employee of the employer who has the authority to investigate, discover or terminate misconduct); an Office of Inspector General; the Recovery Accountability and Transparency Board; the Comptroller General; a member of Congress; a State or Federal regulatory or law

enforcement agency; a court or grand jury; or a Federal agency head or his/her representatives. Such disclosures may be made during the course of the employee's duties.

Retaliatory conduct against a person protected under the ARRA provisions may result in a federal agency order for reinstatement, back pay, employment benefits, compensatory damages and/or attorney fees.

4. **Other Federal Laws**

Federal law also contains criminal sanctions for false claims and statements that may be applicable to identified instances of health care fraud.

B. **State Laws**

1. **Idaho**

Idaho has a False Claims Act ("IFCA") that specifically provides for sanctions for knowingly:

- (1) submitting a claim that is incorrect;
- (2) making a false statement in any document submitted to the State;
- (3) submitting a claim for a medically unnecessary service;
- (4) violating a condition of the provider agreement; or
- (5) failing to repay any identified overpayments.

Penalties under the IFCA include civil monetary penalties, referral to the Medicaid Fraud Unit and exclusion from the State's health programs, including Medicaid.

The State of Idaho has not adopted any false claims acts or statutes that contain qui tam or whistleblower provisions that are similar to those found in the federal FCA.

2. **Michigan**

The Michigan Medicaid False Claims Act ("MMFCA") is a state law aimed at discouraging and preventing fraud, kickbacks and conspiracies in the Michigan Medicaid program.

The MMFCA establishes liability for any person who knowingly presents or causes to be presented a false or fraudulent claim for payment to Michigan's Medicaid program. A "claim" means an attempt to cause the Michigan's Medicaid program to make a payment. The term "knowingly" is defined as:

- (1) being aware that his or her conduct is substantially certain to cause the payment of a Medicaid benefit;
- (2) should be aware that his or her conduct is substantially certain to cause the payment of a Medicaid benefit; and
- (3) does not include errors or mistakes, unless there is a persistent tendency to use inaccuracies.

Healthcare providers who violate the MMFCA may be subject to both criminal and civil penalties. Violation of the MMFCA is a felony punishable by four years or less in prison, or a fine of \$50,000 or less, or both. Civil monetary penalties are equal to the full amount received plus triple damages. The provider may also be excluded from participating in the Michigan Medicaid Program.

The MMFCA allows any person to file a civil lawsuit to recover losses to the state of Michigan. Such persons are called "whistleblowers". The whistleblower must file his or her lawsuit. If the government decides that the lawsuit has merit, the Michigan Attorney General may choose to participate in the case. If the government chooses not to participate, the whistleblower can continue with the lawsuit on his or her own.

If the lawsuit is successful, the whistleblower may receive an award ranging from fifteen to thirty percent of the amount recovered. If a court finds that the whistleblower actively participated in the false claims, the award, if any, may be decreased. If the whistleblower is convicted of crimes related to the false claims, no award will be given. If the court finds that the action brought by the whistleblower was frivolous, the court may fine the whistleblower up to \$10,000.

The MMFCA contains important protections for whistleblowers who file claims in good faith. Depending on the circumstances, these protections may not apply to whistleblowers who file frivolous claims, file claims in bad faith or were directly involved in certain aspects of the claim. Retaliatory or discriminatory conduct against an employee who either files under the MMFCA or cooperates in a MMFCA lawsuit may result in additional relief, including: reinstatement of employment, back pay and compensation for costs or damages.

3. **Minnesota**

a. The Minnesota False Claims Act ("MFCA")

The MFCA is a state law aimed at discouraging and preventing fraud, waste and abuse in State and local government programs, including the Minnesota Medicaid program.

The MFCA establishes liability for any person who knowingly:

- (1) presents or causes to be presented a false or fraudulent claim for payment;
- (2) makes or uses or causes to be made a false statement/record or claim for payment;
- (3) conspires to make a false statement/record or claim for payment;
- (4) returns less money or property than owed to the government;
- (5) makes false representations related to monies/property owed;
- (6) makes or uses or causes to be made a false statement/record to conceal, avoid or decrease an obligation to pay money or property to the government.

The term "knowingly" is defined as:

- (1) has actual knowledge of the information;
- (2) acts in deliberate ignorance of the truth or falsity of information; or
- (3) acts in reckless disregard of the truth or falsity of information.

No proof of specific intent to defraud is required.

The MFCA specifically limits liability for:

- (1) mere negligence, inadvertence or mistake;
- (2) for certain acts committed by a non-management employee; and
- (3) when an entity repays the false claims within 45 days of a report of the false claim to the entity's compliance office.

Healthcare providers who violate the MFCA may be subject to civil penalties. Violation of the MFCA may result in civil monetary penalties equal to the full amount received plus triple damages.

The MFCA allows individuals to file a civil lawsuit to recover losses to the state of Minnesota. Such persons are called "whistleblowers". The whistleblower must file his or her lawsuit. If the government decides that the lawsuit has merit, the prosecuting attorney may choose to participate in the case. If the government chooses not to participate, the whistleblower can continue with the lawsuit on his or her own.

If the lawsuit is successful, the whistleblower may receive an award ranging from fifteen to thirty percent of the amount recovered, along with reasonable costs and attorney fees. If a court finds that the whistleblower actively participated in the false claims, the award, if any, may be decreased. If the whistleblower is convicted of crimes related to the false claims, no award will be given.

The MFCA contains important protections for whistleblowers who file claims in good faith. Depending on the circumstances, these protections may not apply to whistleblowers who file frivolous claims, file claims in bad faith or were directly involved in certain aspects of the claim. Retaliatory or discriminatory conduct against an employee who either files under the MFCA or cooperates in a MFCA lawsuit may result in additional relief, including: reinstatement of employment, two times the amount of any back pay plus interest and compensation for any special damages sustained.

b. Minnesota Medicaid Fraud Statute

Minnesota also has a Medicaid Fraud Statute that specifically provides sanctions for false claims and false statements in connection with the provision of medical services reimbursed by the State. These laws provide for both monetary and administrative sanctions, including exclusion from the Medicaid program.

c. Minnesota Whistleblower Protection Law

Minnesota has a whistleblower protection law that prohibits retaliation or discrimination against employees who report in good faith:

- (1) violations of any federal or state law or regulation or
- (2) a situation in which the quality of care provided by a health care facility or provider violates established standards and poses a potential risk to public health or safety.

Employees who seek protection under this law may be eligible for reinstatement, back pay, restoration of lost service credit, compensatory damages and removal of adverse employment records from their permanent record.

4. **North Dakota**

North Dakota currently does not have a state False Claims Act.

5. **Wisconsin**

a. The Wisconsin False Claims ("WFCA")

The WFCA is a state civil law aimed at discouraging and preventing fraud, waste and abuse in state medical assistance programs, including Wisconsin's Medicaid Program.

The WFCA prohibits any person from knowingly:

- (1) presenting (or causing to be presented) a false claim;
- (2) making or using (or causing to be presented) a false record or statement to obtain approval for or payment of a false claim;
- (3) conspiring to defraud the State by obtaining allowance or payment of a false claim for medical assistance;
- (4) making or using (or causing 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 Medical Assistance programs; or
- (5) benefiting from the submission of a false claim for Medical Assistance, knowing that the claim is false, and failing to disclose the false claim to the State within a reasonable time after the person becomes aware that the claim is false.

Healthcare providers who violate the WFCA may be subject to civil penalties. Violation of the WFCA may result in civil monetary penalties up to three times the amount paid for each claim that is determined to be false plus an additional civil monetary penalty.

The whistleblower must file his or her lawsuit. If the government decides that the lawsuit has merit, the Wisconsin Attorney General may choose to participate in the case. If the government chooses not to participate, the whistleblower can continue with the lawsuit on his or her own.

If the lawsuit is successful, the whistleblower may receive an award of up to thirty percent of the amount recovered, along with reasonable costs and attorney fees. If a court finds that the whistleblower actively participated in the false claims, the award, if any, may be reduced.

The WFCFA contains important protections for whistleblowers who file claims in good faith. Retaliatory or discriminatory conduct against an employee who either files under the WFCFA or cooperates in a WFCFA lawsuit may result in additional relief, including: reinstatement of employment, two times the amount of any back pay plus interest and compensation for any special damages sustained.

b. The Wisconsin Medicaid Fraud Statute ("WMF")

The WMF is a state criminal law allowing for penalties related to fraud in State medical assistance programs, including Wisconsin's Medicaid Program.

The WMF prohibits any person from:

- (1) knowingly and willfully making or causing to be made a false statement or misrepresentation of a material fact in a claim for Medicaid benefits or payments;
- (2) knowingly and willfully making or causing to be made a false statement or misrepresentation of a material fact for use in determining rights to Medicaid benefits or payments;
- (3) having knowledge of an act affecting the initial or continued right to Medicaid benefits or payments;
- (4) having knowledge of an act of concealing or failing to disclose an act affecting the initial or continued right to Medicaid benefits or payments with an intent to fraudulently secure Medicaid benefits or payments for a greater amount or quantity than is due or when no benefit is authorized;
- (5) making a claim for Medicaid benefits or payments for the use or benefit of another, and after receiving the benefit or payment, knowingly and willfully converting it or any part of it to a use other than for the use and benefit of the intended person.

Anyone found guilty of the above is convicted of a felony and may be imprisoned for up to six years, and fined not more than \$25,000, plus three times the amount of actual damages.

c. The Wisconsin Health Care Worker Protection Statute ("WHCPS")

The WHCPS also protects health care workers who disclose any of the following to an appropriate individual or agency:

- (1) information that a health care facility or provider has violated any state law or rule or federal law or regulation;
- (2) a situation in which the quality of care provided by the health care facility or provider, or by an employee of, violates established standards and poses a potential risk to public health or safety.

The health care facility or provider cannot take disciplinary action against an individual who reports the above in good faith. A health care facility or provider who violates this statute will be subject to not more than \$1,000 for a first violation. There are additional penalties for repeated violations.

References:

The American Recovery and Reinvestment Act of 2009 (Public Law P111 – 5 §1553)
Deficit Reduction Act of 2005 (Public Law 109 – 171)
Federal False Claims Act (31 U.S.C. §§ 3729-3733)
Idaho False Claims Act (IC §56-209h(6))
Program Fraud Civil Remedies Act (31 U.S.C., §§ 3801-3811)
Michigan Medicaid False Claims Act (Mich. Comp. Laws Ann. §§ 400.601-400.613)
Minnesota False Claims Act (Minnesota Statutes §§15C.01-15C.13)
Minnesota Medicaid Fraud Statute (Minnesota Statutes §256B.064)
Minnesota Whistleblower Protection Law (Minnesota Statutes §§181.932-181.935)
Wisconsin False Claims Act (Wisconsin Statutes Section §20.931)
Wisconsin Medicaid Fraud Statute (Wisconsin Statutes §49.49)
Wisconsin Health Care Worker Protection Law (Wisconsin Statutes §146.997)

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