PATHWAYS CMH

POLICY TITLE: Deficit Reduction Act (DRA) of 2005	**CATEGORY:** Human Resources/Personnel	
EFFECTIVE DATE: April 6, 2011	**BOARD APPROVAL DATE:** June 5, 2019	
REVIEWED DATE: April 8, 2020	**REVISION(S) TO POLICY STATEMENT:** ☐ **Yes** ☒ **No**	**OTHER REVISION(S):** ☒ **Yes** ☐ **No**
RESPONSIBLE PARTY: Human Resources Director	**CEO APPROVAL:** Mary Swift, CEO	

APPLIES TO:
Pathways Personnel
Contract Providers

POLICY:
Pathways Personnel and Contract Providers are prohibited from knowingly submitting to a federal or state health care program, including the Medicare and Medicaid programs, a false claim for reimbursement or a claim that an employee suspects is false. Such conduct is unlawful under federal and state law. Pathways strives to ensure that its Personnel and Contract Providers are fully aware of conduct that constitutes a false claim, and has implemented a Compliance Program to ensure our business is conducted with the highest level of integrity.

PURPOSE:
To ensure compliance with federal and state laws and regulations regarding fraud, waste, and abuse, including Section 6032 of the Deficit Reduction Act of 2005, Pathways has developed a policy which serves to inform Pathways Personnel and Contract Providers about the requirement of certain federal and state health care laws.

DEFINITIONS:
1. ***Abuse (****CMS)*: means provider practices that are inconsistent with sound fiscal, business, or clinical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medical necessary or that fail to meet professionally recognized standards of care. It also includes beneficiary practices that result in unnecessary cost to the Medicaid program. (42 CFR § 455.2)

2. ***Claim*** - includes any request or demand for money or property if the United States Government provides any portion of the money requested or demanded.

3. ***Contractor or agent*** - includes any contractor, subcontractor, agent or other person which or who on behalf of the entity, furnish, or otherwise authorized the furnishing of Medicaid health care items or services, or performs billing or coding functions.

4. ***Knowingly*** - means that a person (1) has actual knowledge of false information on the claim, (2) acts in deliberate ignorance of the truth or falsity of the information, or (3) acts in reckless disregard of the truth to falsity of the information, and no proof of specific intent to defraud is required.

5. ***Fraud*** *(CMS):* means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him/herself or

some other person. It includes any act that constitutes fraud under applicable Federal or State law including but not limited to the Federal False Claims Act and the Michigan False Claims Act. (42 CFR § 455.2)

6. ***Contract Providers*** - includes all providers contract with.
7. ***Pathways Personnel*** - includes personnel assigned to Pathways on a full-or part-time basis, students, volunteers, interns, and Board Members applicable.
8. ***Waste:*** (CMS) means overutilization of services, or other practices that result in unnecessary costs. Generally not considered caused by criminally negligent actions but rather the misuse of resources.

REFERENCES:

- Federal False Claims Act – Title 31
- Whistle Blowers' Protection Act 469 of 1980
- 42 CFR 438.608
- 42 CFR 455.2
- Michigan Medicaid False Claims Act 72 of 1977
- Other Federal and State Laws Identified in the following Procedures
- MDHHS/PIHP Specialty Supports and Services Contract 1915 (b)/(c)Waiver Program
- Pathways Compliance Plan
- Applicable Pathways Compliance, Quality Management and HR Policies

HISTORY:

Dates Reviewed: 06/26/15; 06/13/16; 11/14/16; 5/22/17, 5/3/19; 4/8/20;
Dates Revised: 06/13/16 (Policy); 11/14/16; 5/3/19 4/8/20 (procedure)
Dates Approved: 04/06/11; 8/3/16 (Board); 6/5/19 (Board)

PROCEDURES:

1. **EDUCATION**
   Pathways Chief Executive Officer (CEO)/designee shall provide information to all Pathways Personnel and Contract Providers regarding the federal and state False Claims Act, the Whistleblower's Protection Act and Pathways compliance and quality programs that address the detection and prevention of fraud, waste and abuse. The information from this policy shall be distributed to all personnel and contractors as required by the Deficit Reduction Act of 2005, as well as included in employee handbooks, as applicable.

2. **REPORTING**
   If any Pathways Personnel or Contract Provider has knowledge or information or suspicion that fraud, waste or abuse activity as prohibited by federal or state law may have taken place, the employee/contract provider must immediately notify Pathways Compliance Officer. Because Michigan Department of Health and Human Services (MDHHS) has the responsibility and authority to make fraud and/or abuse referrals to the Office of the Attorney General, Health Care Fraud Division, Pathways will immediately report directly to the MDHHS and NorthCare. In order to facilitate this report to MDHHS, Pathways will complete or request the provider/contractor/agent to complete and submit a Provider Fraud Referral form.

3. **INVESTIGATION:**
   Per the MDHHS/PIHP and MDHHS/CMHSP specialty supports and services contract, Pathways (or contract provider) will not attempt to investigate or resolve the reported alleged fraud and/or abuse without prior consultation with the MDHHS-OIG., Pathways will cooperate fully in any investigation by the MDHHS or Office of the Attorney General, and with any subsequent legal action that may arise from such investigation. Personnel and Contract Providers are also expected to fully cooperate in any such investigation.

4. **NON-RETALIATION/NO REPRISAL**
   Pathways is also committed to protecting employees from any form of reprisal, retaliation or discrimination if they, in good faith, report suspected unlawful activity. An employee who believes he or she has suffered reprisal, retaliation or discrimination shall immediately report the incident(s) to the Human Resources Department, Compliance Office or Chief Executive Officer (CEO) as set forth in Pathways Policy. Pathways considers retaliation to be a major offense that will result in disciplinary action against the offender including termination of employment.

5. **FEDERAL LAWS**
   - 5.1 Federal False Claims Act (31 U.S.C. §§ 3729. Et seq.): the False Claims Act imposes liability on any person who submits a claim to the federal government that he or she knows (or should know) is false. It prohibits a health care provider from knowingly presenting (or causing to be presented) to the federal government a false or fraudulent claim for payment. The FCA prohibits a healthcare provider from knowingly making or using (or causing to be made or used) a false record or statement to get a false or fraudulent claim paid by the federal government or its agents, such as a fiscal intermediary, claims processor, or state Medicaid program.

A false claim is a claim for payment, which the provider knowingly submits for services or supplies that were not provided specifically as presented, or for which the provider is otherwise not entitled to payment. Examples of false claims include, but are not limited to:

5.1.1. A claim for a service or supply that was never provided;
5.1.2. A claim indicating the service was provided for some diagnosis code other than the true diagnosis code in order to obtain reimbursement for the service (which would not be covered if the true diagnosis code were submitted);
5.1.3. A claim indicating a higher level of service than was actually provided;
5.1.4. A claim for a service that the provider knows is not reasonable and necessary;
5.1.5. A claim for services provided by an unlicensed individual;
5.1.6. A claim for services that were performed as a result of a kickback in violation of the Anti-Kickback Statue (42 U.S.C. § 1320a-7b); or
5.1.7. A claim resulting in an unreturned overpayment.

While the False Claims Act imposes liability only when the claimant acts "knowingly," it does not require that the person submitting the claim have actual knowledge that the claim is false. A person, who acts in reckless disregard or in deliberate ignorance of the truth or falsity of the information, also can be found liable under the Act. 31 U.S.C. 3729.

5.2 Civil Monetary Penalties Law (CMPL): The CMPL, 42 U.S.C. Section 1320a-7a, authorizes OIG to seek CMPs and sometimes exclusion for a variety of health care fraud violations. Different amounts of penalties and assessments apply based on the type of violation. CMPs also may include an assessment of up to three times the amount claimed for each item or service, or up to three times the amount of remuneration offered, paid, solicited, or received. Violations that may justify CMPs include:

- Presenting a claim you know, or should know, is for an item or service not provided as claimed or that is false and fraudulent
- Violating the AKS
- Making false statements or misrepresentations on applications or contracts to participate in the Federal health care programs

NOTE: Each year, the Federal Government adjusts all CMPs for inflation. Refer to 42 C.F.R. Section 102.3 for the yearly adjustment for inflation.

5.2 Federal False Claims (FCA) Act *Qui Tam* Provisions

5.3.1. The FCA also allows individuals to bring civil suites, called *qui tam* actions against a person in the name of the United States government for a violation for the FCA. Generally, the suit must be brought within six years after the violation, but in no event more than ten. When an individual files the action, it remains under seal (not public) for at least 60 days. The government may choose to join in the lawsuit and assume primary responsibility for prosecuting, dismissing or settling the action. If the government chooses not to join the suit, the individual

who initiated the lawsuit has the right to conduct the action independent of the government.

5.3.2. In the event the government proceeds with the lawsuit, the *qui tam* plaintiff may receive 15%-25% of the proceeds of the action or settlement. Under certain circumstances, this amount maybe reduced to not more that 10%. If the *qui tam* plaintiff proceeds with the action without the government, the qui tam plaintiff may receive 25%-30% of the recovery. In either case, the plaintiff may also receive an amount for reasonable expenses plus reasonable attorneys' fees and costs.

5.3.3. If the plaintiff planned or initiated the violation, the plaintiff's share of the proceeds may be reduced and, if the qui tam plaintiff is found guilty of a crime associated with the violation, no share will be awarded the plaintiff. IF the qui tam plaintiff's civil action is frivolous or brought primarily to harass the provider, the *qui tam* plaintiff may have to pay the defendant's fees and costs.

5.3 Whistleblower Provisions

The FCA also provides for protection for employees from retaliation. An employee, who is discharged, demoted, suspended, threatened, harassed, or discriminated against 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 recovery of litigation costs, including attorney's fees.

5.4 Federal Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801, *et seq.*)

The Program Fraud Civil Remedies Act of 1986 established an administrative remedy against any person who, among other things, presents or causes to be presented a claim to a Federal health care program that a person knows or has reason to know is false, fictitious, or fraudulent, or that contains an omission of material fact. The Office of Inspector General (the "OIG") may investigate, and with the Attorney General's approval, commence administrative proceedings regarding potential violations of this statute. A violation of the statute may result in civil monetary penalties of $10,781, with a maximum per-claim penalties of $21,563. [Per Congress's Bipartisan Budget Act of 2015; Effective 08/01/16]

6. STATE LAWS

6.1. Medicaid (State of Michigan) False Claims Act (MCL §§ 400.601 et seq.):

The Michigan Medicaid False Claims Act (the "MI FCA") prohibits 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 relation; to provide for certain civil fines; and to prescribe remedies and penalties.

6.2. Penalties for Unlawful Conduct

The civil penalty for violating the MI FCA is a minimum of $5,000, and up to $10,000, for each violation. In addition to the penalty, a provider could be found liable for up to three times the amount of damages, plus the costs associated with bringing the action, including attorney's fees. In addition to the penalty, a provider could be found guilty of a felony and receive up to 4 years in prison and a $50,000 fine.

6.3. State *Qui Tam* Provisions

6.3.1. The MI FCA allows an individual to bring a civil suit, called a *qui tam* action, against a provider in the name of the State for a violation of the MI FCA. When an individual files the action, it remains under seal (not public) for a period of at least 90 days. The attorney general may choose to join in the lawsuit and assume primary responsibility for prosecuting, dismissing, or settling the action. If the attorney general chooses not to join the suit, the individual who initiated the lawsuit has the right to conduct the action independent of the attorney general.

6.3.2. In the event the attorney general proceeds with the lawsuit, the plaintiff may receive 15%-25% of the proceeds of the action or settlement. If the plaintiff proceeds with the action without the attorney general, the plaintiff may receive 25-30% of the recovery. If a court finds that the plaintiff planned or initiated the violation, the plaintiff's share of the proceeds may be reduced and, if the plaintiff is found guilty of a crime associated with a violation of the MI FCA, no share will be awarded the plaintiff. Under certain other circumstances, the plaintiff's award may be reduced to less than 10% of the recovery. In addition, if the attorney general decides not to join in the case and the court ultimately decides for the defendant, the court will award attorney's fees and costs against the person bringing the action upon a finding of bad faith or that such claim was frivolous.

6.4. Whistleblower Provisions

The MI FCA provides protection to employees from retaliation. An employee who is discharged, demoted, suspended, threatened, harassed or discriminated against because of lawful acts conducted in furtherance of an action under the MI FCA is entitled to: (i) reinstatement; (ii) two times the amount of lost back pay; (iii) interest on back pay; (iv) compensation for any special damages; and (v) any other relief necessary to make the employee whole.

6.5. Michigan Health Care False Claims Act (Mich. Comp. Laws § 752.1005)

The Michigan Health Care False Claims Act prohibits, among other things, knowingly presenting (or causing to be presented) a false or fraudulent claim for payment or approval. Additionally, it prohibits knowingly making or using (or causing to be made or used) a false record or statement to obtain payment or approval of a claim by the State or any governmental agency. A violation of the Health Care False Claims Act is a felony punishable with up to 10 years in prison and/or a $50,000 fine.

6.6. Michigan Public Health Code (Mich. Comp. Laws § 333.16221(d)(iii))
The Michigan Public Health Code authorizes disciplinary proceedings against a licensed individual who fraudulently obtains or attempts to obtain third-party reimbursement.

6.7. Michigan Social Welfare Act (Mich. Comp. Laws §§ 400.111b, 400.111e)
The Michigan Social Welfare Act provides that failure to repay or return to the State an overpayment constitutes conversion of the money by the provider and may result in termination from participation in the State's Medicaid program.

6.8. Michigan Whistleblowers' Protection Laws (Mich. Comp. Laws §§ 15.361*et seq*., § 333.20180)
The Michigan Whistleblowers' Protection Act prohibits an employer from taking any adverse action against an employee because the employee reports a suspected violation of law. Additionally, the Michigan Health Facility Whistleblowers' Protection Act provides that an employee of a health facility who reports a violation of the State's health facilities laws may be further immune from civil or criminal penalties for conduct related to the violation. An employee who alleges a violation of this provision may bring a civil action for injunctive relief, back pay, damages, and a $500 fine. The employee also may recover the costs of suit, including attorney's fees.