

False Claims Act

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Policy Overview

The PROGRAM DEVELOPMENT SERVICES INC. is committed to prompt, complete and accurate billing of all services provided to people receiving supports. All supports and services delivered must be medically necessary and of the highest quality. PROGRAM DEVELOPMENT SERVICES INC. and its employees, contractors and agents shall not make or submit any false or misleading entries on any bills or claim forms, and no employee, contractor or agent shall engage in any arrangement or participate in such an arrangement at the direction of another person, including any supervisor or manager, that results in such prohibited acts.

Further, it is the policy of PROGRAM DEVELOPMENT SERVICES INC. to detect and prevent fraud, waste and abuse in federal healthcare programs. This Policy explains the Federal False Claims Act (31 U.S.C. §§ 3729 – 3733), the Federal Program Fraud Civil Remedies Act (31 USC §§3801-3812), the New York State False Claims Act (State Finance Law §§187-194) and other New York State laws concerning false statements or claims and employee protections against retaliation. This policy also sets forth the procedures we have put into place to prevent any violations of Federal or New York State laws regarding fraud or abuse in its health care programs.

Scope

This Policy applies to all employees, including management, and all contractors and agents of PROGRAM DEVELOPMENT SERVICES INC.

Overview of Relevant Laws

Federal False Claims Act (31 U.S.C. §§ 3729 – 3733).

Overview

The False Claims Act is one of the laws the Government uses to prevent and detect fraud, waste and abuse in federal health care programs. The False Claims Act establishes liability for any

person who “knowingly” submits a false claim either (1) directly to the Government or (2) to a contractor or grantee of the Government, if the money or property is to be spent or used on the Government’s behalf or to advance a Government program or interest. A violation of the False Claims Act can result in a civil penalty between \$5,500 and \$11,000 for each false claim submitted, plus up to three times the amount of the damages sustained by the Government due to the violations(s).

The False Claims Act defines “knowingly” to mean that a person:

- Has actual knowledge of the false claim;
- 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. Specifically, the False Claims Act may be violated by the following acts:
 - Knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval;
 - Knowingly making or using, or causing to be made or used, a false record or statement material to a false claim; or
 - Conspiring to commit a violation of the False Claims Act;
 - Knowingly making, using, or causing to be made or used, a false record or statement material to an obligation to pay money or transmit property to the Government or knowingly concealing or avoiding or decreasing an obligation to pay money or transmit property to the Government.

Applicability

Among other things, the False Claims Act applies to claims submitted for payment by federal health care programs, including Medicare and Medicaid.

Examples

A few examples of actions that violate the False Claims Act include knowingly:

- Billing for services that were not actually rendered;
- Charging more than once for the same service;
- Billing for medically unnecessary services; and

- Falsifying time records used to bill Medicaid.

Methods of Enforcement

The Government, or an individual citizen acting on behalf of the Government (a “Relator”), can bring actions under the False Claims Act. If a Relator brings an action under the False Claims Act, the Government has a period of time to investigate the allegations and decide whether to join the lawsuit. If the Government elects to join the lawsuit, the Relator is entitled to 15-25% of any recovery. If the Government elects not to join the lawsuit, the Relator may still proceed with the action and is entitled to 25-30% of any recovery.

Employee Protection

The False Claims Act prohibits discrimination by PROGRAM DEVELOPMENT SERVICES INC. against an employee, contractor or agent for taking lawful actions in furtherance of an action under the False Claims Act. Under the False Claims Act, any employee, contractor or agent who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts in furtherance of an action under the False Claims Act is entitled to all relief necessary to make the employee, contractor or agent whole. Such relief may include reinstatement, double back pay, and compensation for any special damages, including litigation costs and reasonable attorneys’ fees.

Federal Program Fraud Civil Remedies Act (31 USC §§3801-3812)

The Program Fraud Civil Remedies Act of 1986 is a federal law that provides 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. Violations of this law are investigated by the Department of Health and Human Services and monetary sanctions may be imposed in an administrative hearing setting. Monetary sanctions may include penalties of up to \$5,500 per claim and damages of twice the amount of the original claim.

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

New York State False Claims Act was modeled after the Federal False Claims Act and its provisions are very similar. This Act provides that 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 penalties between \$6,000 and \$12,000 for each false claim submitted.

The False Claims Act defines “knowingly” to mean that a person:

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

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. In addition, the New York State False Claims Act prohibits discrimination against an employee for taking lawful actions in furtherance of an action under the Act. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in furtherance of an action under the False Claims Act is entitled to all relief necessary to make the employee whole.

New York City False Claims Act (New York City Administrative Code §§ 7-801-7-810);

New York City False Claims Act was modeled after the State False Claims Act and its provisions are similar. This Act provides that 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 penalties between \$5,000 and \$15,000 for each false claim submitted.

The False Claims Act defines “knowingly” to mean that a person:

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

The City, or an individual citizen acting on behalf of the City (a “Relator”), can bring actions under the New York City False Claims Act. In addition, the New York City False Claims Act prohibits discrimination against an employee for taking lawful actions in furtherance of an action under

the Act. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in furtherance of an action under the False Claims Act is entitled to all relief necessary to make the employee whole.

Social Service Law §145-b

Under this section, it is unlawful to knowingly make a false statement or representation, or to deliberately conceal any material fact, or engage in any other fraudulent scheme or device, to obtain or attempt to obtain payments under the New York State Medicaid program. In the event of a violation of this law, the local Social Services district or the State has a right to recover civil damages equal 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 damages (or \$5,000, whichever is greater) sustained by the government due to the violation. In addition, the Department of Health may impose a monetary penalty of up to \$2,000 per violation unless a penalty under the section has been imposed within the previous five years, in which case the penalty may be up to \$7,500.

Social Service Law §145-c

Under this section, if any person individually or as a member of a family applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, then the needs of that person shall not be taken into account for determining the needs of that person or those of his or her family: (1) for a period of 6 months if a first offense; (2) for a period of 12 months if a second offense, or upon an offense which resulted in the wrongful receipt of benefits in an amount of between \$1000 and \$3900 and (3) for a period of 18 months if a third offense or upon an offense which resulted in the wrongful receipt of benefits in excess of \$3900 and five years for any subsequent occasion of any offense.

Social Service Law §145

Under this section, any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor. That crime is punishable by fines and by imprisonment up to one year.

Social Service Law § 366-b

Under this section any person who, with intent to defraud, presents for payment any false or fraudulent claim for services or merchandise, or knowingly submits false information for the

purpose of obtaining compensation greater than that to which he/she is legally entitled to shall be guilty of a Class A misdemeanor.

Penal Law Article 155

Under this Article, the crime of larceny applies to a person who, with intent to deprive another of his property, obtains, takes or withholds the property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud, or similar behavior. This Article has been applied to Medicaid fraud cases. This crime is punishable by fines and imprisonment up to twenty-five years.

Penal Law Article 175

Under this Article, four crimes relating to falsifying business records or filing a false instrument have been applied in Medicaid fraud prosecutions. These crimes are punishable by fines and imprisonment up to four years.

Penal Law Article 176

This Article establishes the crime of insurance fraud. A person commits such a crime when he/she intentionally files a health insurance claim, including Medicaid, knowing that it is false. This crime is punishable by fines and imprisonment up to twenty-five years.

Penal Law Article 177

This Article establishes the crime of health care fraud. A person commits such a crime when, with the intent to defraud Medicaid (or other health plans, including non-governmental plans), he/she knowingly and willfully provides false information or omits material information for the purpose of requesting payment for a health care item or service and, as a result of the false information or omission, receives such a payment in an amount to which he/she is not entitled. Health care fraud is punished with fines and jail time based on the amount of payment inappropriately received due to the commission of the crime.

Procedure

General Principles

PDS has in place a comprehensive corporate compliance program. The program is designed to detect and prevent fraud, waste and neglect and ensure compliance with applicable laws and regulations governing the provision of services and maintenance of documentation by the Agency. All new employees are provided with in-depth corporate compliance training. If you have not received or been scheduled for corporate compliance training, please contact Leandre Constantine, Corporate Compliance Officer

PROGRAM DEVELOPMENT SERVICES INC. must provide training to all its employees regarding this Policy and will share this Policy with all contractors and agents.

Billing activities must be performed in a manner consistent with Medicare, Medicaid and other payer regulations and requirements and in accordance with PROGRAM DEVELOPMENT SERVICES INC.'s documentation/billing policies.

To assist in its efforts to detect and prevent fraud, waste and abuse, PROGRAM DEVELOPMENT SERVICES INC. conducts regular audit and monitoring procedures.

Reporting Non-Compliance

If a PROGRAM DEVELOPMENT SERVICES INC. employee, contractor or agent has any reason to believe that anyone is engaging in false billing practices, that person must immediately report the practice in accordance with our policy on reporting potential compliance concerns. Concerns should be brought to PROGRAM DEVELOPMENT SERVICES INC.'s Corporate Compliance officer by calling PROGRAM DEVELOPMENT SERVICES INC. Compliance Hotline at 718-307-7846.

PROGRAM DEVELOPMENT SERVICES INC. will respond appropriately to violations of law, regulations and its own Corporate Compliance Policy to protect the agency and to continue to improve our reputation as a reliable and trustworthy organization.

Non-Retaliation & Non-intimidation

PROGRAM DEVELOPMENT SERVICES INC. will not intimidate any employee into not reporting any compliance-related concern to any government entity nor will it retaliate against any employee for taking any lawful action under the False Claims Act. Moreover, we will not retaliate against any employee, volunteer, contractor or agent for reporting any potential compliance concern, as described in our anti-retaliation and anti-intimidation policy.

Employee Handbooks and Contractor Agreements

The tenets of this policy will be included in employee handbooks and attached to all contracts with outside contractors or agents.