

PROMEDICA SYSTEM POLICY

Policy Title: False Claims Education Policy **Policy No:** SP 1.26

Effective Date: 1/01/07

Revised Date: 4/1/12

Purpose: To educate ProMedica employees, physicians, medical staff, contractors, and agents ("Personnel"), as required by the Deficit Reduction Act of 2005, on the contents of the Federal and State False Claims laws, including the legal protection for Personnel who report false claims incidents to regulatory agencies.

Scope: ProMedica will provide this Federal and State False Claims Education Policy to all employees, physicians, medical staff, contractors, and agents. ProMedica welcomes any questions or discussion related to this policy.

Policy: **Federal False Claims Act**

No person shall do any of the following:

1. Knowingly present or cause to be presented, to an officer or employee of the United States government a false or misleading claim for payment or approval;
2. Knowingly, make, use, or cause to be made or used a false record or statement to get the Federal government to pay or approve a false or misleading claim;
3. Conspire to defraud the Federal government by getting a false or fraudulent claim allowed to be paid; or
4. Have possession, custody, or control of property or money used or to be used by the Federal government and, with intent to defraud the Federal government or willfully conceal the property or cause to be delivered less property than the amount for which the person received a certificate or receipt.

Knowing and Knowingly means, that a person, with respect to information, meets at least one of the following criteria:

1. The person has actual knowledge of the information;
2. The person acts in deliberate ignorance of the truth or falsity of the information; or
3. The person acts in reckless disregard of the truth or falsity of the information.

No specific intent to defraud is required to be shown to prove a violation of the Federal False Claims Act.

Claim includes, any request or demand, whether under a contract or otherwise, for money or property that is made to a contractor, grantee, or other recipient if the Federal government provides any portion of the money or property that is requested or demanded or if the Federal government will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.

Person can mean an individual, corporation, partnership, association, or other legal entity.

Michigan False Claims Act

Under Michigan law, a person is prohibited from, among other things, doing any of the following:

1. Knowingly making or causing to be made false statements or representations in applying for or determining rights under Medicaid benefits;
2. Soliciting, offering, or receiving a kickback or bribe in connection with furnishing goods or services payable in whole or in part by Medicaid or receiving a payment or rebate for referring an individual to another person for the furnishing of such goods and services;
3. Knowingly and willfully making or inducing or seeking to induce the making of a false statement or representation of a material fact with respect to the conditions or operation of an institution or facility so that it may qualify as a hospital, skilled nursing facility, intermediate care facility, or home health agency;
4. Entering into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another to obtain payment or allowance of a false claim; or
5. Knowingly making or presenting false claims.

Knowing and Knowingly mean, that a person is in possession of facts under which he or she is aware or should be aware of the nature of his or her conduct and that his or her conduct is substantially certain to cause the payment of a Medicaid benefit. **Knowing or knowingly** do not include conduct which is an error or mistake unless the person's course of conduct indicates a systematic or persistent tendency to cause inaccuracies to be present.

Claim means any attempt to cause the department of social services to pay out sums of money under Medicaid.

Person means an individual, corporation, partnership, association, or other legal entity.

Ohio False Claims Laws

Ohio does not have a False Claims Act¹; however, it does have laws pertaining to false claims filed under the Medicaid program. Under Ohio law, a provider under contract with Medicaid shall not utilize deception to attempt to obtain payments to which the provider is not entitled or willfully receive payments to which the provider is not entitled, nor shall a provider falsify any report or document required by state or Federal law, rule, or provider agreement relating to Medicaid payments. Engaging in such deception could subject the provider to civil penalties.

Additionally, no provider or person shall knowingly make or cause to be made any false or misleading statement or representation for use in obtaining Medicaid reimbursement whether through receipt of reimbursement to which the provider or person is not entitled pursuant to a provider agreement; receiving remuneration beyond that authorized by state law; or altering, falsifying, destroying, concealing, or removing claims records.

Further, in applying for Medicaid benefits, no person shall knowingly make or cause to be made misleading statements; conceal property interests, or fail to disclose property transfers occurring within certain time frames. Engaging in these prohibited behaviors could subject a person or provider to criminal penalties.

Deception means acting with actual knowledge of the representation or information involved, acting in deliberate ignorance of the truth or falsity of the representation or information involved, or acting in reckless disregard of the truth or falsity of the representation or information involved, deceiving another or causing another to be deceived in any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact. No proof of specific intent to defraud is required to show that a provider has engaged in deception.

Federal Administrative, Civil, and Criminal Penalties

Federal administrative remedies under the Program Fraud and Civil Remedies Act consist of Civil Monetary Penalties up to \$5,000 per false claim or statement and payment of up to twice the amount claimed due to fraud.

Violations of the Federal False Claims Act could result in civil penalties of not less than \$5,500 and not more than \$11,000 for each false claim, plus three times the amount of damages sustained by the Federal government

¹ Senate Bill 143 introduced to State Senate on 4/7/11 increases civil monetary penalties to \$11,000 and makes allowances for self-disclosures. As of 4/1/12, the Bill is still in Committee.

because of the actions of the person making the false claim. A person found liable for any false claim may also be liable for costs of the civil action brought to recover any penalty and/or damages.

The Federal government may also seek criminal penalties against persons involved in making false claims as prohibited by the Federal False Claims Act.

Michigan Civil and Criminal Penalties

Violations of the State of Michigan False Claims Act could result in civil penalties assessed to the person receiving a benefit to which that person is not entitled by reason of fraud, making a fraudulent statement, or knowingly concealing a material fact. Civil monetary penalties include restitution of the full amount received, and for each claim \$5,000 to \$10,000, plus treble damages.

The Michigan state government may also seek criminal penalties against persons involved in making false claims as prohibited by the Michigan False Claim Act. Criminal penalties consist of up to 4 years in prison and up to \$50,000 in fines, or both.

Ohio Civil and Criminal Penalties

Ohio civil penalties for providers consist of payment of the following: interest on the amount of the excess payments, three times the amount of any excess payments, \$5,000 - \$10,000 for each deceptive act, all reasonable expenses incurred by the state. Additionally, termination of the provider's provider agreement and/or suspension/revocation of the provider's license could occur.

Criminal penalties for providers or persons convicted of Medicaid fraud range from misdemeanors to felonies based on the amounts of money involved. Jail, fines, restitution, and suspension or revocation of provider licenses can also be imposed.

Whistleblower Protections

Under both State and Federal law, protections exist for individuals who report and/or file claims related to suspected fraud, abuse, and waste. Furthermore, individuals who file lawsuits under Michigan or Federal False Claims Acts may be eligible to receive a percentage of any recovery. The percentage varies depending upon whether the government chooses to intervene or not. There may be penalties imposed for the filing of false and/or frivolous claims. Ohio law specifies that both state and non-state employees should first engage in written internal reporting of suspected fraud, abuse, and waste. State employees can go directly to appropriate governmental authorities upon reasonable belief that the fraud, abuse, or waste is a criminal offense. Non-

state employees can report to appropriate governmental authorities if the employer does not make a timely attempt to correct the violation.

If any employee who has acted lawfully under the Michigan and/or Federal False Claims Acts is discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against in his/her terms and conditions of employment, that employee shall be entitled to relief necessary to make that employee whole, including reinstatement with same seniority status, two times the amount of any back pay owed, and compensation for any special damages incurred, including litigation costs and reasonable attorneys' fees. Likewise, Ohio employees are protected from similar retaliation and may file actions if retaliation occurs based on their lawful actions. State of Ohio employees must file with the state personnel board of review.

CONTACT INFORMATION:

ProMedica Compliance Hotline: (419) 824-1815 or 1-800-807-2693
CMS Regional Office (Chicago): (312) 886-6432
Michigan Attorney General: (517) 373-1110
Ohio Attorney General, Health Care Fraud Section: 1-800-642-1110

References:

Section 1902(a) of the Social Security Act (42 U.S.C. §1396a(a))
Federal False Claims Act (31 U.S.C. §§ 3729-3722)
Program Fraud and Civil Remedies Act of 1986 (31 U.S.C. §§ 3801-3812)
Ohio False Claims laws (ORC §§ 5111.101, 5111.03, 2913.40, 2913.401, 4113.52, 124.341, 2921.13)
Michigan Medicaid False Claim Act (Chapter 400, Act 72 of 1977 §§ 400.601-400.613)

Approved by:

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