Compliance with False Claims Act

MH Policy and Procedure

Document Number: MH-COMPLY-001
Revision #: v2
Document Owner: Corporate Compliance Officer
Date Last Updated: 09/19/2013
Author: Corporate Compliance Officer
Status: Approved and Released

General Description

Purpose:

To establish written guidelines to satisfy the requirements of Section 6032 of the Deficit Reduction Act of 2005 by identifying certain federal and state laws relating to liability for false claims and statements; protections against reprisal or retaliation for those who report wrongdoing; and Meridian Health's policies and procedures to detect and prevent occurrences of potential fraud and abuse.

Scope: All Meridian-affiliated facilities and providers (Meridian Health), including but not limited to, hospitals, ambulatory surgery centers, outpatient imaging centers, home health agencies, long term care facilities, physician practices, service centers, imaging services and all Corporate and affiliated Departments .

Policy: It is the policy of Meridian Health to obey all federal and state laws, to implement and enforce procedures to detect and prevent fraud, waste and abuse regarding payments to Meridian Health from federal or state healthcare programs, and to provide protections for those who report actual or suspected wrongdoing.

This Policy shall be available to all current Board and team members, contractors and agents of Meridian Health through posting to the Meridian Internet and Intranet and through other means. Information on its subject will be included in the team member handbook.

Explanation of Laws

Set forth below are summaries of certain statutes that provide liability for false claims and statements. These summaries are not intended to identify all applicable laws but rather to outline some of the major statutory provisions as required by the Deficit Reduction Act of 2005.

Definitions

Knowingly means:

- has actual knowledge that the information on the claim is false;
- acting in deliberate ignorance of whether the claim is true or false; or

- acting in reckless disregard of whether the claim is true or false.

No proof of specific intent to defraud is required.

Whistleblowers, also known as qui tam relators, can be a team member or other person affiliated with an organizaton who has direct and independent knowledge of a false claim and who reports actual or alleged misconduct or fraudulent activity to an external agency or entity which has the authority to take corrective action. The misconduct may be a violation of a law rule, regulation and/or a direct threat to public interest such as fraud or health/safety violations.

Qui tam action under the provisions of the False Claims Acts is a case filed in federal or state court against individuals and/or entities that defraud the federal or state government by filing false or fraudulent Medicare or Medicaid claims.

State means any of the principal departments of the Executive Branch of New Jersey State government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; and any independent State authority, commission, instrumentality or agency.

FEDERAL FALSE CLAIMS ACT

Federal False Claims Act (31 U.S.C. §§ 3729 – 3733)

The Federal False Claims Act (FCA) imposes civil liability on any person or entity who:

- knowingly files a false or fraudulent claim for payments to Medicare, Medicaid or other federally funded health care program;
- knowingly uses a false record or statement to obtain payment on a false or fraudulent claim from Medicare, Medicaid or other federally funded health care program; or
- conspires to defraud Medicare, Medicaid or other federally funded health care program by attempting to have a false or fraudulent claim paid.

A person or entity found liable under the Federal False Claims Act is subject to a civil money penalty of between $5,000 and $10,000 plus three times the amount of damages that the government sustained because of the illegal act. In health care cases, the amount of damages sustained is the amount paid for each false claim that is filed.

Any person may bring a qui tam action under the Federal False Claims Act in the name of the United States in federal court. The case is initiated by filing the

complaint; the complaint remains under seal for at least 60 days, and will not be served on the defendant. During this time, the government investigates the complaint and gathers additional evidence as necessary to determine if it wishes to pursue the case. If the government decides not to pursue the case, the person who filed the action has the right to continue with the case on his or her own.

If the government proceeds with the case, the person who filed the action can receive a percentage of any monetary recovery, depending upon the contribution of that person to the prosecution of the case.

Anti-discrimination

Anyone initiating a qui tam case may not be discriminated or retaliated against in any manner by their employer. The employee is authorized under the FCA to initiate court proceedings to make themselves whole for any job related loses resulted from any such discrimination or retaliation.

Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801 – 3812)

The Program Fraud and Civil Remedies Act (PFCRA) creates administrative remedies for making false claims and false statements. These penalties are separate from and in addition to any liability that may be imposed under the Federal False Claims Act.

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

- is false, fictitious, or fraudulent;
- includes or is supported by any written statement that contains false, fictitious, or fraudulent information;
- includes or is supported by a written statement that omits a material fact, which causes the statement to be false, fictitious, or fraudulent, and the person or entity submitting the statement has a duty to include the omitted fact; or
- is for payment for property or services not provided as claimed.

A violation of this section of the PFCRA is punishable by a $5,000 civil penalty for each wrongfully filed claim, plus an assessment of twice the amount of any unlawful claim that has been paid.

In addition, a person or entity violates the PFCRA if they submit a written statement which they know or should know:

- asserts a material fact that is false, fictitious or fraudulent; or
- omits a material fact that they had a duty to include, the omission caused the statement to be false, fictitious, or fraudulent, and the

statement contained a certification of accuracy.

New Jersey False Claims Laws
The New Jersey False Claims Act, Health Care Claims Fraud Act, and Medical Assistance and Health Services Act (N.J.S.A. 30:4D-1 et seq.), provide criminal penalties and civil remedies for false health care claims.

NEW JERSEY FALSE CLAIMS ACT

N.J.A. 2A:32C-1 & N.J.S. 30:4D-17(e)

The New Jersey False Claims Act (NJFCA) authorizes the State Attorney General and qui tam relators (whistleblowers) to initiate false claims litigation similar to the provisions of the federal False Claims Act described in this policy. The NJFCA imposes civil liability on any person who knowingly (as defined in this policy) commits certain acts which result in payment of a false or fraudulent claim. These acts include:

knowingly presenting or causing to be presented a false claim for payment or approval to an employee, officer or agent of the State, or to any contractor, grantee or other recipient of State funds;
knowingly making, using, or causing to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the State;
making, using, or causing to be made a or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State.

Any person found liable under the NJFCA is subject to a civil penalty of not less than and not more than the civil penalty allowed under the federal FCA, as from time to time amended (presently between $5,500 and $11,000) plus three times the amount of damages which the State sustains, for each false or fraudulent claim.

The NJFCA also amends the New Jersey Medical Assistance & Health Services (Medicaid) Act to impose liability described at N.J.S.30:4D(e) and to increase the $2000 per false claim civil penalties under NJS 30:4D-17 (e)(3) to the same level provided for under the Federal False Claims Act in addition to the penalties outlined in the Medicaid Act as described below in this policy.

Similar to the federal False Claims Act, any person may bring a qui tam action under the New Jersey False Claims Act in the name of the State of New Jersey. The case is initiated by filing the complaint; the complaint remains under seal for at least 60 days, and will not be served on the defendant. During this time, the state government investigates the complaint and gathers additional evidence as necessary to determine if it wishes to pursue the case. If the state government

decides not to pursue the case, the person who filed the action has the right to continue with the case on his or her own.

If the state government proceeds with the case, the person who filed the action can receive a percentage of any monetary recovery, depending upon the contribution of that person to the prosecution of the case.

Anti-discrimination

Similar to the federal FCA, the NJFCA also provides that anyone initiating a qui tam case may not be discriminated or retaliated against in any manner by their employer. The employee is authorized under the NJFCA to initiate court proceedings to make themselves whole for any job related losses resulted from any such discrimination or retaliation.

New Jersey Health Care Claims Fraud Act

N.J.S. 2C:21-4.2 & 4.3; N.J.S. 2C:51-5

The New Jersey Health Care Claims Fraud Act ("NJHCCFA") imposes criminal penalties for health care claims fraud, including the submission of false claims to program funded in whole or in part with state funds:

A person, licensed professional or provider who knowingly or recklessly commits health care claims fraud in the course of providing, billing or arranging for healthcare services is guilty of a crime and subject to penalties including monetary fines and temporary or permanent suspension or forfeiture of their license(s).

"Knowingly" means that a person, with respect to the information has actual knowledge of the information which could be in a false or fraudulent claim, record, statement or other document that is submitted to the government; acts in a 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.

Conscientious Employee Protection Act "Whistleblower Act" (N.J.S.A. 34:19-4)

The NJ Conscientious Employee Protection Act affords protection to whistleblowers by prohibiting an employer from taking any retaliatory action against a team member who:

discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy, or practice of the employer or another employer, with whom there is a business relationship, that the team member reasonable believes is in violation of a law, or a rule or regulation issued under the law, or, in the case of a team member who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care.

The protection against retaliation, when a disclosure is made to a public body, does not apply unless the team member has brought the activity, policy or practice to the attention of the supervisor of the team member by written notice and given the employer a reasonable opportunity to correct the activity, policy or practice. However, disclosure is not required where the team member reasonably believes that the activity, policy, or practice is known to one or more supervisors of the team member or where the team member fears physical harm as a result of the disclosure, provided that the situation is an emergency nature.

New Jersey Medical Assistance & Health Service Act – N.J.S. 30:4D-17(a)-(d)

Criminal Penalties
Provides criminal penalties for individuals and entities engaging in fraud or other criminal violations relating to Title XIX-funded (Medicaid) programs including fines of up to $10,000, imprisonment for up to 3 years, or both. These violations include: (a) fraudulent receipt of payments or benefits; (b) false claims statements or omissions, or conversion of benefits or payments; (c) kickbacks, rebates and bribes; and (d) false statements or representations about conditions or operations of an institution or facility to qualify for payment.

Civil Remedies
In addition, violations of N.J.S.30:4D(a)-(d) can result in the following civil sanctions: (a) unintentional violations: recovery of overpayments and interest; (b) intentional violation: recovery of overpayments, interest, up to triple damages, and up to $2,000 for each false claim.

Anti-Retaliation "Whistleblower" Protections: Individuals within Meridian Health who observe activities or behavior that may violate the law are encouraged by the Meridian Code of Conduct to bring information regarding such situations to the attention of Meridian management so that any violations can be corrected. Individuals who report their observations either to management or to governmental agencies are provided protections under certain laws. Team members are further protected by Meridian's standards as described in the Meridian Corporate Compliance Program – Organizational Code of Business Ethics Policy and the ComplyLine Procedures:
http://zavantarpts.meridianhealth.com/zav_corcomppolpro.htm

The Civil False Claims Act states that any employee who is discharged,

demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful actions taken in furtherance of a qui tam action is entitled to recover damages. The employee also can be awarded litigation costs and reasonable attorneys' fees.

Role of False Claims Laws: The False Claims Laws described herein are intended to control waste, fraud and abuse in federal and state health care programs by giving appropriate governmental agencies the authority to seek out, investigate and prosecute violations in three available forums -- criminal, civil and administrative.

Meridian Health Policies and Procedures for Detecting and Preventing Fraud: Meridian Health is committed to detecting and preventing fraud, waste, and abuse. Regular education, monitoring, audits and investigations occur throughout the organization in compliance with the policies, procedures, and Meridian Health Compliance Plan available on the Meridian Intranet.

REFERENCES:

Meridian Health Corporate Compliance Program: MHS-Admin-01-1006
42 U.S.C. §1320a-7b; 42 U.S.C. §1001.952(a)-(a); 42 U.S.C. §1395 nn; 66 Fed. Reg. 856, 961-962 (January 4, 2001); 69 Fed. Reg. 16054 (March 26, 2004)
31 U.S.C. §3729 - 3733 Federal False Claims Act
31 U.S.C. §3801 - 3812 Federal Program Fraud Civil Remedies Act
N.J.S. 30:4D-17(a)-(d) New Jersey Medical Assistance and Health Services Act-Criminal Penalties
N.J.S. 30:4D-7.h; N.J.S. 30:4D-17(e)-(i): N.J.S. 30:4D-17.1.a NJDMAHS Act – Civil Penalties
N.J.S. 2C:21-4.2 & 4.3; N.J.S. 2C:51-5 NJ Health Care Claims Fraud Act
N.J.S. 34:19-1 et seq. NJ Conscientious Employee Protection Act
New Jersey False Claims Act, P.L. 2007, Chapter 265 enacted January 13,2008 - effective 60 days after enactment, adding N.J.S. 2A:32C-1 to 2A:32C-17 and amending N.J.S. 30:4D-17(e)

Meridian ComplyLine Procedures; Compliance Program Education and Training; Corporate Compliance Program Structure and Purpose; Corporate Compliance Program Internal Investigations Processes.

Meridian Health Code of Conduct, latest revision: January 2007.

Special Notes / Appendix

Meridian Compliance Operations Group approved November 2006

Revision History

v1: 11/11/2007
Document Created

v2: 03/01/2012
inclusion of Meridian internet for policy access

09/19/2013
Converted to MH template

Authorization History

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Date Approved:
11/09/2006

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