



**Executive Office of Health and Human Services
Department of Developmental Services**

POLICY TITLE: Medicaid False Claims

DDS POLICY #: 03--01

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Commonwealth of Massachusetts

I. Introduction

The Department of Developmental Services is providing the following detailed information about its policies and procedures for detecting Medicaid fraud, waste and abuse; the federal and state False Claims Laws; and the role of these laws in detecting and preventing Medicaid fraud, waste, and abuse, as required by 42 U.S.C. §1396a(a)(68).

This information is being provided to our employees, as well our contractors or agents, who on our behalf furnish or authorize the furnishing of Medicaid health care items or services, perform billing or coding functions, or are involved in monitoring health care that we provide, and receive payment through the Medicaid program.

II. Policies and Procedures

It is the Department of Developmental Service's policy to correctly submit Medicaid claims or otherwise receive Medicaid payment in accordance with all applicable laws. The Department of Developmental Services (DDS) ensures that claims or payments received for services we may provide in connection with the Medicaid program reflect only those services and in such amounts for which Medicaid payments may be claimed. This is inclusive of waiver claims that the Department submits to the Centers for Medicaid and Medicare Services (CMS) for services which are provided directly by DDS or provider agencies which it contracts with.

Any employee, contractor or agency of the DDS with knowledge of any improper claims or payments must report it to the DDS Theft and Fraud Hotline. This report can be anonymous.

- DDS Theft and Fraud Hotline – 617-624-7801

Our contractors or agents, who on our behalf furnish or authorize the furnishing of Medicaid health care items or services, perform billing or coding functions, or are involved in monitoring health care for which we receive payment from the Medicaid program, are required to adopt and abide by our policies.

III. Federal and State False Claims Laws

Because the Medicaid program is both federally and state funded, both federal and state laws applicable to false claims apply.

1. Federal Laws

- **Federal False Claims Act, 31 U.S.C. §§3729-3733**

The federal False Claims Act (FCA) provides, in pertinent part, that:

(a) Any person who (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government ... a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; (3) conspires to defraud the Government by getting a false or fraudulent claim paid or approved by the Government;. . . or (7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person

(b) For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required. 31 U.S.C. § 3729.

While the FCA 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 FCA. In sum, the FCA imposes liability on any person who submits a claim for federal payment that he or she knows (or should know) is false.

In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States. 31 U.S.C. §3730 (b). These private parties, known as “qui tam relators,” or “whistleblowers,” may share in a percentage of the proceeds from an FCA action or settlement.

Section 3730(d)(1) of the FCA provides, with some exceptions, that a qui tam relator, when the Government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(d)(2) provides that the relator shall receive an amount that the court decides is reasonable and that shall be not less than 25 percent and not more than 30 percent.

2. Massachusetts Laws

Massachusetts laws, as described below, also provide for significant penalties for submitting false Medicaid claims.

- **Medicaid False Claims Act – G.L. c. 118E, §§40-44.**

This law provides, among other things, for penalties of up to \$10,000 or imprisonment in a state prison of up to 5 years, or in a house of correction for up to 2 ½ years, or by both fine and imprisonment, for any person who furnishes items or services for the Medicaid program and who:

- knowingly and willingly makes or causes to make any false statement or representation of a material fact in any application for payment; or
- knowingly and willingly makes or causes to be made any false statement or representation of a material fact for determining rights to such payment; or

- having knowledge of any event affecting continued right to any payment fails to disclose an event with an intent fraudulently to secure a greater amount than authorized or payment when none is authorized.

- **Massachusetts False Claims Act – G.L. c. 12, §§5A-5O**

This law is similar to the Federal False Claims Act described above and applies to any claim to the Commonwealth for payment. The Massachusetts False Claims Act provides for civil penalties of not less than \$5,000 and not more than \$11,000 per violation, plus three times the amount of damages, including consequential damages, that the commonwealth or a political subdivision thereof sustains because of such violation. It also provides for private parties, known as relators (or whistleblowers), to bring a civil action on behalf of the Commonwealth, and with some exceptions, for the relator, when the Attorney General's Office¹ has intervened, to receive at least 15% but not more than 25% of the proceeds recovered and collected, depending on the extent to which the relator substantially contributed to the prosecution of the action. When the Attorney General's Office does not intervene, the law provides that the relator shall receive an amount that the court decides is reasonable and that shall be not less than 25 percent and not more than 30 percent. Certain Commonwealth employees or others who learn of the information from such employees may not bring these actions. See G.L. c. 12, §5G(4).

3. Protections for "Relators" or "Whistleblowers"

Federal and state laws protect individuals who disclose information to government or law enforcement agencies or file False Claim actions. For example, the federal False Claims Act provides protection to relators who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the False Claims Act. 31 U.S.C. 3730(h). Remedies include reinstatement with seniority comparable to that the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including

¹ Using the Massachusetts False Claims Act, M.G.L. c. 12, §§ 5A-5O, the False Claims Division of the Office of the Attorney General conducts civil investigations and prosecutions against companies and individuals who mislead or defraud state or municipal entities through the use of false or fraudulent claims, records or statements.

litigation costs and reasonable attorneys' fees. The state False Claims Act provides similar protections under G.L. c.12, §5J.

IV. Purpose of the False Claims Laws

By establishing significant monetary and criminal penalties, the federal and state False Claims Laws serve an important purpose in furthering the prevention and detection of fraud, waste, and abuse in the Medicaid program. Those laws also affirmatively encourage disclosure of such activities by protecting individuals who give information to government and law enforcement agencies and by providing for individual monetary awards.