

Cardinal McCloskey Community Services

Corporate Compliance

False Claims Act and Whistleblower Provisions

Purpose:

The submission of a false claim can result in significant administrative and civil penalties under the Federal False Claims Act and other New York State laws. This Policy explains the Federal False Claims Act (31 U.S.C. §§ 3729 -3733), the Administrative Remedies for False Claims (31 USC Chapter 38 §§ 3801-3812), the New York State False Claims Act (State Finance Law §§ 187-194) and other New York State criminal and civil laws concerning false statements or claims; the Policy also describes various protections against retaliation that these laws provide.

Through its Compliance Program, Cardinal McCloskey Community Services (“CMCS” or the “Organization”) strives to prevent and detect fraud, waste and abuse in Federal healthcare programs. CMCS has instituted various procedures, which are set forth in our Compliance Handbook and related policies and procedures, to ensure compliance with these laws and to assist us in preventing fraud, waste and abuse in Federal health care programs. This policy also briefly sets forth the procedures CMCS has put into place to prevent any violations of law regarding fraud or abuse.

This policy applies to all Personnel, including management, contractors and agents and volunteers.

For purpose of this policy, a contractor or agent is defined as:

- Any contractor, subcontractor, agent, or other person which or who, on behalf of the Organization, furnishes, or otherwise authorizes the furnishing of Medicaid health care items or services, performs billing or coding functions; or
- Is involved in the monitoring of health care provided by the Organization.

Policy:

CMCS is committed to prompt, complete and accurate billing of all services provided to children/consumers/clients. CMCS and its Personnel are prohibited from making any false or misleading entries on any claim forms or submitting any false claims for payment to a Federal health care program or any other payer. Personnel may not engage in any arrangement or participate in such arrangement at the direction of another person, including any supervisor or manager that results in the submission of a false or misleading entry on claims forms or documentation of services that result in the submission of a false claim.

1. CMCS will perform billing activities in a manner consistent with the regulations and requirements of third party payers, including Federal health care programs (e.g., Medicaid and Medicare.)
2. CMCS will conduct regular auditing and monitoring procedures as part of its efforts to assure compliance with applicable regulations.
3. Any Personnel who has any reason to believe that anyone is engaging in false billing practices or false documentation of services is expected to report such information in accordance with the Compliance Handbook’s Reporting Requirements and the Whistleblower, Non-Intimidation and Non-Retaliation Policy.
4. Any form of retaliation or intimidation against any Personnel who reports a perceived problem or concern in good faith is strictly prohibited.
5. Compliance issues should be reported to one of the following personnel:

President/Chief Executive Officer	Beth Finnerty
Chief Operating Officer	William Ursillo
Chief Financial Officer	Christine Monroe
Senior VP of Financial & Corporate Compliance	Kamlesh Singh
Vice President, Human Resources	Donna Ouimette
Director of Corporate Compliance/Privacy Officer	Irene Roman
Virtual Chief Information Security Officer	Zandy McAllister

6. Personnel also have the right to make a report on an anonymous and confidential basis to: the Compliance Hotline – EthicsPoint (866) 437-3557 or EthicsPoint Internet Connection – <http://www.CMCS.ethicspoint.com>.
7. Failure to report and disclose or assist in an investigation of fraud and abuse is a breach of the Personnel’s obligations to the Organization and may result in disciplinary action, up to, and including termination of employment or contract.
8. Any Personnel who commits or condones any form of retaliation or intimidation for good faith reporting of any compliance issue will be subject to discipline up to, and including, termination of employment, contract or affiliation with the Organization.
9. CMCS is committed to investigating any suspicions of fraud, waste, or abuse swiftly and thoroughly and requires all Personnel to assist in such investigations.

Procedures:

1. CMCS will provide this policy and procedure to all current Personnel and to new Personnel as part of their orientation.
2. The Compliance Officer will assure that all contractors are advised of this policy and procedure, and that it may be viewed on the CMCS website.

Overview of Relevant Laws:

I. FEDERAL LAWS

A. The False Claims Act (31 U.S.C. §§ 3729-3733)

The False Claims Act is a federal law designed to prevent and detect fraud, waste and abuse in Federal healthcare programs, including Medicaid and Medicare. Under the False Claims Act, anyone who “knowingly” submits false claims to the Government is liable for damages up to three times the amount of the erroneous payment plus mandatory per claim penalties for each false claim submitted.

The False Claims Act (“FCA”) provides, in pertinent part, that:

1) any person who (A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; (C) conspires to commit [the above violations]; . . . or (G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government, . . .

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000,¹ plus 3 times the amount of damages which the Government sustains because of the act of that person

The term “knowingly” includes a person who:

- Has actual knowledge of the false information in a claim;
- Acts in deliberate ignorance of the truth or falsity of the information in a claim;
- Acts in reckless disregard of the truth or falsity of the information in a claim.

The term “claim” means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that-- (i) is presented to an officer, employee, or agent of the United States; or (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government’s behalf or to advance a Government program or interest, and if the United States Government (a) provides or has provided any portion of the money or property requested or demanded; or (b) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

The term “obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.

¹ Although the statutory provisions of the Federal False Claims Act authorizes a range of penalties of from between \$5,000 and \$10,000, those amounts have been adjusted for inflation and increased by regulation to not less than \$13,508 and not more than \$27,018 for penalties assessed after January 30, 2023, whose associated violations occurred after November 2, 2015. *See* 28 C.F.R. §85.5.

The term “material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

False Claims suits can be brought against individuals and entities.

The False Claims Act does not require proof of a specific intent to defraud the Government.

Providers can be prosecuted for a wide variety of conduct that leads to the submission of a false claim. Some examples include:

- Knowingly making false statements;
- Falsifying records;
- Submitting claims for services never performed or items never furnished;
- Double-billing for items or services;
- Using false records or statements to avoid paying the Government;
- Falsifying time records used to bill Medicaid; or
- Otherwise causing a false claim to be submitted.

In sum, the False Claims Act imposes liability on any person who submits a claim to the federal government or a contractor of the federal government that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The False Claims Act also imposes liability on an individual who knowingly submits a false record in order to obtain payment from the government. An example of this includes a government contractor who submits records that he knows (or should know) is false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone obtains money from the federal government to which he or she may not be entitled, and then uses false statements or records in order to retain the money. An example of this so-called “reverse false claim” includes a health care agency that obtains interim payments from Medicare throughout the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare program.

B. Administrative Remedies for False Claims (31 USC Chapter 38. §§3801-3812)

This statute allows for administrative recoveries by federal agencies including the Department of Health and Human Services, which operates the Medicare and Medicaid Programs. The law prohibits the submission of a claim or written statement that the person knows or has reason to know is false, contains false information or omits material information. The agency receiving the claim may impose a monetary penalty of up to \$5,500 per claim and damages of twice the amount of the original claim.²

Unlike the False Claims Act, a violation of this law occurs when a false claim is submitted, not when it is paid. Also unlike the False Claims Act, the determination of whether a claim is false, and imposition of fines and penalties is made by the administrative agency, and not by prosecution in the federal court system.

II. NEW YORK STATE LAWS

A. Civil and Administrative Laws

1. New York State False Claims Act (State Finance Law §§187-194)

The New York State False Claims Act closely tracks the Federal False Claims Act. It imposes fines on individuals and entities that knowingly file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. The penalty for filing a false claim is the same that may be imposed for a violation of the Federal FCA (including any adjustments for inflation) plus three times the amount of the damages which the state or local government sustains because of the act of that person. In addition, a person who violates this act is liable for costs, including attorneys' fees, of a civil action brought to recover any such penalty.

The Government, or an individual citizen acting on behalf of the Government (a "Relator"), can bring actions under the New York State False Claims Act. If a Relator's suit eventually concludes with payments back to the government, the Relator may receive 15% - 30% of the proceeds, depending upon whether the government participated in the suit.

2. Social Service Law §145-b False Statements

It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Services program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device. The State or the local Social Services district may recover up to three times the amount of the incorrectly paid claim. In the case of non-monetary false statements, the local Social Service district or State may recover three times the amount incorrectly paid. In addition, 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.

3. Social Service Law §145-c Sanctions

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the person's and the person's family needs are not taken into account for a period of six months to five years, depending upon the number of offenses.

B. Criminal Laws

1. Social Service Law §145 Penalties

² Although the statutory provisions of the Program Fraud Civil Remedies Act authorizes a penalty up to \$5,000, that amount has been adjusted for inflation and increased by regulation to not more than \$13,508 for penalties assessed after January 30, 2023, whose associated violations occurred after November 2, 2015. See 28 C.F.R. §85.5.

Any person, who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor.

2. **Social Service Law § 366-b, Penalties for Fraudulent Practices**

- a. Any person who, with intent to defraud, presents for payment any false or fraudulent claim for furnishing services or merchandise, knowingly submits false information for the purpose of obtaining Medicaid compensation greater than that to which he/she is legally entitled to, or knowingly submits false information in order to obtain authorization to provide items or services shall be guilty of a Class A misdemeanor.
- b. Any person who obtains or attempts to obtain, for himself or others, medical assistance by means of a false statement, concealment of material facts, impersonation, or other fraudulent means is guilty of a Class A misdemeanor.

3. **Penal Law Article 155, Larceny**

The crime of larceny applies to a person who, with intent to deprive another of property, obtains, takes or withholds the property by means of a trick, embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior. This law has been applied to Medicaid fraud cases.

- a. Fourth degree grand larceny involves property valued over \$1,000. It is a class E felony.
- b. Third degree grand larceny involves property valued over \$3,000. It is a class D felony.
- c. Second degree grand larceny involves property valued over \$50,000. It is a class C felony.
- d. First degree grand larceny involves property valued over \$1 million. It is a class B felony.

4. **Penal Law Article 175, Written False Statements**

There are four crimes in this Article that relate to filing false information or claims and have been applied in Medicaid fraud prosecutions:

- a. §175.05 – Falsifying business records involves entering false information, omitting material information or altering an enterprise’s business records with the intent to defraud. It is a class A misdemeanor.
- b. §175.10 – Falsifying business records in the first degree includes the elements of the §175.05 offense and includes the intent to commit another crime or conceal its commission. It is a class E felony.
- c. §175.30 – Offering a false instrument for filing in the second degree involves presenting a written instrument, including a claim for payment, to a public office knowing that it contains false information. It is a class A misdemeanor.
- d. §175.35 – Offering a false instrument for filing in the first degree includes the elements of the second degree offense and must include intent to defraud the state or a political subdivision. It is a class E felony.

5. **Penal Law Article 176, Insurance Fraud**

This Article applies to claims for insurance payment, including Medicaid or other health insurance. The six crimes in this Article involve intentionally filing a false insurance claim. Under this article, a person may be guilty of a felony for false claims in excess of \$1,000.

6. Penal Law Article 177, Health Care Fraud

This statute was designed to address the specific conduct by health care providers who defraud the system including any publicly or privately funded health insurance or managed care plan or contract, under which any health care item or service is provided. Medicaid is considered to be a single health plan under this statute.

This law primarily applies to claims by providers for insurance payment, including Medicaid payment, and it includes six crimes.

- a. Health care fraud in the 5th degree – a person is guilty of this crime when, with intent to defraud a health plan, he or she knowingly and willfully provides materially false information or omits material information for the purpose of requesting payment from a health plan. This is a class A misdemeanor.
- b. Health care fraud in the 4th degree – a person is guilty of this crime upon filing such false claims on more than one occasion and annually receives more than three thousand dollars. This is a class E felony.
- c. Health care fraud in the 3rd degree – a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over ten thousand dollars. This is a class D felony.
- d. Health care fraud in the 2nd degree – a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over fifty thousand dollars. This is a class C felony.
- e. Health care fraud in the 1st degree – a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over one million dollars. This is a class B felony.

III. WHISTLEBLOWER PROTECTIONS

B. Federal False Claims Act (31 U.S.C. §3730[h])

The False Claims Act contains a “Qui Tam” or whistleblower provision. This provision allows an individual citizen (referred to as a whistleblower or “Relator”) acting on behalf of the Government, to bring an action under the False Claims Act. If the lawsuit is successful, and provided certain legal requirements are met, the whistleblower may receive an award ranging from 15% - 30% of the amount recovered. The percentage of the award will depend upon the extent to which the Relator substantially contributed to the prosecution of the action, and whether the Government has intervened in the lawsuit or not.

The Federal False Claims Act also provides protection to Relators (who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. *31 U.S.C. 3730(h)*). Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees.

C. Enhancement of Employee Whistleblower Protections (41 U.S.C. § 4712)

This statute applies to all employees working for contractors, grantees, subcontractors and subgrantees of federal contracts and grants. It provides protections for employees who disclose information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a specific danger to public health or safety, or a violation of law, rule, or regulations related to a federal contract or grant. The statute provides that employees who make such disclosures may not be discharged, demoted or otherwise discriminated against if the disclosure is made to one of the following:

- A member of Congress or a representative of a committee of Congress
- An Inspector General
- The Government Accountability Office
- A federal employee responsible for contract or grant oversight or management at the relevant agency
- An authorized official of the Department of Justice or other law enforcement agency
- A court or grand jury
- A management official or other employee of the contractor, subcontractor, or grantee who has responsibility to investigate, discover, or address misconduct.

Any employee who believes he or she has been subjected to retaliation as stated above may submit a complaint to the Inspector General of the governmental agency involved. The employee will have all rights and remedies afforded by federal law.

D. NY False Claim Act (State Finance Law §191)

The New York False Claim Act also provides protection to qui tam relators (individuals who commence a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the Act. Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees

E. New York Labor Law §740

Section 740 prohibits employers from taking "retaliatory" action against an employee (including former employees and natural persons working as independent contractors), whether or not the employee is acting within the scope of his or her job duties, because the employee does any of the following:

1. discloses or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that the employee reasonably believes is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety;
2. provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such activity, policy or practice by such employer; or
3. objects to, or refuses to participate in, any such activity, policy or practice.

The employee's disclosure will only be protected if the employee first made a good faith effort to notify his or her employer by bringing up the matter with a supervisor and giving the employer a reasonable opportunity to correct the alleged violation. However, such employer notification is not required where:

- there is an imminent and serious danger to the public health or safety;
- the employee reasonably believes that reporting to the supervisor would result in a destruction of evidence or other concealment of the activity, policy or practice;
- such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor;

- the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or
- the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct it.

Under Section 740, “retaliatory action” is defined to mean an adverse action taken by an employer or his or her agent to discharge, threaten, penalize, or in any other manner discriminate against any employee or former employee exercising his or her rights under Section 740. This includes: (i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms of conditions of employment (including but not limited to discharge, suspension, or demotion); (ii) actions or threats to take such actions that would adversely impact a former employee’s current or future employment; or (iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee’s suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee’s family or household member.

If an employer takes a retaliatory action against the employee, the employee may bring a civil action within two years after the alleged retaliatory action was taken. The parties to such an action are entitled to a jury trial. A court may order: an injunction to restrain continued violation of the law; the reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position, or “front pay;” the reinstatement of full fringe benefits and seniority rights; the compensation for lost wages, benefits and other remuneration; the payment by the employer of reasonable costs, disbursements and attorneys’ fees; a civil penalty not to exceed \$10,000; and/or the payment by the employer of punitive damages, if the violation was willful, malicious or wanton.

F. New York Labor Law §741

Section 741 prohibits certain defined health care employers from taking “retaliatory action” against an employee because the employee does any of the following:

1. discloses or threatens to disclose to a supervisor, to a public body, to a news media outlet, or to a social media forum available to the public at large, an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety; or
2. objects to, or refuses to participate in, any activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety.

Section 741 defines “retaliatory action” to mean the discharge, suspension, demotion, penalization or discrimination against an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

Similar to Section 740, an employee will not be protected under Section 741 unless the employee has brought the improper quality of patient care or improper quality of workplace safety to the attention of a supervisor and has given the employer a reasonable opportunity to correct the activity, policy or practice. Also similar to Section 740, notice to the employer is not required where it presents an imminent threat to public health or safety or to the health of a specific patient or specific health care employee and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

The same relief and enforcement provided for under Labor Law Section 740 (described above) are applicable to retaliatory actions under Section 741.

Date Implemented: September 27, 2007

Date Reviewed	Date Revised	Reviewer Name/Title
	November 13, 2007	Kamlesh Singh, Sr. VP of Finance and Corporate Compliance
	July 6, 2011,	Kamlesh Singh, Sr. VP of Finance and Corporate Compliance
	January 24, 2012	Kamlesh Singh, Sr. VP of Finance and Corporate Compliance
	April 29, 2013	Kamlesh Singh, Sr. VP of Finance and Corporate Compliance
	December 17, 2014	Kamlesh Singh, Sr. VP of Finance and Corporate Compliance
	August 17, 2016	Kamlesh Singh, Sr. VP of Finance and Corporate Compliance
	June 28, 2017	Kamlesh Singh, Sr. VP of Finance and Corporate Compliance
	June 26, 2019	Kamlesh Singh, Sr. VP of Finance and Corporate Compliance
	June 28, 2023	Kamlesh Singh, Sr. VP of Finance and Corporate Compliance

