

ADLER APHASIA CENTER

FALSE CLAIMS / WHISTLEBLOWER ACT

Policy Statement

The Adler Aphasia Center is committed to prompt, complete, and accurate billing of all services provided to members for payment by members, government agencies, or other third party payers. The facility is committed to complying with all applicable federal and state laws and regulations. To ensure compliance with such laws, the Adler Aphasia Center has policies and procedures in place to detect and prevent fraud, waste, and abuse, and also supports the efforts of federal and state authorities in identifying incidents of fraud and abuse. This policy sets forth information concerning the facility's existing policies and procedures, including avenues for reporting concerns internally, and an overview of the Federal Civil False Claims and Program Fraud Civil Remedies Acts and applicable state laws.

Procedures

The Adler Aphasia Center and its employees shall not make or submit any false or misleading entries on any bills or claim forms, and no employee shall engage in any arrangement, or participate in such arrangement at the direction of another employee, that results in such prohibited acts. Any false statement on a bill or claim form may subject the employee to disciplinary action, up to, and including termination. The facility may also be required to report violations to the authorities.

False claims and billing fraud may take a variety of different forms, including, but not limited to, false statements supporting claims for payment, misrepresentation of material facts, concealment of material facts, or theft of benefits or payments from the party entitled to receive them.

Employees who are aware of, or suspect, any type of false or fraudulent billing are required to report this to a manager or the compliance officer. Employees are required to report suspected billing fraud regardless of whether it is carried out willfully and knowingly or whether it is being done inadvertently or accidentally. Knowing of a potential violation and failing to report it may result in disciplinary action.

A **whistleblower** is an employee who reports an activity that he or she considers to be illegal or dishonest. The whistleblower is not responsible for investigating the activity or for determining fault or corrective measures; appropriate management officials are charged with these responsibilities. As stated above, if an employee has knowledge of or a concern of illegal or dishonest activity, the employee is to contact a manager or the compliance officer.

Whistleblower protections are provided in two areas – confidentiality and against retaliation. Insofar as possible, the confidentiality of the whistleblower will be maintained. However, identity may have to be disclosed to conduct a thorough investigation, to comply with the law and to provide accused individuals their legal rights of defense. The facility will not retaliate against a whistleblower. This includes, but is not limited to, protection from retaliation in the form of adverse employment action such

as termination, pay cuts, poor work assignments, and threats of physical harm. Any whistleblower who believes he or she is being retaliated against should contact the Executive Director immediately. The right of a whistleblower for protection does not include immunity for any personal wrongdoing that is alleged and investigated.

The Role of Federal and State Laws in Preventing Fraud, Waste, and Abuse: The Centers for Medicare and Medicaid Services (CMS) defines “fraud” as the intentional deception or misrepresentation that an individual knows to be false (or does not believe to be true) and makes, knowing that the deception could result in an unauthorized benefit to himself or another person. CMS defines “abuse” as incidents or practices of providers that are inconsistent with sound medical practice and may result in unnecessary costs, improper payment, or the payment for services that either fail to meet professionally recognized standards of care or are medically unnecessary.

The Federal Government and the State of New Jersey have enacted criminal and civil laws pertaining to the submission of false or fraudulent claims for payment or approval to the federal and state governments and to private payers. These false claims laws, which provide for criminal, civil, and administrative penalties, provide governmental authorities with broad authority to investigate and prosecute potentially fraudulent activities, and also provide anti-retaliation provisions for individuals who make good faith reports of waste, fraud, and abuse.

The Federal Civil False Claims and Program Fraud Civil Remedies Acts, applicable State laws, and anti-retaliation provisions are summarized in the following sections.

1. FEDERAL CIVIL FALSE CLAIMS ACT

The **Civil False Claims Act** (31 U.S.C. §3729 *et seq.*) is a statute that imposes civil liability on any person who:

- knowingly presents, or causes to be presented, a false or fraudulent claim, record or statement for payment of approval,
- conspires to defraud the government by getting a false or fraudulent claim allowed or paid,
- uses a false record or statement to avoid or decrease an obligation to pay the Government,
- and other fraudulent acts enumerated in the statute.

The term “**knowingly**” as defined in the Civil False Claims Act (“FCA”) includes a person who has actual knowledge of the information, acts in 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.

The term “**claim**” includes any request or demand for money or property if the United States Government provides any portion to the money requested or demanded.

Potential civil liability under the FCA currently includes penalties of between five thousand five hundred and eleven thousand per claim, treble damages, and the costs of any civil action brought to recovery such penalties or damages.

The **Attorney General of the United States** is required to diligently investigate violations of the FCA, and may bring a civil action against a person. Before filing suit the Attorney General may issue an investigative demand requiring production of documents and written answers and oral testimony.

The FCA also provides for **Actions by Private Persons** (*qui tam* lawsuits) who can bring a civil action in the name of the government for a violation of the Act. Generally the action may not be brought more than six years after the violation, but in no event more than ten. When the action is filed it remains under seal for at least sixty days. The United States Government may choose to intervene in the lawsuit and assume primary responsibility for prosecuting, dismissing or setting the action. If the Government chooses not to intervene, the private party who initiated the lawsuit has the right to conduct the action.

In the event the government proceeds with the lawsuit, the *qui tam* plaintiff may receive fifteen to twenty-five per cent of the proceeds of the action or settlement. If the *qui tam* plaintiff proceeds with the action without the government, the plaintiff may receive twenty-five to thirty per cent of the recovery. In either case, the plaintiff may also receive an amount for reasonable expenses plus reasonable attorneys' fees and costs.

If the civil action is frivolous, clearly vexatious, or brought primarily for harassment, the plaintiff may have to pay the defendant its fees and costs. If the plaintiff planned or initiated the violation, the share of proceeds may be reduced and, if found guilty of a crime associated with the violation no share will be awarded the plaintiff.

Whistleblower Protection. The Civil False Claims Act also provides for protection for employees from retaliation. An employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in terms and conditions of employment because of lawful acts conducted in furtherance of an action under the FCA may bring an action in Federal District Court seeking reinstatement, two times the amount of back pay plus interest, and other enumerated costs, damages, and fees.

2. FEDERAL PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

The **Program Fraud Civil Remedies Act of 1986** ("Administrative Remedies for False Claims and Statements" at 38 U.S.C. §3801 *et seq.*) is a statute that establishes an administrative remedy against any person who presents or causes to be presented a claim or written statement that the person knows or has reason to know is false, fictitious, or fraudulent due to an assertion or omission to certain federal agencies (including the Department of Health and Human Services).

The term "**knows or has reason to know**" is defined in the Act as a person who has actual knowledge of the information, acts in 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.

The term “**claim**” includes any request or demand for property or money, e.g., grants, loans, insurance or benefits, when the United States Government provides or will reimburse any portion of the money.

The authority, i.e., federal department, may investigate and with the Attorney General’s approval commence proceedings if the claim is less than one hundred and fifty thousand dollars. A hearing must begin within six years from the submission of the claim. The Act allows for civil **monetary sanctions** to be imposed in administrative hearings, including penalties of five thousand five hundred dollars per claim and an assessment, in lieu of damages, of not more than twice the amount of the original claim.

3. NEW JERSEY FALSE CLAIMS LAW

Under the criminal provisions of the New Jersey Medical Assistance and Health Services Act (MAHSAM), codified at N.J.S.A. § 30:4D-17(a) – (d), participants in the NJEIS shall refrain from engaging in fraud or other criminal violation relating to Title XIX (Medicaid)-funded programs. Prohibited conduct includes, but is not limited to:

- fraudulent receipt of payments or benefits;
- false claims, statements or omissions, or conversion of benefits or payments
- kickbacks, rebates and bribes; and
- false statements or representations about conditions or operations of an institution or facility to qualify for payments.

Participants engaging in criminal violations may be excluded from participation in Medicaid and other health care programs under N.J.S.A. §30:4D-17.1(a).

Under the civil provisions of the New Jersey Medical Assistance and Health Services Act (MAHSAM), codified at N.J.S.A. §§ 30:4D-7(h) and 30:4D-17(e) – (l), participants in the NJEIS:

- shall repay with interest any amounts received as a result of unintentional violations;
- are liable to pay up to treble damages and up to \$2000 per false claim when violations are intentional.

Participants engaging in civil violations may be excluded from participation in Medicaid and other health care programs under N.J.S.A. § 30:4D-17.1(a).

Under the Health Care Claims Fraud Act (HCCFA), codified at N.J.S.A. §§ 2C:21-4.2, 2C:21-4.3 and 2C:51-5, participants in the NJEIS shall not:

- knowingly commit health care claims fraud in the course of providing NJEIS services;
- recklessly commit health care claims fraud in the course of providing NJEIS services;

- commit acts of health care claims fraud as described in the first two bullet points, if the commission of such acts would be performed by an individual other than the professional who provided NJEIS services (e.g., claims processing staff).

4. New Jersey Whistleblower Protection

Under the Conscientious Employee Protection Act (CEPA), codified at N.J.S.A. §34:19-1, et seq., provider agencies are prohibited from taking retaliatory action against employees who:

- disclose or threaten to disclose to a supervisor or any public agency an activity, policy, or practice of the provider agency or another business with which the provider agency shares a business relationship, that the employee reasonably believes to be illegal, fraudulent and/or criminal;
- provides information or testimony to any public agency conducting an investigation, hearing or inquiry into any violation of law, rule or regulation by the provider agency or another business with which the provider agency shares a business relationship;
- objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is illegal, fraudulent, criminal or incompatible with a clear mandate of public policy concerning the public health, safety or welfare, or protection of the environment.