

LAKE COUNTY BOARD OF DD/DEEPWOOD

BOARD POLICY

Reviewed and Adopted by the Board:
Date: February 22, 2021

Signature on File
Elfriede Roman, Superintendent

I. SUBJECT: FALSE CLAIMS PREVENTION AND WHISTLEBLOWER PROTECTION

II. PURPOSE:

To comply with the Deficit Reduction Act of 2005 requiring certain entities participating in Medicaid to establish written policies providing information about the Federal False Claims Act and other state and federal laws.

III. REFERENCES

Deficit Reduction Act of 2005, Section 6032 (31 U.S.C. 3729-3733(False Claims Act))
31 U.S.C. 3801 to 3812
O.R.C. 5111.101
O.R.C. 124.341
O.R.C. 4113.52
ODJFS Manual “Ohio Health Plan’s Procedures for Detecting Fraud, Waste and Abuse”
ODJFS Manual “State and Federal False Claims Act and Whistleblower Protections”

IV. POLICY:

A. Summary of the False Claims Act

(For complete text of the False Claims Act, please consult 31 U.S.C. 3729-3733)

- 1) The False Claims Act (FCA), codified by Congress in Chapter 31 of the U.S. Code, holds liable for civil damages anyone who submits or causes someone else to submit a false or misleading claim for government funds. This includes, but is not limited to, any person who engages in the following:
 - a) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;

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- b) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
 - c) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;
 - d) has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
 - e) authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
 - f) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or
 - g) knowingly makes, uses, or causes 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,
- 2) In general, any person who violates the FCA is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains. There are limited exceptions.
- 3) Violations of the FCA may be prosecuted in one of two ways.
- a) The U.S. Attorney General may investigate a violation. In the event that the Attorney General finds that a person has violated or is violating the FCA, he/she may bring a civil action under this section against the person.
 - b) A private person may bring a civil action for a violation of the FCA on behalf of the person and for the United States Government. The FCA details the steps necessary for the United States Government may intervene in such an action. This civil action remains under seal for 60 days during which the Department of Justice can investigate and decide whether to join the action. If the Government proceeds with such an action, the private person may receive up to 25 percent of the proceeds of the action or settlement of the claim. If the Government does not proceed with such an action, the private person may receive up to 30 percent of the proceeds of the action or settlement.

- c) A civil action may not be brought more than six years after the date on which the violation was committed, or more than three years after the date when officials knew or should have known, but in no event

more than 10 years after the date on which the violation is committed.

- 4) Ohio Law.
 - a) In addition to the FCA, Ohio law prohibits making false claims for federal and state funds. Under Ohio Revised Code Section 5111.03, providers may be liable for civil penalties for attempting to obtain payment of federal funds from ODJFS to which they are not entitled.

B. Whistleblower Protection.

- 1) In addition to the ability to bring an independent cause of action for a violation of the FCA, as detailed in section I(C) above, reporters enjoy whistleblower protection for any report of covered misconduct.
 - a) Anyone filing such a civil action is protected pursuant to federal law from retaliation by his/her employer and coworkers. Any such whistleblower who has been harassed or discriminated against may be entitled to damages, including reinstatement and/or two times their back pay.
 - b) The federal whistleblower protections are in addition to those found in Ohio whistleblower statutes, ORC 124.341 and ORC 4113.52. These statutes provide legal protection for employees who follow statutory procedures in reporting any violation of state or federal statute, or local ordinance or regulation that is a criminal offense likely to cause an imminent risk of physical harm, is a hazard to public health or safety, or is a felony.

C. Lake County Board of DD/Deepwood Policies and Procedures for Detecting and Preventing Waste, Fraud, and Abuse

- 1) The Lake County Board of DD/Deepwood has established procedures to monitor and assure compliance with the appropriate use of funds and to detect fraud, waste and abuse. Outside entities performing various audits and reviews are also utilized to ensure proper adherence to procedures. Those policies and procedures include the following:
 - a) Verification and signature of all billing documents by habilitation managers
 - b) Exclusion of waiver eligible individuals in Title XX billing procedures to prevent double billing.
 - c) Internal audit process in the billing software that kicks out claims that are not considered "authorized".
 - d) Review by Job and Family Services (JFS) of claims submitted against their Medicaid database for eligibility.

- 2) This policy will be made available to all current employees, and will be provided to all new employees during orientation. In addition, the attached excerpts from a publication by the Ohio Department of Job and Family Services, which is incorporated into this policy, containing the following notice, will be posted on employee bulletin boards:

“The County Departments of Job and Family Services are primarily responsible for pursuing cases of Medicaid recipient fraud. If you become aware of Medicaid fraud, waste or abuse you should report the activity to one of the following:

Office of Research, Assessment and Accountability at 614-466-7936

Medicaid Fraud Control Unit at 1-800-642-2873

Auditor of State at 1-800-282-0370.”

V: DISTRIBUTION

Board Members

All Management Staff

All Staff (Via Department Managers)

LEADD President

VI: REVIEWED

02/21, 02/19, 02/18, 02/17, 02/16, 02/15, 02/14, 02/13, 02/11, 03/09, 03/07

State And Federal False Claims Act And Whistleblower Protections

OVERVIEW

The Federal False Claims Act (FCA) is an important mechanism for the Ohio Attorney General (OAG) and the Ohio Department of Job and Family Services (ODJFS) because it permits these state agencies as well as private citizens to sue anyone who submits a false claim to obtain funds from Ohio's Medicaid program for civil damages. Furthermore, the FCA amplifies Ohio state law because unlike Ohio, the FCA permits anyone who files a false claim to be sued for damages whereas Ohio only permits providers of health care services to be sued if they file a false claim. Other important aspects of the FCA are the incentives and protection afforded to whistleblowers under the FCA. Whistleblowers are entitled to a portion of the damages recovered in a suit to which he or she participated, and employees who come forward to report suspected fraud are protected from retaliation by their employers.

WHAT IS THE FCA?

The purpose of the FCA is to recover taxpayers' money that was fraudulently paid to individuals who deceived the government. The FCA was revised in 1986 because of the increase in fraud perpetuated against the federal and state governments. These revisions helped to strengthen the joint effort needed between the federal and state governments to eliminate the fraud, waste and abuse of government funds, particularly those funds illegally earned through government contracts. These revisions also included more incentives for whistleblowers to come forward with reports of fraud. "By doing so, Congress put into play a powerful public-private partnership for uncovering fraud against the federal fisc and obtaining the maximum recovery for American taxpayers."

The FCA is a valuable device to the OAG and the ODJFS to help maintain the integrity of Ohio's Medicaid program because it specifically provides a mechanism for the government or private individuals to file a civil lawsuit against those who would otherwise be outside the reach of civil prosecution by Ohio because of its limited false claims act. Ohio's false claim act applies only to providers of medical services who receive compensation from the Medicaid program. Together, with knowledge of the FCA, the OAG, ODJFS and private citizens can help eliminate the fraud, waste and abuse of government funds in Ohio.

1. Analysis of the Federal Provisions

The FCA holds anyone who submits or causes someone else to submit a false or misleading claim for government funds liable for civil damages. 31 U.S.C. §§3729-3733. Entities such as businesses, corporations, managed care providers, among others, can also be liable under this act for submitting false claims. A claim is simply some demand for money or property to which the government provides any portion of the money or property requested, and it is the filing of an untrue claim that brings liability upon the person who purported it to be true.

The FCA encompasses several different examples of falsifying claims including, but not limited to: falsifying medical records submitted, billing for services not rendered or goods not provided, duplicating billing to obtain double compensation, and billing, certifying, or prescribing services medically unnecessary. Additionally, no proof of specific intent to defraud the government is required to be held liable under the FCA. All that is required is that the person has actual knowledge, or has acted with deliberate ignorance or reckless disregard of the truth/falsity of his or her claim. Basically, the defense of “I didn’t know it was illegal or that my timesheet was false” does not work. The FCA also mandates whistleblower protections and incentives for employees to come forward and report misconduct. 31 U.S.C. § 3730. Generally, a person who knows about the filing of false claims (the whistleblower) may bring a civil action on behalf of the government for a violation of FCA. After the whistleblower files a suit, the government can pursue the claim on its own, or decline to intervene and allow the whistleblower to continue. If the whistleblower’s case goes forward, no one else can bring a separate action later. Furthermore, depending on the outcome of the case and the whistleblower’s involvement in the prosecution of the case, the whistleblower may be entitled to up to thirty-percent (30%) of the proceeds of the action or settlement. Under the FCA, a whistleblower also has protection from possible retaliation by his or her employer or fellow employees. For example, after the initial filing of a case, the case remains under seal for sixty (60) days and is not accessible by the public. Moreover, any person who is harassed or discriminated against in any way because of his or her involvement in a FCA action has the right to be made whole. The whistleblower’s damages include reinstatement of their job position, two times (2x) back pay, plus interest, and compensation for any special damages including reasonable litigation and attorneys’ fees.

2. Federal Administrative Remedies

The Civil Monetary Penalties (CMP) law is a federal administrative remedy that allows the federal government to pursue civil monetary penalties against anyone who files a false or misleading claim. 42 U.S.C. § 1320a-7a. Such claims are pursued by the Office of the Inspector General. Penalties for filing a false or fraudulent claim include a possible fifty-thousand dollar (\$50,000.00) fine for each act and the assessment of damages three times (3x) the amount of overpayment due.

3. State Provisions – False Claims

Although Ohio does not have a law equivalent to the FCA there are still laws that regulate the filing of false claims in an attempt to defraud Medicaid. Under Ohio law, only providers can be civilly liable for obtaining or attempting to obtain “payments . . . to which the provider is not entitled pursuant to the provider agreement, or the rules of the federal government or the department of job and family services.” RC 5111.03. Similar to the FCA no actual intent to deceive or defraud the government is necessary. If a provider is found to have violated this particular law he or she could be subject to several civil penalties, including, but not limited to: payment of interest (at the maximum rate) on the amount of the excess payments, payment of three times (3x) the amount of any excess payments, a fine between five (5) and ten thousand dollars (\$10,000.00) for each false filing, and any other reasonable expenses determined by the court. Moreover, a provider will also have his or her provider agreement terminated for five years.

In some circumstances, a provider or any other person who has to repay funds because they provided a false statement to the Medicaid program may also be criminally liable for Medicaid Fraud. RC 2913.40. However, a civil judgment is not a pre-requisite to the filing of a criminal

charge, and criminal charges are not limited solely to providers; therefore, anyone who files a false claim or in some way participates in a scheme to file false claims for Medicaid funds can be charged with fraud. Anyone charged with Medicaid Fraud faces a misdemeanor or felony charge depending on the amount of money received fraudulently. If convicted, the individual could go to jail and be ordered to pay fines and restitution. Additionally, if someone, specifically a licensed medical provider, is found guilty of Medicaid Fraud either civilly or criminally, their license can come under review and be suspended or permanently revoked as a result of their fraudulent activity.

4. State Whistleblower Protections

In accordance with Ohio Revised Code (ORC) 124.341 state employees are permitted to file a written report that identifies either 1) a violation of state or federal law or 2) the misuse of public resources that the employee becomes aware of in the course of employment. The written report is to be filed with the employee's supervisor or appointing authority (assuming the supervisor or appointing authority has the authority to correct the violation or misuse). The statute also permits the employee to report the violation of state or federal law or misuse of public resources to a prosecuting attorney, law enforcement or similarly situated person, if the employee reasonably believes that the violation is a criminal offense, or to the Ethics commission if the employee believes that is appropriate.

ORC 124.341 permits an state employee to file an appeal with the state personnel board of review if retaliatory or disciplinary action is implemented as a result of the employee filing a report of a violation of state or federal law or the misuse of public resources. ORC 124.341 further provides that the appeal is the only recourse available to the reporting employee and must be filed within thirty days of the employee receiving the notice of action.

Similarly, ORC 4113.52 provides protections for non-state employees. This statute permits employees to report to their supervisor or other responsible officer of their employer, violations of state or federal statute or any ordinance or regulation of a political subdivision that the employer has authority to correct and the employee reasonably believes that the violation either is a criminal offense that is likely to cause an imminent risk of physical harm to persons or a hazard to public health or safety or is a felony. The non-state employee shall orally notify the supervisor or other responsible officer of his employer of the violation and subsequently file a written report describing the violation.

This statute also provides that if the employer neither corrects nor makes a reasonable and good faith effort to correct the violation within twenty-four hours after receiving notice of the violation, the employee may file a written report of the violation with any of the following: 1) the prosecuting attorney of the county or municipal corporation where the violation occurred, 2) law enforcement, 3) any governmental entity that has regulatory authority over the employer, or 4) the inspector general (if the violation is within his jurisdiction).

If an employer takes disciplinary or retaliatory action against the reporting non-state employee, ORC 4113.52(B) permits the non-state employee to file a civil action for injunctive relief or other remedies in a court of common pleas, provided the action is brought within one hundred eighty days after the date the disciplinary or retaliatory action was taken. The court may render a

judgment that may order reinstatement of the employee, payment of back wages, reinstatement of fringe benefits and seniority rights or any combination of remedies. The court may also award the prevailing party all or a portion of the costs of litigation in an amount the court determines to be appropriate. Both statutes provide protections for employees who follow the statutory procedures in reporting any of the previously stated matters. The employee must make a reasonable effort to ensure the accuracy of information included in the report and, if it is shown that the employee purposely, knowingly, or recklessly reported incorrect or false information, the employee is subject to disciplinary action, including suspension or removal.

If you have any questions about these federal and state provision you can contact the Ohio Attorney General, Health Care Fraud Section at 1-800-642- 2873.

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