



Deficit Reduction Act Policy

Policy #: deficit-reduction-act-policy-20140529

Effective Date: 5/29/2014

Supersedes Policy #: CC-2013-25 12/11/2013

POLICY STATEMENT

1. This Policy was adopted in order to comply with the Deficit Reduction Act of 2005 (“**DRA**”), section 6032 entitled, “Employee Education About False Claims Recovery.” The Policy may be updated from time to time. The Policy covers discussions of the following:
 - 1.1. Federal False Claims Act
 - 1.2. Federal Civil and Criminal Penalties and Administrative Remedies
 - 1.3. State False Claims Laws
 - 1.4. State False Claims Laws Penalties
 - 1.5. Federal “Qui Tam” or “Whistleblower” Protections
 - 1.6. Maryland Whistleblower Law
 - 1.7. National Lutheran Home for the Aged, Inc. d/b/a National Lutheran Communities & Services (NLCS) Programs to Prevent and Detect Fraud
2. This Policy is designed to help employees, agents and contractors of NLCS and its related entities. NLCS understands the provisions of the federal and state laws regarding the submission of false claims to the federal and/or state governments for reimbursement and to inform such employees, agents and contractors of their rights to report violations of such federal and state laws.
3. This policy will provide information to our employees, agents and contractors regarding both the federal and state false claims laws as well as protections available for those who report violations of these laws. The policy will also reference NLCS’ policies and procedures for detecting and preventing the submission of false claims. It is important that our employees, agents and contractors understand the provisions of these laws and how NLCS strives to comply with such laws.

FEDERAL FALSE CLAIMS ACT (31 U.S.C. §§ 3729-3733)

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The False Claims Act is a federal statute that imposes civil liability for fraud involving any federally funded government program such as Medicare or Medicaid (Medical Assistance in Maryland). The federal government may bring a lawsuit under the False Claims Act against any person or entity whom it believes has knowingly presented, or caused to be presented, a false or fraudulent request for payment from the federal government, or who has made a false statement or used a false record to get a claim approved. Such false or fraudulent claims can include everything from documenting false information in a client's medical record, to using improper codes when submitting a bill to Medicaid or Medicare. A "claim" is defined as any request or demand for money that is submitted to the United States Government (including through submissions to a contractor or grantee of the federal government). In the health care context, such a claim is typically in the form of a bill or claim form submitted to Medicare, Medicaid or another government health program for services provided or items furnished.

The False Claims Act defines "knowingly" to mean that a person must (1) have actual knowledge of the falsity of the information in the claim, (2) act in deliberate ignorance of the truth or falsity of the information in the claim, or (3) act in reckless disregard of the truth or falsity of the information in a claim. However, the False Claims Act does not require proof of a specific intent to defraud the government as health care providers are expected to know and understand the rules regarding the submission of claims. Thus, health care providers can be prosecuted under the False Claims Act for engaging in a wide variety of acts such as entering false information into a client's medical record, submitting bills to Medicare, Medicaid or any other federal government program for services never performed or items never furnished, or using improper billing codes when submitting a bill to Medicare or Medicaid.

FEDERAL CIVIL AND CRIMINAL PENALTIES AND ADMINISTRATIVE REMEDIES

FALSE CLAIMS ACT CIVIL PENALTIES (31 U.S.C. § 3729)

Persons or organizations who violate the False Claims Act can be subject to civil penalties ranging from \$5,000 to \$10,000 (\$5,500 to \$11,000 for violations occurring after September 29, 1999) for each false claim submitted, plus three times the amount of damages sustained by the federal government.

PROGRAM FRAUD AND CIVIL REMEDIES ACT OF 1986 ("PFCRA") (31 U.S.C. §§ 3801-3812)

The PFCRA provides an administrative remedy against any person who makes a false claim or written statement to any federal agency. The PFCRA provides for civil penalties of up to \$5,000 per claim for each false claim submitted to a federal agency and an assessment

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of no more than twice the amount of the claim. The penalties are imposed on any person (defined to include individuals, corporations and private organizations) who, (1) submits a false, fictitious or fraudulent claim, (2) includes a false statement of material fact, (3) omits a material fact, or (4) makes a claim for property or services that were not provided as claimed.

CIVIL MONETARY PENALTIES LAW (“CMPL”) (42 U.S.C. § 1320A-7A)

The CMPL provides for civil monetary penalties for a variety of prohibited acts including: (1) presenting a claim to a federal or state officer, employee or agency the person knows or should know was not provided as claimed (including upcoding claims) or is false or fraudulent, or (2) seeking payment for medical or other items and services the person knows or should know are not medically necessary. CMPL penalties may also be assessed against providers who submit bills for services performed by individuals not licensed or excluded from federal or state health care programs, violate the federal anti-kickback statute (42 U.S.C. § 1320a-7b(b)), or violate the federal Physician Self-Referral Law (42 U.S.C. § 1395nn). The amount of the CMPL penalty depends upon the type of violation. Up to \$10,000 may be imposed for false or fraudulent claims as well as an assessment of up to three times the amount improperly claimed.

CRIMINAL PENALTIES (42 U.S.C. § 1320A-7B)

There are also specific federal criminal penalties for fraudulent and abusive activities, including: (1) making a false statement of a material fact in any application for benefits or payment under a federal health care program, (2) soliciting or receiving any payments for referring someone for a service or item reimbursable by a federal health care program, and (3) charging or accepting payment in excess of allowable Medicare rates. In general, such activities may be punishable as felonies by fines of up to \$25,000 or imprisonment for not more than five years, or both.

EXCLUSION FROM PARTICIPATION IN FEDERAL HEALTH CARE PROGRAMS (42 U.S.C. § 1320A-7)

Activities that are subject to criminal or CMPL sanctions may also be subject to mandatory or permissive exclusion from participation in federal health care programs. If a health care organization such as NLCS or an individual health care provider is convicted of a criminal false claims violation, the federal government may seek to exclude that organization or individual from participation in the federal health care programs such as Medicare or Medicaid.

STATE FALSE CLAIMS LAWS (MD. CODE ANN. HEALTH-GEN. SEC. 2-601 ET SEQ.)

Maryland laws prohibit fraudulent acts against the Maryland Medical Assistance program. Some of the prohibited acts include:

- Knowingly presenting or causing to be presented a false or fraudulent claim for approval;
- Knowingly making, using, or causing to be made or used a false record or statement material to a false or fraudulent claim;
- Conspiring to commit a violation of the billing laws;
- Having possession, custody, or control of money or other property used by or on behalf of the State under a State health plan and knowingly delivering or causing to be delivered less than all of that money or property;
- Being authorized to make or deliver a receipt or document and, intending to defraud the State, making or delivering a receipt or document knowing that the information on it is untrue;
- Knowingly buying or receiving as a pledge of an obligation any publicly owned property from any official who is not lawfully authorized to sell or pledge the property;
- Knowing making, using, or causing to be made or used a false record or statement material to an obligation to pay or transmit money;
- Knowingly concealing, or knowingly and improperly avoiding or decreasing, an obligation to pay or transmit money or other property to the State; and
- Knowingly making any other false or fraudulent claim against the State health plan.

STATE FALSE CLAIMS LAW PENALTIES

A person (including an organization) who commits any of these prohibited acts may be subject to civil liability, including up to \$10,000 for each violation and up to triple the amount of damages sustained by the State as a result of the fraudulent billings. In addition, the person may be subject to criminal penalties that may include fines and/or imprisonment, depending upon such factors as the nature and duration of the violation. In addition, a person who violates the State false claims law may be subject to exclusion from the Medical Assistance program, which may include a prohibition on working for any person or business those contracts with Medical Assistance. Further, subject to certain restrictions set forth in the law, any person who is aware of a violation of the state false claims law may bring a cause of action on behalf of him/herself and the State to obtain all other available penalties, as well as attorneys' fees and court costs.

FEDERAL “QUI TAM” OR “WHISTLEBLOWER” PROTECTIONS (31 U.S.C. § 3730)

In order to encourage individuals to come forward and report misconduct involving false claims, the False Claims Act includes a whistleblower provision that offers incentives and protections for persons who report such misconduct (such a person is referred to as a whistleblower). In general, this provision allows any person who knows about the submission of false claims to the government (such as to Medicare or Medicaid) to bring forth a lawsuit for a violation of the False Claims Act on behalf of the federal government. The lawsuit will be filed “under seal” which means that the lawsuit is kept confidential while the federal government investigates the allegation and decides how to proceed. After reviewing the allegations, the government may decide to proceed with and take over the lawsuit, or it may decline to take over the lawsuit, at which time the whistleblower can continue with the action on his or her own (referred to as a “qui tam” action). If the case is successful, the whistleblower may, depending on his or her involvement in the case, receive a percent of the amount recovered by the federal government.

The False Claims Act contains a provision to protect whistleblowers from retaliation by their employers. If a whistleblower is fired, demoted, suspended, threatened, harassed or in any way discriminated against by his or her employer for his or her involvement in a False Claims Act action such as filing a lawsuit under the False Claims Act or assisting in the investigation of a False Claims Act action, the whistleblower is entitled to all relief required to make him or her whole. Such relief can include reinstatement with the same seniority status he or she had before the discrimination, double back pay, interest on the back pay and compensation for any special damages sustained as a result of the discriminatory treatment, including reasonable attorney fees and litigation costs.

MARYLAND HEALTH CARE WORKER WHISTLEBLOWER PROTECTION ACT (MD. CODE ANN. HEALTH OCC. SEC. 1-501 *ET SEQ.*)

Under Maryland law, an employer may not take or refuse to take any personnel action as reprisal against an employee because the employee: 1) discloses or threatens to disclose to a supervisor or board an activity, policy, or practice of the employer that is in violation of a law, rule or regulation; 2) provides information to or testifies before any public body conducting an investigation into any violation of a law, rule, or regulation; or 3) objects to or refuses to participate in any activity, policy, or practice in violation of a law, rule or regulation. However, this protection only applies if: 1) the employee has a reasonable, good faith belief that the employer has, or still is, engaged in an activity, policy, or practice that violates a law, rule, or regulation; 2) the employer’s conduct poses a substantial and specific danger to the public health or safety; and 3) before reporting to the board, the employee has reported the activity to a supervisor in writing and afforded the employer an opportunity to correct the conduct, or, if the employer has a corporate compliance plan that specifies who

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is receive reports of violations, the employee has followed the plan. Any employee who is the subject of a personnel action in violation of the law may institute a civil action. The court may issue an injunction, order that the employee be reinstated in the same or similar position, remove any adverse action in the personnel record, require reimbursement of lost wages and benefits, and assess reasonable attorney fees.

NLCS PROGRAMS TO PREVENT AND DETECT FRAUD

As stated in the NLCS Code of Conduct Statement , NLCS is committed to ethical, honest billing practices and expects every team member (including employees, officers and directors of all boards of related entities, independent contractors, subcontractors and vendors) to be vigilant in maintaining these standards at all times. NLCS will not tolerate any deliberately false or inaccurate billing. Any team member who knowingly submits a false claim or provides information that may contribute to submitting a false claim such as falsified clinical documentation to any payer, public or private, is subject to termination.

The Code of Conduct Statement is the foundation of the NLCS Compliance Plan and highlights NLCS' standards of proper legal, ethical and professional behavior and describes how team members can communicate any legal, ethical or quality concerns. Employees are obligated to promptly report any actual or potential wrongdoing observed, and the NLCS Compliance Line policy details the use of the NLCS Compliance Line to report suspected misconduct.

Other important compliance policies are also included in the NLCS Policies and Procedures. Such policies include, without limitation, a policy which describes how the NLCS Code of Conduct Statement will be enforced; a policy which describes NLCS' compliance education and training program; and a policy which sets forth NLCS' non-retaliation policy to protect employees who report suspected misconduct from any retaliation.