

JONES MEMORIAL HOSPITAL
ADMINISTRATIVE
POLICY AND PROCEDURE

SUBJECT: CORPORATE COMPLIANCE - POLICY # C-16
DETECTION AND PREVENTION OF FRAUD, WASTE AND ABUSE

EFFECTIVE: July 1, 2007 REVISED: April 7, 2010

APPROVED BY: Eva Benedict

POLICY:

In compliance with the federal Social Security Act (as amended in the Deficit Reduction Act of 2005), this policy provides, to all JMH's employees and contractors and agents that are involved in providing or furnishing health care items or services, performing billing or coding functions, or monitoring health care (the "Employees and Agents") an overview of and information on:

- the federal False Claims Act,
- the New York State False Claims Act
- federal administrative remedies for false claims,
- New York laws pertaining to civil and criminal penalties for false claims, and
- Whistleblower protections contained in the foregoing laws.
- JMH's policies and procedures for detecting and preventing waste, fraud and abuse

JMH requires all Employees and Agents to report suspicions of fraud, waste, or abuse and in connection therewith educates all of its Employees and Agents to enable them to detect, prevent, and report suspected incidents of fraud, waste, and abuse.

JMH prohibits any employee from intentionally or recklessly submitting a claim which includes fraudulent information or is based on fraudulent documentation to any federally-funded or state-funded program for payment approval.

I. Summary of Federal and New York State False Claims Laws

The Centers for Medicare and Medicaid Services (CMS) define "fraud" as an intentional deception or misrepresentation that an individual knows or should know to be false, or does not believe to be true, and which the individual makes knowing that the deception or misrepresentation could result in an unauthorized benefit to himself or others. Fraud occurs when an individual or entity purposely bills for a service that was never provided or for a service that has higher reimbursement than the actual service produced. CMS defines "abuse" as a range of improper behaviors or billing practices, including: (i) billing for a non-covered service; (ii) misusing codes on the claim; or (iii) inappropriately allocating costs on a cost report.¹

There are both federal and New York State criminal and civil laws pertaining to fraud and abuse in the submission of claims for payment or approval to the federal and state governments and to private payors. These laws provide: (i) governmental authorities with broad authority to investigate and prosecute potentially fraudulent activities, (ii) criminal, civil and administrative penalties for fraudulent or abusive activities, and (iii) anti-retaliation provisions for individuals who make good faith reports of waste, fraud and abuse. The following provides detailed information about certain laws:

A. The False Claims Act²

¹ U.S. Department of Health, Centers for Medicare and Medicaid Services, <http://www.cms.hhs.gov/apps/glossary>.

² 31 U.S.C. §§3729-3733.

The False Claims Act (the “Act”) imposes civil liability on any person who commits fraudulent acts including, without limitation, one who: (i) knowingly presents, or causes to be presented, a false or fraudulent claim, record or statement for payment or approval; (ii) conspires to defraud the government by getting a false or fraudulent claim allowed or paid; or (iii) uses a false record or statement to avoid or decrease an obligation to pay the government. The term “knowingly” is broadly defined within the False Claims Act to mean: (a) having actual knowledge that the information on the claim is false; (b) acting in deliberate ignorance of whether the claim is true or false; or (c) acting in reckless disregard of whether the claim is true or false.

For each violation of the False Claims Act, a person or entity may be subject to civil monetary fines equal to the sum of: (i) between \$5,500 and \$11,000, plus (ii) three times the amount paid for each false claim, plus (iii) the costs of any civil action brought to recover such penalties or damages. In addition, such violations can subject a person to exclusion from participation in federally funded health care programs, such as Medicare and Medicaid.

The Act is enforced by the Attorney General of the United States, who is required to investigate violations of the Act. The Act also permits private persons to bring suit on behalf of the United States and entitles the private persons bringing suit to receive a percentage of monies obtained through settlements, penalties and/or fines collected in such action. Actions brought by private persons, or “realtors” for violations of the Act are known as “qui tam” actions. If a qui tam action brought by a relator is frivolous or commenced in order to harass the defendant, the relator may be liable to pay the defendant’s fees and costs associated with such action.

B. Federal Whistleblower Protection

The Act protects from retaliatory actions by JMHA a relator bringing a qui tam action and any other whistleblower who questions a perceived violation of the Act. The Act specifically provides that any employee who is discharged, demoted, suspended, threatened, harassed or in any manner discriminated against by his or her employer because of reporting violations of the Act will be entitled to reinstatement with seniority, double back pay, interest, special damages sustained as a result of discriminatory treatment, and attorney’s fees and costs.

C. Program Fraud Civil Remedies Act of 1986³

The Program Fraud Civil Remedies Act (PFCRA) provides for the imposition of administrative remedies on any person who makes, presents or submits (or causes to be made, presented or submitted) to certain federal agencies a claim or statement that the maker knows or has reason to know: (i) is false, fictitious or fraudulent; or (ii) includes or is supported by any written statement which asserts a material fact which is false, fictitious or fraudulent; or (iii) includes or is supported by any written statement which omits a material fact, is false, fictitious or fraudulent because of the omission and is a statement in which the person or entity has a duty to include such material fact; or (iv) is for the provision of items or services which the person or entity has not provided as claimed.

The PFCRA authorizes the imposition of federal administrative charges. It imposes on any person who submits, or causes to be submitted, a false claim or a false statement a civil penalty of up to \$5,000 for each wrongfully filed statement or claim, regardless of whether property, services, or money is actually delivered or paid. If any payment is made, property is transferred, or services are provided in reliance on a false claim, the person submitting it is also subject to an assessment of not more than twice the amount of the false claim. This assessment is in lieu of damages sustained because of the false claim.

D. New York State Laws

1. New York False Claims Act- New York State Finance Law §§187-194 Section 189 of the New York State Finance Law makes it unlawful in the State of New York for a person or entity

³ 31 U.S.C. § 3801 – 3812.

to commit any of the fraudulent acts set forth in the federal False Claims Act. Both the federal and New York False Claims Acts impose civil liability on any person who commits fraudulent acts including, without limitation, one who: (i) knowingly presents, or causes to be presented, a false or fraudulent claim, record or statement for payment or approval; (ii) conspires to defraud the government by getting a false or fraudulent claim allowed or paid; or (iii) knowingly makes or uses a false record or statement to conceal, avoid, or decrease an obligation to pay the government. The New York False Claims Act (the "Act") also makes it unlawful for a person or entity to: (i) have property or money of the State or local government and, with the intent to defraud or willfully conceal the property or money, deliver less property or money than the amount stated in the receipt; (ii) make or deliver a document certifying receipt of property without completely knowing that the information on the receipt is true; or (iii) knowingly buy or accept unlawfully sold public property from a State or local government employee or officer.

The term "knowingly" is defined in Section 188 of the Act with language identical to that of the federal False Claims Act. Proof of specific intent to defraud is not required, provided, however that acts occurring by mistake or as a result of mere negligence do not subject a person to liability.

For the commission of any single fraudulent act, the actor shall be liable to the State for a civil penalty of between \$6,000 and \$12,000, and to both the State and local government for three times the amount of damages each sustained as a result of the fraudulent act. Section 190 of the Act allows for civil enforcement actions to be commenced by either the Attorney General of the State of New York, by any local government, or by any private person who brings an action on behalf of the state or any local government.

Section 191 of the Act provides protection for whistleblowers. It protects any employee of any private or public employer from retaliatory actions by his or her employer because of lawful acts done in furtherance of this Act. Such employee shall be entitled to all necessary relief.

2. New York Social Services §145-b – This statute declares it unlawful to knowingly make a false statement or representation (or by deliberate concealment of any material fact or other fraudulent scheme or device) to attempt to obtain, or to obtain, payment from public funds for services or supplies furnished under the New York State Medical Assistance Program. The local social services district has the right to recover civil damages equal to three times the amount by which the figure is falsely overstated or \$5,000, whichever is greater. Interest may be charged at a rate of 16% for the period from which the fraudulent money was disbursed until the date of repayment.

In addition, the New York State Department of Health may impose a civil monetary penalty, ranging from \$2,000 to \$7,500 per item depending on prior violations, as restitution to the Medical Assistance Program, if the person or entity knew, or had reason to know that: (i) the payment related to care, services or supplies that were medically improper, unnecessary or in excess of the documented medical needs of the person to whom they were furnished; (ii) the care, services or supplies were not provided as claimed; (iii) the person who ordered or prescribed care, services or supplies which were medically improper, unnecessary or in excess of the documented medical need of the person to whom they were furnished was suspended or excluded from the Medical Assistance Program at the time the care, services or supplies were furnished; or (iv) the services or supplies for which payment was received were not, in fact, provided.

3. New York Public Health §238-a – With certain limited exceptions, this statute prohibits the submission of Medicaid claims which are the result of a referral from a health care provider or a referring practitioner to a health care service provider (clinical laboratory services, pharmacy services, radiation therapy services, physical therapy services or x-ray or imaging services) who has a financial or familial relationship with the health care provider or referring practitioner.

4. New York Labor Law §740 - This law prohibits any retaliatory behavior (i.e. discharge, suspension, demotion or other adverse action in terms of condition of employment) by an employer against a current or former employee who reports health care fraud, testifies or cooperates with an investigatory agency, or refuses to participate in any fraudulent act. The law allows employees so treated to bring a civil action for: (i) injunction relief to restrain continued retaliation; (ii) reinstatement to

the same or equivalent position held before the retaliatory action; (iii) reinstatement of benefits and seniority; (iv) compensation for lost wages, benefits and other remuneration and the payment of reasonable costs. In addition to the foregoing remedies, section 215 of the New York Labor Law provides for a fine of between \$200 and \$2000 for each violation of section 740 and subjects the employer to civil action by the aggrieved employee. The protections of this statute are only available if the employee has notified his supervisor of the violation of the law and has afforded the employer a reasonable opportunity to correct such activity, policy or practice.

5. New York Social Services §366-b – This statute identifies which acts constitute fraudulent practices. Any person who, with intent to defraud, presents for allowance or payment any false or fraudulent claim for furnishing services or merchandise, knowingly over-bills for services or merchandise, or knowingly submits false information to obtain authorization to furnish services or merchandise shall be guilty of a class A misdemeanor (or a violation if so prescribed by a provision of the New York Penal Code).

6. New York Penal Code Article 177 – This statute makes it a crime to commit “health care fraud,” an act which is defined as any time a person who, with the intent to defraud a private or public health plan, knowingly and willfully provides materially false information or omits material information for the purpose of receiving payment for health care items or services that the person or entity is not otherwise entitled to receive. The penalty for the commission of health care fraud ranges from a class A misdemeanor to a class B felony, based upon the amount of payment fraudulently obtained from a single health plan during a one-year period.

PROCEDURE

A. Persons covered by this policy who suspect an occurrence of fraud, waste or abuse are required to notify JMH via their supervisor, other manager in the chain of command (to the extent the supervisor is not involved in the fraud, waste or abuse), or the Corporate Compliance Officer (CCO).

B. To contact the CCO directly, any employee or agent may call **(585) 596-4053** to report any potential compliance concern or incident, or to schedule an appointment to meet with the CCO. There will be appropriate follow up by the CCO and/or a designee appointed by the CCO.

C. Any employee or agent may also report perceived incidents of non-compliance on a strictly confidential basis by calling the JMH Employee Hotline Number **(585) 594-4095**.

D. In accordance with its policies, JMH will promptly evaluate and investigate all allegations an individual brings forward and make every attempt to correct those found to be true and to prevent further occurrences thereof. All records and any subsequent investigation of reported matters shall be confidentially retained by the CCO in so far as possible. The records shall be subject to disclosure only as required by JMH policy, through advice of counsel, or as otherwise required by law.

E. An individual also has the right to report his or her suspicions to the appropriate government agency.

F. JMH will not retaliate against employees or agents who, in good faith, bring forth or report claims of fraud, waste, and/or abuse.

References:

Additional administrative policies relevant to detection and prevention of fraud, waste and abuse include:

- C-9 Conflict of Interest
- C-14 Corporate Compliance Plan
- E-5 Code of Conduct & Ethical Behavior
- N-1 Non-Retaliation for Reporting Potential Violations (Personnel Policy)

New in July, 2007