

Deficit Reduction Act – Contract Providers

Training

OVERVIEW

The first major change to the enforcement landscape in the Deficit Reduction Act (DRA) is the creation of the Medicaid Integrity Program, modeled after a Medicare program. It will allow the government to bring private contractors into the business of Medicaid oversight.

Notable provisions:

- Prosecutions on the civil side do not require proof of fraud but only proof that the provider acted in "reckless disregard" or "deliberate ignorance".
- Qui tam or "whistleblower" provisions that allow private citizens to bring suit against providers for false claims and to collect a portion of the monies recouped by the government in a successful prosecution or action against that provider.
- Very high penalties assessed on a per claim basis for violators. The government can get triple damages on monies it should not have paid and per claim fines from \$5,500 to \$11,000 each.

AS A PROVIDER OF PATHWAYS SERVICES YOU HAVE AN OBLIGATION TO REPORT ANY FRAUD, ABUSE OR WASTE OF MEDICAID TO THE PATHWAYS ORGANIZATION.

FEDERAL FALSE CLAIMS ACT

The False Claims Act applies when a company or person:

- Knowingly presents (or causes to be presented) to the Federal Government a false or fraudulent claim for payment,
- Knowingly uses (or causes to be used) a false record or statement to get a claim paid by the Federal Government,
- Conspires with others to get a false or fraudulent claim paid by the Federal Government,
- Knowingly uses (or causes to be used) a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Federal Government.

Time period for a claim to be brought:

The statute of limitations under the False Claims Act is the later of 6 years of the illegal conduct or within 3 years after the Government knows or should have known about the illegal activity but no later than 10 years after the illegal activity.

What money can be recovered:

A person who brings a False Claims Act (or qui tam) case is entitled to a proportional share of the funds that are recovered for the government (15% to 30%) and can also receive an amount for reasonable expenses plus reasonable attorney's fees and costs.

Protection for people who bring Qui Tam cases:

Anyone who lawfully acts to bring suit is protected from discharge, demotion, suspension, threats, harassment and discrimination.

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MICHIGAN FALSE CLAIMS ACT

The Michigan False Claims Act is an act to prohibit fraud in the obtaining of benefits or payments in connection with the medical assistance program; to prohibit kickbacks or bribes in connection with the program; to prohibit conspiracies in obtaining benefits or payments; to authorize the attorney general to investigate alleged violations of this act; to provide for the appointment of investigators by the attorney general; to ratify prior appointments of attorney general investigators; to provide for civil actions to recover money received by reason of fraudulent conduct; to provide for receiverships of residential health care facilities; to prohibit retaliation; to provide for certain civil fines; and to prescribe remedies and penalties.

Definitions:

- Claim – means an attempt to cause the Department of Community Health to make payment under the social welfare act.
- Deceptive – means making a claim or causing a claim to be made which contains a statement of fact or which fails to reveal a material fact, which statement or failure leads the department to believe the represented or suggested state of affair to be other than it actually is.
- False – means wholly or partially untrue or deceptive.
- Knowing or knowingly – means that a person has information 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 does not include conduct which is an error or mistake unless the person's course of conduct indicated a systematic or persistent tendency to cause inaccuracies to be present.

A person may bring a civil action in the name of the state to recover losses at the time of filing, the person shall disclose, in writing , substantially all material evidence and inforamiton supporting the complaint.

Court Findings:

If the court finds an action under this section based primarily on information from other than the person bringing the action, the court shall award costs, reasonable attorney's fees, and not more than 10% of monetary recovery. A person other than the attorney general shall not bring an action that is already the subject of a civil suit, criminal investigation, prosecution or administrative investigation.

Frivolous Actions:

If a person proceeds with an action after the attorney general declines, and the court finds it frivolous, the court shall award prevailing defendant actual and reasonable attorneys fees and expenses and impose a civil fine of not more than \$10,000.

Employers Actions:

An employer shall not discharge, demote, suspend, threaten, harass, or otherwise discriminate against an employee who initiates, assists, or participates in a proceeding or court action or the employer is liable for all of the following:

- Reinstatement to position without loss of seniority
- 2 X back pay
- Interest on back pay
- Compensatory damages
- Other relief as necessary to make employee whole

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WHISTLEBLOWERS' PROTECTION ACT

Is an act to provide protection to employees who report a violation or suspected violation of state, local, or federal law; to provide protection to employees who participate in hearing, investigations, legislative inquiries, or court actions; and to prescribe remedies and penalties.

Employers Obligation:

An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding compensation, terms, conditions, location, or privileges of employment because the employee reports or is about to report a violation. A person who alleges a violation of this act may bring a civil action for appropriate injunctive relief, or actual damages, within 90 days after the occurrence of the alleged violation. An employer is not required to compensate an employee for participation in the investigation, hearing or inquiry held by a public body in accordance with this act. An employer shall post notices and use other appropriate means to keep employees informed of these protections. Provide education as required. Review existing plan and policies to assure adequacy.

Your signature on the attestation form acknowledges your obligation to report and attests that you have reported any issues of which you are aware. This is to be signed and submitted within two weeks of this training.

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COMPLIANCE ATTESTATION

I, _____ as a provider of Pathways Community Mental Health services, recognize and acknowledge my obligation to report any incidence of fraud, abuse or waste of public funding received by Pathways Community Mental Health.

I understand that this obligation is explained in the Pathways Community Mental Health Corporate Compliance Program Reporting and Investigation Procedures. The procedures give guidance on what is reportable, where to direct questions, and how to report.

As of this date, I am not aware of any reportable incidents OR I have reported all known incidents of non-compliance. Should I become aware that a situation or circumstance is potentially a violation of the False Claims Act or any otherwise reportable occurrence, I will report immediately as follows:

Jeanne Lippens, Corporate Compliance Officer
Pathways CMH
2500 7th Avenue South, Suite 100
Escanaba, MI 49829
(906) 233-1217

OR

Diane Bennett, Corporate Compliance Officer
NorthCare Network
200 West Spring Street
Marquette, MI 49855
(906) 226-0043

Signature

Date

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Deficit Reduction Act Quiz

Contract Provider Agency: _____

Employee Name: _____

1. The Medicaid Integrity Program encompasses: (check one)
 - Reviewing the actions of Medicaid providers
 - Auditing of claims for payment of Medicaid services
 - Identifying overpayments
 - Education
 - All of the above
 - A and D

2. Does Michigan have a False Claims Act? (check one) yes no

3. What does the Deficit Reduction Act (DRA) require of employers? (check one)
 - To provide education to employees
 - Have written policies for detecting and/or preventing fraud, abuse and waste
 - Include fraude and abuse laws in employee handbooks
 - All of the above
 - None of the above

4. Does the Federa False Claims Act apply when a person or company knowingly presents a false of fraudulent claim to the Federal Government? (check one) yes no

5. When money is recovered under the False Claims Act, does the reporting person share in the recovery of funds? (check one) yes no

6. A compliance plan identifies how to report any fraud, abuse or waste? (check one) yes no

7. Does the False Claims Act protects you when reporting fraud, abuse or waste? (check one) yes no

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8. What is the definition of claim? _____

9. What is the definition of a false claim? _____

10. If the court finds a person reported, participated in, or initiated the false claim upon which the action is brought, the court may reduce/ eliminate any share of the proceeds?

(check one) yes no

11. Who does the Whistleblowers' Protection Act Protect? _____
