

NOYES HEALTH
ADMINISTRATION POLICY/PROCEDURE

SUBJECT: DETECTION AND PREVENTION OF
FRAUD, WASTE, AND ABUSE
EFFECTIVE DATE: July, 2014
TJC REF: None

POLICY: CC-10
ISSUED BY: Administration
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POLICY:

In compliance with the Federal Social Security Act (as amended in the Deficit Reduction Act of 2005), this policy provides information to all Noyes Health Board of Directors, Medical Staff, officers, employees, contractors, volunteers, students, and others (hereinafter stakeholders) regarding certain federal and state laws relating to false claims and statements; protections against reprisal or retaliation for those who report wrongdoing; and Noyes Health policies and procedures to detect and prevent fraud, waste, and abuse.

PROCEDURE:

- The Deficit Reduction Act of 2005 (DRA) was signed into law by President Bush on February 8, 2006. The purpose of the act was to bring entitlement spending under control by increasing emphasis on detecting and preventing fraud, waste, and abuse with the states' Medicaid programs.
- Under Section 6032 of DRA, every entity that receives at least \$5 million in Medicaid payments annually must establish, by January 1, 2007, written policies for all employees of the entity (including management), and for all employees of any contractor or agent of the entity, providing detailed information about false claims, false statements, and whistleblower protections under applicable federal and state fraud and abuse laws. These written policies must include a specific discussion of the foregoing laws and detailed information regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse, as well as the rights of employees to be protected as whistleblowers.
- Any individual who reports a suspected preparation or submission of a false claim, other potential fraud, waste, or abuse will have the right and opportunity to do so anonymously and will be protected against retaliation for making the report. Noyes Health also prohibits anyone from intimidating an individual from disclosing compliance concerns.
- If any Board member, employee, contractor, or agent who is aware of or reasonably suspects the preparation or submission of a false claim report or any other potential fraud, waste, or abuse related to a federal or state-funded health care program, they are expected to report such information to:
 - his/her supervisor, or
 - the Corporate Compliance Officer by calling (585) 335-4305, writing, or e-mailing, or
 - the confidential Compliance Hotline at (585) 335-4330.
- Noyes Health will immediately investigate and take appropriate action with respect to all suspected acts of retaliation or intimidation.

I. The Federal False Claims Act:

Civil False Claims Act; 31 U.S.C. 3729-3733

Summary:

The False Claims Act (FCA) is a federal law that imposes civil liability on organizations and individuals for knowingly submitting, to the federal government, a false or fraudulent claim for payment. It applies to all federal programs, from military procurement contracts to welfare benefits to health care benefits.

Prohibitions of the Federal False Claims Act:

The False Claims Act prohibits, among other things:

- knowingly presenting or causing to be presented to the federal government a false or fraudulent claim for payment or approval;
- knowingly making or using, or causing to be made or used, a false record or statement in order to have a false or fraudulent claim paid or approved by the government;
- conspiring to defraud the government by getting a false or fraudulent claim allowed or paid; and
- knowingly 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 government.

"Knowingly" means that a person, with respect to information: (1) has actual knowledge of the 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 and no proof of specific intent to defraud is required.

Enforcement:

The United States Attorney General may bring civil actions for violations of the False Claims Act. As with most other civil actions, the government must establish its case by presenting a preponderance of the evidence rather than by meeting the higher burden of proof that applies in criminal cases.

Qui Tam Actions - also known as "Whistleblowers":

- The FCA permits a person with knowledge of fraud against the United States Government to file a lawsuit on behalf of the government against the business that committed the fraud.
- If the fraud has not previously been publicly disclosed, any person including employees and competitors may bring a qui tam action regardless of whether he or she has "direct" or first-hand knowledge of the fraud.
- The case is initiated by filing the complaint and all available material evidence under seal with the federal court. 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. The government may, and often does, obtain additional investigation time by showing good cause. After expiration of the review and investigation period, the government may elect to pursue the case in its own name or decide not 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 will receive between 15% and 25% of any recovery, depending upon the contribution of that person to the prosecution of the case. If the government does not proceed with the case, the person who filed the action will be entitled to between 25% and 30% of any recovery, plus reasonable expenses and attorney's fees and costs.

Penalties under the False Claims Act:

A person or entity found liable under the Civil False Claims Act is subject to a civil money penalty between \$5,500 and \$11,000 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.

Self Disclosure:

The FCA includes a provision that reduces the penalties for providers who promptly self-disclose a suspected FCA violation.

When accessing the penalties, the court will take into consideration:

- Whether the self-disclosed information was submitted within 30 days of learning of the violation.
- Whether the organization cooperates throughout the government's investigation.
- Whether the government had not already begun their own investigation of the reported violation.

II. The Program Fraud Civil Remedies Act of 1986:

31 U.S.C. 3801-3812

Summary:

The Program Fraud Civil Remedies Act of 1986 (PFCRA) authorizes federal agencies such as the Department of Health and Human Services ("HHS") to investigate and assess penalties for the submission of false claims to the agency. The conduct prohibited by the PFCRA is similar to that prohibited by the False Claims Act. For example, a person who may be liable under the PFCRA for making, presenting or submitting, causing to be made, presented or submitted, a claim that the person knows or has reason to know:

- is false, fictitious, of fraudulent;
- includes or is supported by any written statement that asserts a material fact that is false, fictitious, or fraudulent;
- includes or is supported by any written statement that:
 - omits a material fact;
 - is false, fictitious, or fraudulent as a result of such omission; and
 - is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or
- is for payment for the provision of property or services which the person has not provided as claimed.

Enforcement:

If a government agency suspects that a false claim has been submitted, it can appoint an investigating official to review the matter. The investigating official may issue a subpoena to further the investigation or may refer the matter to the Department of Justice for proceedings under the False Claims Act. If, based on the investigating official's

report, an agency concludes that further action is warranted, it may issue a complaint (following approval from the Department of Justice) regarding the false claim. A hearing would be held, following the detailed due process procedures set forth in the regulations implementing the PFCRA.

Penalties under the Program Fraud Civil Remedies Act:

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.

A violation of this section of the PFCRA carries a civil penalty of up to \$5,000 in addition to any other remedy allowed under other laws.

III. Protection for Whistleblowers:

The Federal False Claims Act Civil False Claims Act; 31 U.S.C. 3729-3733

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 losses resulted from any such discrimination or retaliation. These protections include:

- reinstatement and damages double the amount of lost wages if the employee is fired, and
- any other damages sustained if the employee is otherwise discriminated against.

Anyone who believes that he or she has been subject to any such retribution or retaliation should also report this to the hotline at (585) 335-4330.

IV. The Role of Such Laws in Preventing and Detecting Fraud, Waste, and Abuse in Federal and State Health Care Programs:

The laws described in this policy create a comprehensive scheme for controlling 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. Enforcement activities are pursued in three available forums: criminal, civil, and administrative. This provides a broad spectrum of remedies to battle this problem.

Moreover, whistleblower statues and protections for individuals reporting waste, fraud, and abuse in good faith encourage reporting of waste, fraud, and abuse, creating broader opportunities to prosecute violators. Whistleblower statutes, such as the Federal Civil False Claims Act, create reasonable incentives for this purpose. Employment protections create a level of security employees need to help in prosecuting these cases.

V. New York False Claims Act:

New York False Claims Act - New York State Finance Law Sections 187-194

Summary: The New York False Claims Act imposes penalties and fines upon individuals and entities who knowingly file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. It also has a provision regarding reverse false claims similar to the Federal False Claims Act such that a person or entity will be liable in those instances in which the person obtains money from a state or local government to which he may not be entitled and then uses false statements or records in order to retain the money.

Enforcement: Under the New York False Claims Act, the State Attorney General, a local government, or any person may file a lawsuit against a person or a company that obtains or withholds funds or property from the state or local government through false or fraudulent conduct.

Penalties: The penalty for filing a false claim is \$6,000 to \$12,000 per claim plus three times the amount of the damages. Additionally, the person or entity that violates the act is liable for the cost, including attorney fees, of a civil action brought to recover any such penalty.

Protection: 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. Any private individual who brings a successful suit may recover 25% to 30% of the proceeds if the government did not participate in the suit, or 15% to 25% if the government did participate in the suit.

VI. New York Social Services False Statement:

Social Services Law Section 145-b

Summary: 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.

Penalty: 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. Additionally, the Department of Health may impose a civil penalty of up to \$10,000 per violation. If repeat violations occur within five years, a penalty of up to \$30,000 per violation may be imposed if the repeat violations involve more serious violations of Medicaid rules, billing for services not rendered, or providing excessive services. Anyone who knowingly submits false information to obtain greater compensation is guilty of a Class A misdemeanor.

VII. New York Public Health:

New York Public Health Law Section 238-a

Summary: With certain limited exceptions, this statute prohibits the submission of Medicaid claims that 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.

VIII. New York Labor Law:

New York Labor Law Section 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 who are retaliated against 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 between \$200 and \$2,000 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.

IX. 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.

X. Noyes Health Existing Policies and Procedures for Detecting and Preventing Fraud:

1. Corporate Compliance Plan Policy CC-05:
The Corporate Compliance Program is intended to reinforce the commitment of the stakeholder to sound ethical practices and moral behavior and to minimize instances of improper conduct by individuals or Noyes Health.
2. Noyes Health Code of Ethical Conduct CC-06:
The Corporate Compliance Code of Conduct provides guidance to all of Noyes Health Board members, officers, employees, contractors, volunteers, students, and others and assists in carrying out the daily activities within appropriate ethical and legal standards.

3. Internal Disclosure Plan CC-02:
The purpose of the internal disclosure program is to enable individuals to disclose to the Corporate Compliance Officer, or some other individual who is not in the disclosing individual's chain of command, any identified issues or questions associated with the policies, conduct, practices, or procedures of Noyes Health.
4. Compliance Monitoring CC-08:
The Corporate Compliance Officer has been assigned the task of overseeing the monitoring of the various activities and operations of Noyes Health. The Corporate Compliance Officer's duties include providing an assessment of the effectiveness of the Corporate Compliance Plan and identifying the areas where the plan may need to be revised or improved. To the extent that the Corporation's monitoring activities reveal conduct which could potentially constitute violations of the Corporate Compliance Plan, failure to comply with applicable state or federal law, and other types of misconduct, the Corporation has an obligation to investigate the conduct in question immediately to determine whether any such violation has occurred, take action to discipline the person or persons involved, and correct the problem.
5. Billing and Claims Reimbursement CC-09:
This policy provides guidance to all of Noyes Health stakeholders and assists them in carrying out their daily billing activities within appropriate ethical and legal standards.
6. Non-Retaliation for Reporting Potential Violations CC-11:
This policy protects employees, stakeholders, and others from intimidation, threats, coercion, discrimination, and other retaliatory action.

Originated: 9/07

Revised: 6/12, 7/14

POL:CORPCOMPL

Committee Approval: Corporate Compliance Committee - 8/20/2014

Distribution: Original - Administration; Copy - Via Meditech/Intranet

Signature: _____

Amy Dollard

Date: _____

8/20/14