



Title: Detecting Fraud and Abuse and an Overview of the Federal and State False Claims Acts

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PURPOSE:

MedHealth (dba Methodist Moody Brain and Spine Institute) is committed to its role in preventing health care fraud and abuse and complying with applicable state and federal law related to health care fraud and abuse. The Deficit Reduction Act of 2005 [42 U.S.C. §1396a(a)(68)] requires information about both the federal False Claims Act and other laws, including state laws, dealing with fraud, waste, and abuse and whistleblower protections for reporting those issues. To ensure compliance with such laws, MedHealth has policies and procedures in place to detect and prevent fraud, waste, and abuse, and also supports the efforts of federal and state authorities in identifying incidents of fraud and abuse. See LGL 006 – General Compliance Plan.

This policy sets forth information concerning MedHealth’s existing policies and procedures for detecting and preventing fraud, waste, and abuse and an overview of the Federal Civil False Claims Act, the Program Fraud Civil Remedies Act and applicable state laws.

POLICY:

1. MedHealth takes health care fraud and abuse very seriously. It is the MedHealth policy to provide information to all employees, contractors and agents about the federal and state false claims laws, penalties available under these laws, the whistleblower protections available under these laws, and, because MedHealth and each employee, contractor and agent of MedHealth can be liable under these laws, impress upon each employee, contractor, and agent the importance of complying and following the requirements of these laws.
2. Federal and State False Claims Laws
 - A. The Role of Federal and State Laws in Preventing Fraud, Waste, and Abuse

The Centers for Medicare & Medicaid Services (CMS) defines “fraud” as the intentional deception or misrepresentation that an individual knows to be false (or does not believe to be true) and makes, knowing that the deception could result in an unauthorized benefit to himself or another person. CMS defines “abuse” as incidents or practices of providers that are inconsistent with sound medical practice and may result in unnecessary costs, improper payment, or the payment for services that either fail to meet professionally recognized standards of care or are medically unnecessary.

The Federal Government and the State of Texas have enacted criminal and civil laws pertaining to the submission of false or fraudulent claims for payment or approval to the federal and state governments and to private payors. These false claims laws, which provide for criminal, civil, and administrative penalties, provide governmental authorities with broad authority to investigate and prosecute potentially fraudulent activities, and also provide anti-retaliation provisions for individuals who make good faith reports of waste, fraud, and abuse.

The Federal Civil False Claims, the Program Fraud Civil Remedies Acts, applicable State laws, and anti-retaliation provisions are summarized in the following sections.

B. Federal Civil False Claims Act

- 1) The Civil False Claims Act (31 U.S.C. §3729 *et seq.*) is a statute that imposes civil liability on any person who:
 - a. Knowingly presents, or causes to be presented, a false or fraudulent claim, record or statement for payment or approval;
 - b. conspires to defraud the government by getting a false or fraudulent claim allowed or paid;
 - c. uses a false record or statement to avoid or decrease an obligation to pay the Government; and
 - d. other fraudulent acts enumerated in the statute.
- 2) The term “**knowingly**” as defined in the Civil False Claims Act (“FCA”) includes a person who 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. No proof of specific intent to defraud is required.
- 3) The term “**claim**” includes any request or demand for money or property if the United States Government provides any portion of the money requested or demanded.
- 4) Potential civil liability under the FCA currently includes penalties of between five thousand five hundred dollars (\$5500.00) and eleven thousand dollars (\$11,000) per claim, treble damages, and the costs of any civil action brought to recover such penalties or damages.
- 5) The Attorney General of the United States is required to diligently investigate violations of the FCA, and may bring a civil action against a person or organization believed to have violated the FCA. Before filing suit the Attorney General may issue an investigative demand requiring production of documents and written answers and oral testimony.

- 6) The FCA also provides for **Actions by Private Persons** (*qui tam* lawsuits) who can bring a civil action in the name of the government for a violation of the Act. When the action is filed it remains under seal for at least sixty days. The United States Government may choose to intervene in the lawsuit and assume primary responsibility for prosecuting, dismissing or settling the action. Detecting Fraud and If the Government chooses not to intervene, the private party who initiated the lawsuit has the right to conduct the action. Depending upon the circumstances, the *qui* the action or settlement.
- 7) If the civil action is frivolous, clearly vexatious, or brought primarily for harassment, the plaintiff may have to pay the defendant its fees and costs. If the plaintiff planned or initiated the violation, the share of proceeds may be reduced and, if found guilty of a crime associated with the violation, no share will be awarded the plaintiff.
- 8) Whistleblower Protection. The Civil False Claims Act also provides for protection for employees from retaliation. An employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in terms and conditions of employment because of lawful acts conducted in furtherance of an action under the FCA may bring an action in Federal District Court seeking reinstatement, two times the amount of back pay plus interest, and other enumerated costs, damages, and fees.

A. Federal Program Fraud Civil Remedies Act of 1986

- 1) The **Program Fraud Civil Remedies Act of 1986** (“Administrative Remedies for False Claims and Statements” at 38 U.S.C. §3801 *et seq.*) is a statute that establishes an administrative remedy against any person who presents or causes to be presented a claim or written statement that the person knows or has reason to know is false, fictitious, or fraudulent due to an assertion or omission to certain federal agencies (including the Department of Health and Human Services [HHS]).
- 2) The term “**knows or has reason to know**” is defined in the Act as a person who 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. No proof of specific intent to defraud is required.
- 3) The term “**claim**” includes any request or demand for property or money, e.g., grants, loans, insurance or benefits, when the United States Government provides or will reimburse any portion of the money.
- 4) The authority i.e. HHS, may investigate and with the Attorney General’s approval commence proceedings if the claim is less than one hundred and fifty thousand dollars. A hearing must begin within six years from the submission of the claim. The Act allows for **civil monetary sanctions** to be imposed in administrative hearings, including penalties of five thousand five hundred dollars (\$5500.00) per claim and an assessment, in lieu of damages, of not more than twice the amount of the original claim.

B. Texas False Claims Acts

- 1) In Texas, there are two statutes that make it unlawful to submit a false claim under the Medicaid Program. These laws can be found in Chapters 32 and 36 of the Texas Human Resources Code.
- 2) Texas Human Resources Code - Chapter 36

- 3) The Texas Medicaid Fraud Prevention Act, found at TEX. HUM. RES. CODE Chapter 36 provides that a person commits a violation of the Act if a person:
 - a. makes a false statement or misrepresents a material fact to obtain a benefit or payment;
 - b. conceals an event or fact that affects the initial or continued right to a payment or benefit;
 - c. applies for or receives a benefit or payment on behalf of a recipient and converts some or all of the benefit or payment for use other than on behalf of the recipient;
 - d. makes, causes to be made, induces or seeks to induce the making of a false statement or misrepresentation regarding the (a) conditions or operation of a facility to obtain certification or recertification or (b) any other information required to be provided to the Medicaid program;
 - e. accepts or charges any gift, money or other consideration, other than the Medicaid payment, as a condition for the provision of services to a Medicaid recipient;
 - f. presents a claim for payment for services rendered by a person who is not licensed;
 - g. makes a claim for a service that (a) has not been ordered by an appropriate practitioner, (b) is substandard or inadequate, or (c) for a product that has been mislabeled or adulterated;
 - h. makes a claim for payment and fails to indicate the type of license or identification number of the provider who actually rendered the services; or
 - i. enters into a conspiracy to defraud the state by obtaining an unauthorized payment or benefit.

- 4) If a person violates the Act, he or she could be subject to the following:
 - a. suspension or revocation of the provider agreement, permit, license, or certification;
 - b. exclusion from the Medicaid program for a period of no less than ten (10) years;
 - c. disciplinary action by a state licensing board;
 - d. restitution for the value of any money or benefit received;
 - e. civil penalty from \$1,000.00 to \$15,000.00 depending on the unlawful act; and
 - f. penalties of up to two times the value of the unlawful payment or benefit received.

- 5) A private citizen may file an action under the Texas Medicaid Fraud Prevention Act, but the Texas Attorney General must be notified and given the opportunity to pursue the case. If the Attorney General proceeds with an action under this subchapter, the person bringing the action may be entitled to receive a percentage of the proceeds recovered by the State. If the Attorney General declines to pursue the case, the case must be dismissed.

- 6) A person who reports a violation of the Act or otherwise acts in furtherance of an action brought under the Act cannot be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against. A person who is subject to such discrimination may bring an action in the appropriate district court for relief and is entitled to:
 - a. reinstatement with the same seniority status the person would have had but for the discrimination; and
 - b. not less than two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

7) Texas Human Resources Code - Chapter 32

8) Under Chapter 32, TEX. HUM. RES. CODE, it is unlawful for a person:

- a. to present or cause to be presented a claim that contains a statement or representation the person knew or should have known to be false;
- b. to offer to pay or agree to accept, directly or indirectly, overtly or covertly any remuneration in cash or in kind to or from another for securing or soliciting a patient or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency;
- c. to solicit or receive, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for referring an individual to a person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program;
- d. to solicit or receive, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for purchasing, leasing, or ordering, or arranging for or recommending the purchasing, leasing, or ordering of, any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program;
- e. to offer or pay, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to refer an individual to another person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program;
- f. To offer or pay, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to purchase, lease, or order, or arrange for or recommend the purchase, lease, or order of, any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program; and Detecting Fraud and
- g. to provide or offer an inducement to an individual, including a recipient, provider, or employee of a provider, for the purpose of influencing a decision regarding selection of a provider or receipt of a good or service under the medical assistance program or for the purpose of otherwise influencing a decision regarding the use of goods or services provided under the medical assistance program.

9) A person who commits a violation under Chapter 32, TEX. HUM. RES. CODE, is liable for:

- a. the amount paid as a result of the violation, including interest;
- b. administrative penalties not to exceed twice the amount paid, plus an amount not less than five thousand dollars (\$5,000.00) and not more than fifteen thousand dollars (\$15,000.00) for each violation; and
- c. exclusion from the Medicaid program for 3 to 10 years depending on the violation.
- d. An intentional violation of Chapter 32 could constitute a state jail felony.

10) There is no private cause of action under Chapter 32. However, the Texas Health and Human Services Commission has the discretion to grant an award to an individual who reports activity that constitutes fraud or abuse of funds in the state Medicaid program or reports overcharges in the program. The disclosure must result in the recovery of an overcharge or in the termination of the fraudulent activity or abuse of funds.

3. Examples of a possible false claim or unlawful act.

- A. Making false statements regarding a claim for payment;
- B. Falsifying information in the medical record;
- C. Double-billing for items or services;
- D. Billing for services not performed or never furnished; and
- E. Concealing an event affects the initial or continued right to a benefit or payment under the Medicaid program. Making, causing to be made, inducing, or seeking to induce the making of a false statement concerning the conditions or operation of a facility in order that the facility may qualify for certification or recertification required by the Medicaid program.

4. Action to be taken if a possible false claim has been made.

- A. If an employee discovers an event that is similar to one of the examples of a false claim described above ("False Claim"), an employee is encouraged to:
 - 1) Report the issue to the appropriate person in the chain of supervision at MedHealth which may include a manager, a director or a corporate officer;

2) If the person in the chain of supervision is unable to find the answer, or if the employee is uncomfortable discussing the issue with a person in the chain of supervision, it is expected that the employee will report the matter to:

- a. A representative of MedHealth's Human Resource Department;
- b. A member of the Business Ethics Committee (a listing of the current members of the Business Ethics Committee – and contact information – can be found on the public drive of MedHealth's information system or through MEDHEALTH's Human Resources Department); or
- c. The Methodist Compliance Hotline (214) 947-4557 (this method of reporting can also be used for making anonymous reports).

B. An employee is not required to report a possible False Claim violation to MedHealth first. A report may be made directly to applicable federal or state authorities. However, MedHealth believes that in many instances the use of its internal reporting process is a better option because it allows MedHealth to quickly address potential issues.

1) MedHealth encourages employees to consider first reporting suspected false claims to a MedHealth administrator but the choice is up to the employee.

C. MedHealth will not retaliate against any employee for informing MedHealth or any federal or state authority of a possible False Claim violation.

2) Keyword: Fraud

APPROVED BY:

The office responsible for this policy is the Legal Affairs Office. Questions about this Memorandum or suggestions for improvement should be directed to the Executive Vice President for Legal Affairs at 214-947-4515.