

LEGAL NOTICES

Medicaid Fraud and Abuse

Medicalodges is committed to its role in preventing health care fraud and abuse and complying with applicable state and federal law related to health care fraud and abuse. The Deficit Reduction Act of 2005 requires information about both the federal False Claims Act and other laws, including state laws, dealing with fraud, waste and abuse and whistleblower protections for reporting those issues. To ensure compliance with such laws, Medicalodges has policies and procedures in place to detect and prevent fraud, waste and abuse and also supports the efforts of federal and state authorities in identifying incidents of fraud and abuse. This policy sets forth information concerning Medicalodges existing policies and procedures, including avenues for reporting concerns internally, and an overview of the Federal Civil False Claims and Program Fraud Civil Remedies Acts and applicable state laws.

a. Policies and Procedures

Medicalodges takes health care fraud and abuse very seriously. It is our policy to provide information to all employees, contractors and agents about the federal and state false claims acts, remedies available under these provisions and how employees and others can use them, and about whistleblower protections available to anyone who claims a violation of the federal or state false claims acts. We also advise our employees, contractors and agents of the steps Medicalodges has in place to detect health care fraud and abuse.

b. Federal and State False Claims Laws

The role of federal and state laws in preventing fraud, waste and abuse: The Centers for Medicare and Medicaid Services (CMS) defines "fraud" as the intentional deception or misrepresentation that an individual knows to be false (or does not believe to be true) and makes, knowing that the deception could result in an unauthorized benefit to himself or another person. CMS defines "abuse" as incidents or practices of providers that are inconsistent with sound medical practice and may result in unnecessary costs, improper payment or payment for services that either fail to meet professionally recognized standards of care or are medically unnecessary.

The federal government and the states of Kansas, Missouri and Oklahoma have enacted criminal and civil laws pertaining to the submission of false or fraudulent claims for payment or approval to the federal and state governments and to private payors. These false claims laws which provide for criminal, civil and administrative penalties provide governmental authorities with broad authority to investigate and prosecute potentially fraudulent activities and also provide anti-retaliation provisions for individuals who make good faith reports of waste, fraud and abuse.

The Federal Civil False Claims and Program Fraud Civil Remedies Acts, applicable state laws and anti-retaliation provisions are summarized in the following sections:

1. Federal Civil False Claims Act

The Civil False Claims Act (31 U.S.C. §3729 *et seq.*) is a statute that imposes civil liability on any person who

Knowingly presents, or causes to be presented, a false or fraudulent claim, record or statement for payment or approval,

Conspires to defraud the government by getting a false or fraudulent claim allowed or paid,

Uses a false record or statement to avoid or decrease an obligation to pay the government and

Other fraudulent acts enumerated in the statute.

The term “knowingly” as defined in the Civil False Claims Act (FCA) includes a person who has actual knowledge of the information, 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. No proof of specific intent to defraud is required.

The term “claim” includes any request or demand for money or property if the United States’ government provides any portion of the money requested or demanded.

Potential civil liability under the FCA currently includes penalties of between five thousand five hundred (\$5,500.00) and eleven thousand (\$11,000.00) per claim, treble damages and the costs of any civil action brought to recover such penalties or damages.

The attorney general of the United States is required to diligently investigate violations of the FCA and may bring a civil action against a person. Before filing suit, the attorney general may issue an investigative demand requiring production of documents and written answers and oral testimony.

The FCA also provides for actions by private persons (*qui tam* lawsuits) who can bring a civil action in the name of the government for a violation of the act. Generally, the action may not be brought more than six years after the violation but in no event more than ten (10). When the action is filed, it remains under seal for at least sixty (60) days. The United States’ government may choose to intervene in the lawsuit and assume primary responsibility for prosecuting, dismissing or settling the action. If the government chooses not to intervene, the private party who initiated the lawsuit has the right to conduct the action.

In the event the government proceeds with the lawsuit, the *qui tam* plaintiff may receive fifteen to twenty-five percent of the proceeds of the action or settlement. If the *qui tam* plaintiff proceeds with the action without the government, the plaintiff may receive twenty-five to thirty percent of the recovery. In either case, the plaintiff may also receive an amount for reasonable expenses plus reasonable attorneys’ fees and costs.

If the civil action is frivolous, clearly vexatious or brought primarily for harassment, the plaintiff may have to pay the defendant its fees and costs. If the plaintiff planned or initiated the violation, the share of the proceeds may be reduced and, if found guilty of a crime associated with the violation, no share will be awarded the plaintiff.

Whistleblower protection: The Civil False Claims Act also provides for protection for employees from retaliation. An employee who is discharged, demoted, suspended, threatened, harassed or discriminated against in terms and conditions of employment 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 other enumerated costs, damages and fees.

2. Federal Program Fraud Civil Remedies Act of 1986

The Program Fraud Civil Remedies Act of 1986 (“Administrative Remedies for False Claims and Statements” at 38 U.S.C. § 3801 *et seq.*) is a statute that establishes an administrative remedy against any person who presents or causes to be presented a claim or written statement that the person knows or has reason to know is false, fictitious or fraudulent due to an assertion or omission to certain federal agencies (including the Department of Health and Human Services).

The terms “knows or has reason to know” is defined in the act as a person who has actual knowledge of the information, 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. No proof of specific intent to defraud is required.

The term “claim” includes any request or demand for property or money, e.g., grants, loans, insurance or benefits, when the United States government provides or will reimburse any portion of the money.

The authority, i.e., federal department, may investigate and with the attorney general’s approval commence proceedings if the claim is less than one hundred and fifty thousand dollars. A hearing must begin within six years from the submission of the claim. The act allows for civil monetary sanctions to be imposed in administrative hearings, including penalties of five thousand five hundred dollars per claim and an assessment, in lieu of damages, of not more than twice the amount of the original claim.

Examples of a Possible False Claim:

1. Making false statements regarding a claim for payment.
2. Falsifying information in the medical record.
3. Double billing for items or services.
4. Billing for services not performed or items never furnished.

What Should be Done if a Possible False Claim has been made:

1. If an employee discovers an event that is similar to one of the examples of a false claim above, an employee is encouraged to:
 - a. Report it to a Medicalleges Administrator for further investigation. If the employee is not comfortable doing this, then
 - b. The employee should contact their immediate supervisor and/or

- c. Call the corporate compliance officer at 1-800-782-0120.
2. An employee is not required to report a possible FCA violation to Medicalodges first. A report may be made directly to the Department of Justice or applicable state authorities. However, in many instances Medicalodges believes that the use of its internal reporting process is a better option because it encourages Medicalodges employees to consider first reporting suspected false claims to a Medicalodges Administrator; but the choice is up to the employee.
3. Medicalodges will not retaliate against any employee for informing Medicalodges or the federal or state government of a possible FCA violation.

An employee with questions regarding this policy should contact the corporate compliance officer for Medicalodges at the above number.

Applicable State Medicaid False Claims Laws: Listed below are the Medicaid false claims laws applicable to the three states in which Medicalodges operates facilities.

1. Missouri: Missouri Fraud Act SB 1210, 1244 and 844.
2. Kansas: Kansas Medicaid Fraud Control Act K.S.A. 2005 supp. 21-3844 to 21-3855 inclusive.
3. Oklahoma: Oklahoma Medicaid Fraud Act O.S. -56-1006 and O.S. -56-1003.

Elder Justice Act

It is our policy to comply with the Elder Justice Act (EJA) about reporting a reasonable suspicion of a crime under Section 1150B of the Social Security Act, as established by the Patient Protection and Affordable Care Act (ACA), Section 6703(b)(3). Specifically, it is our policy to:

- a. Annually notify all "covered individuals" (as that term is defined under the EJA) of their reporting obligations under the EJA to report a suspicion of a crime to the state survey agency (SSA) and to local law enforcement where the facility is located.
- b. Refrain from retaliating against any employee who reports a suspicion of a crime against an individual received care in the facility.
- c. Post a notice in a conspicuous location that informs all "covered individuals" of
 - i. Their reporting obligations under the EJA to report a suspicion of a crime to the SSA and local law enforcement; and
 - ii. Their right to file a complaint with the state survey agency if they feel the facility has retaliated against an employee who reported a suspected crime under this statute;
- d. Refrain from employing any individual who has been prohibited from working in a long term care facility because of failure to report a suspicion of a crime against a resident of a long term care facility; and
- e. See the Abuse, Neglect policy for reporting requirements for the facility.

Statutory and CMS Policy References

-Section 1150B of the Social Security Act, as established by Section 6703(b)(3) of the Patient Protection and Affordable Care Act of 2010; and

-CMS S&C: 11-30-NH:

Definitions:

"Covered individual" means each individual who is an owner, operator, employee, manager, agent, or contractor of a long-term care facility.

"Suspicion of a Crime" is defined by law of the applicable *political subdivision* where a LTC facility is located. Applicable facilities must coordinate with their state and *local law enforcement* entities to determine what actions are considered crimes within their *political subdivision*.

"Political subdivision" means a city, county, township or village.

"Local law enforcement" means the full range of potential responders to elder abuse, neglect, and exploitation including: police, sheriffs, detectives, public safety officers, corrections personnel, prosecutors, medical examiners, investigators, and coroners.

"Neglect" is the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an elder or *self-neglect*.

"Self-neglect" means an adult's inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including obtaining essential food, clothing, shelter, and medical care; obtaining goods and services necessary to maintain physical health, mental health, or general safety; or managing one's own financial affairs.

"Serious bodily injury" is an injury involving extreme physical pain; involving substantial risk of death; involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation. In the case of "criminal sexual abuse" which is defined as serious bodily injury/harm shall be considered to have occurred if the conduct causing the injury is relating to aggravated sexual abuse or relating to sexual abuse.

"Retaliate against an employee" is when the employer discharges, demotes, suspends, threatens, harasses, or denies a promotion or any other employment related benefit to an employee, or in any other manner discriminates against an employee within the terms and conditions of employment because the employee has met their obligation to report a suspicion of a crime.

Procedure:

A. Staff Reporting Requirements:

1. When Staff ("staff" herein refers to *covered individuals*) suspects a crime has occurred against a resident at the facility, they must report the incident to SSA and local law enforcement.
2. Staff must report a suspicion of a crime to the state survey agency and at least one local law enforcement entity within a designated time frame by e-mail, fax or telephone. The individual does not need to determine which local law enforcement entity to report a suspicion of crime; but, must report to at least one local law enforcement entity. This will meet the individual's obligation to report.
3. Staff can use the facility form to report a suspicion of a crime. There is no requirement to use the form.
4. Staff can either report the same incident as a single complaint or multiple individuals may file a single report that includes information about the suspected crime from each staff person using the facility form. The Administrator and/or Director of Nursing can provide assistance in making your report.
5. If, after a report is made regarding a particular incident, the original report may be supplemented by additional staff that become aware of the same incident. The supplemental information may be added to the form and must include the name of the additional staff along with the date and time of their awareness of such incident or suspicion of a crime. However, in no way will a single or multiple reports preclude an individual from reporting separately. Either an individual or joint report will meet the individual's obligation to report.
6. If the reportable event results in serious bodily injury, the staff member shall report the suspicion immediately, but not later than 2 hours after forming the suspicion.
7. If the reportable event does not result in serious bodily injury, the staff member shall report the suspicion not later than 24 hours after forming the suspicion.
8. Failure to report in the required time frames may result in disciplinary action, including up to termination.
9. Staff must report the suspicion of an incident to the Administrator and/or Director of Nursing.

B. Staff Notification

1. Staff will annually receive a copy of their obligation to comply with the law and these policies and procedures.
2. All new staff, as part of their orientation to work at the facility, shall receive a copy of their obligation to comply with the law and this policy and procedure.
3. All covered individuals other than staff shall receive notification annually by e-mail, fax or regular mail.

C. Posting Requirements

1. Facility will post conspicuously in an appropriate location a sign specifying the rights of employees under the EJA. This sign shall include both:

- a. The reporting requirements of each staff member, and
 - b. A statement that an employee may file a complaint with the state survey agency against a long-term care facility that retaliates against an employee for filing, and information how to file such a complaint to the SSA.
2. The sign should be posted in the same area that the facility posts other required employee signs, such as wage/hour and OSHA posters. These may be found in the break room, by the time clock, etc.
 3. Size and type requirements for the sign should be no less than the minimums required for other required employment-related signs.

D. Facility Reporting

1. The EJA does not require the facility to make a report of a suspicion of a crime; however, the facility will be happy to file a report on behalf of staff to SSA and local law enforcement when staff becomes aware of a suspicion of a crime, or to assist staff in making their report.