

Compliance Plan
False Claims Act & Whistleblower Provisions
8/8/2014

PURPOSE:

Catholic Charities of the Roman Catholic Diocese of Syracuse, and its related entities including Toomey Residential and Community Services [‘Charities’] requires its members, trustees, officers, regional trustees, regional officers, employees, contractors and volunteers (the “Personnel”) to observe high standards of business and personal ethics in the conduct of their duties and responsibilities, and all its Personnel to comply with all applicable laws and regulatory requirements. A copy of this Whistleblower Policy shall be provided to all Personnel who provide substantial services to Charities.

POLICY:

‘Charities’ is committed to prompt, complete and accurate billing of all services provided to individuals. ‘Charities,’ its employees, contractors and agents shall not make or submit any false or misleading entries on any claim forms. No employee, contractor or agent shall engage in any arrangement or participate in such arrangement at the direction of another person, including any supervisor or manager, that result in the submission of a false or misleading entry on claims forms or documentation of services that result in the submission of a false claim.

‘Charities’ is committed to detecting and preventing fraud, waste and abuse in federal healthcare programs. This policy explains the Federal False Claims Act (31 U.S.C. §§ 3729 – 3733), the Administrative Remedies for False Claims (31 USC Chapter 38 §§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 ‘Charities’ has put into place to prevent any violations of federal or New York State laws regarding fraud or abuse in its health care programs.

This policy applies to all members, trustees, officers, regional trustees, regional officers, employees, contractors and volunteers (the “Personnel”).

For purpose of this document, a contractor or agent is defined as: Any contractor, subcontractor, agent, or other person which or who, on behalf of ‘Charities’ ,

furnishes, or otherwise authorizes the furnishing of services, performs billing or coding functions; or is involved in the monitoring of services provided by Charities .

REPORTING RESPONSIBILITY:

It is the responsibility of all Personnel to report ethics violations or suspected violations in accordance with this Whistleblower Policy. Charities encourages its Personnel to share their questions, concerns, suggestions or complaints regarding the organization and its operations with someone who can address them properly. In most cases, a member, trustee, officer, regional trustee, regional officer, employee or volunteer should present his or her concerns to the Area Executive Director, Compliance Officer or the Diocesan Charities President/CEO. However, if such individual is not comfortable speaking with the Area Executive Director, Compliance Officer, or the Diocesan Charities President/CEO, such individual is encouraged to speak with any member of the Executive Committee of Charities or make a report by calling the Compliance Hotline.

Violations or suspected violations may be submitted on a confidential basis by the complainant or may be submitted anonymously. Reports or violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation.

Anyone filing a complaint concerning a violation or suspected violation of the law or regulation must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation. Any allegations that prove not to be substantiated and which prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense.

No RETALIATION:

No Personnel of Charities who in good faith reports any action or suspected action taken by or within Charities that is illegal, fraudulent or in violation of any adopted policy of Charities shall suffer intimidation, harassment, discrimination or other retaliation or, in the case of an employee, an adverse employment consequence. This Whistleblower Policy is intended to encourage all Personnel and others to raise serious concerns within Charities prior to seeking resolution outside Charities.

Overview of Relevant Laws

I. The False Claims Act (31 U.S.C. §§ 3729-3733)

The False Claims Act is a federal law designed to prevent and detect fraud, waste and abuse in federal healthcare programs, including Medicaid and

Medicare. Under the False Claims Act, 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 of \$5,000 to \$10,000 for each false claim submitted. The law was revised in 1986 to expand the definition of “knowingly” to include a person who: Has actual knowledge of falsity of information in the claim; Acts in deliberate ignorance of the truth or falsity of the information in the claim; and Acts in reckless disregard of the truth or falsity of the information in a claim.

False Claims suits can be brought against individuals and entities. The False Claims Act does not require proof of a specific intent to defraud the Government. Providers can be prosecuted for a wide variety of conduct that leads to the submission of a false claim.

Some examples include:

- Knowingly making false statements;
- Falsifying records;
- Submitting claims for services never performed or items never furnished;
- Double-billing for items or services;
- Using false records or statements to avoid paying the Government;
- Falsifying time records used to bill Medicaid; or
- Otherwise causing a false claim to be submitted.

Whistleblower or “Qui Tam” Provisions

In order to encourage individuals to come forward and report misconduct involving false claims, the False Claims Act contains a “Qui Tam” or whistleblower provision.

The Government, or an individual citizen acting on behalf of the Government, can bring actions under the False Claims Act. An individual citizen, referred to as a whistleblower or “Relator,” who has actual knowledge of allegedly false claims may file a lawsuit on behalf of the U.S. Government. If the lawsuit is successful, and provided certain legal requirements are met, the whistleblower may receive an award ranging from 15% - 30% of the amount recovered.

Employee Protections

The False Claims Act prohibits discrimination by ‘Charities’ against any employee for taking lawful actions under the False Claims Act. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in False Claims actions is entitled to all relief necessary to make the employee whole. Such relief may include

reinstatement, double back pay, and compensation for any special damages, including litigation costs and reasonable attorney fees.

II. Administrative Remedies for False Claims (31 USC Chapter 38. §§3801-3812)

This federal statute allows 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. A monetary penalty of up to \$5,500 per claim and damages of twice the amount of the original claim may be imposed.

Unlike the False Claims Act, a violation of this law occurs when a false claim is submitted, not when it is paid. Also unlike the False Claims Act, the determination of whether a claim is false, and imposition of fines and penalties is made by the administrative Catholic Charities, and not by prosecution in the federal court system.

II. New York State Laws

A. Civil and Administrative Laws

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

The New York State False Claims Act closely tracks the federal False Claims Act. It imposes fines on individuals and entities that file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. The penalty for filing a false claim is \$6,000 - \$12,000 per claim and the recoverable damages are between two and three times the value of the amount falsely received. In addition, the false claim filer may be responsible for the government's legal fees.

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. If the suit eventually concludes with payments back to the government, the party who initiated the case can recover 15% - 30% of the proceeds, depending upon whether the government participated in the suit. 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.

Social Service Law §145-b False Statements

It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Services program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device. The State or the local Social Services district may recover up 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 amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of up to \$2,000 per violation. If repeat violations occur within five years, a penalty up to \$7,500 may be imposed if they involve more serious violations of the Medicaid rules, billing for services not rendered, or providing excessive services.

Social Service Law §145-c Sanctions

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the person's and the person's family needs are not taken into account for a period of six months to five years, depending upon the number of offenses.

B. Criminal Laws

Social Service Law §145 Penalties

Any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor.

Social Service Law § 366-b, Penalties for Fraudulent Practices

Any person who, with intent to defraud, presents for payment any false or fraudulent claim for furnishing services or merchandise, knowingly submits false information for the purpose of obtaining Medicaid compensation greater than that to which he/she is legally entitled to, or knowingly submits false information in order to obtain authorization to provide items or services shall be guilty of a Class A misdemeanor.

Any person who obtains or attempts to obtain, for himself or others, medical assistance by means of a false statement, concealment of material facts, impersonation, or other fraudulent means is guilty of a Class A misdemeanor.

Penal Law Article 155, Larceny

The crime of larceny applies to a person who, with intent to deprive another of property, obtains, takes or withholds the property by means of a trick,

embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior. This law has been applied to Medicaid fraud cases.

Penal Law Article 175, Written False Statements

There are four crimes in this Article that relate to filing false information or claims. Actions include falsifying business records, entering false information, omitting material information, altering a 'Charities' business records, or providing a written instrument (including a claim for payment) knowing that it contains false information. Depending upon the action and the intent, a person may be guilty of a Class A misdemeanor or a Class E felony.

Penal Law Article 176, Insurance Fraud

This Article applies to claims for insurance payment, including Medicaid or other health insurance. The six crimes in this Article involve intentionally filing a false insurance claim. Under this article, a person may be guilty of a felony for false claims in excess of \$1,000.

Penal Law Article 177, Health Care Fraud

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 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.

New York Labor Law §740

An employer may not take any retaliatory personnel action against an employee if the employee discloses information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar 'Charities' or public official.

This law offers protection to an employee who: discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation that presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud (knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions); provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by the

employer; or objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

The employee's disclosure is protected under this law only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation. The law allows employees who are the subject of a retaliatory action to bring a suit in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health care provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.

New York Labor Law §741

Under this law, a health care employer may not take any retaliatory action against an employee if the employee discloses certain information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar 'Charities' or public official. Protected disclosures are those that assert that, in good faith, the employee believes constitute improper quality of patient care.

The employee's disclosure is protected under this law only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation, unless the danger is imminent to the public or patient and the employee believes in good faith that reporting to a supervisor would not result in corrective action. If the employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health care provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.

CHARITIES WILL:

- Provide training on this document to all its members, trustees, officers, regional trustees, regional officers, employees, contractors and volunteers. This training will be provided to all new employees as part of the new employee orientation.
- Perform billing activities in a manner consistent with the regulations and requirements of third party payors, including Medicaid and Medicare.
- Conduct regular auditing and monitoring procedures as part of its efforts to assure compliance with applicable regulations.

- Expect any personnel who has any reason to believe that anyone is engaging in false billing practices or false documentation of services is expected to report the practice according to 'Charities' policies.
- Strictly prohibit any form of retaliation against any employee who reports a perceived problem or concern in good faith.
- Discipline up to, and including, termination any employee who commits or condones any form of retaliation.

PROCEDURES:

1. The President/CEO of Charities will designate Charities personnel to serve as the officer responsible for ensuring compliance with this Whistleblower Policy (the "Compliance Officer"). The Compliance Officer shall be responsible for investigating and resolving all complaints and allegations concerning violations of this policy. If the complaint involves the Compliance Officer, President/CEO and any member of the Executive Committee, outside legal counsel may carry out the function of the Compliance Officer for purposes of that particular investigation only. The Compliance Officer shall report all complaints and allegations to the Audit Committee.
2. The Compliance Officer will ensure that all personnel receive training related to the contents of this document and the False Claims Act. The Compliance Officer will ensure that records are maintained to document the receipt of training.
3. For any reported violation or suspected violation the Compliance Officer will notify the sender and acknowledge receipt of the reported violation or suspected violation within five (5) business days. All reports will be promptly investigated and appropriate corrective action will be taken if warranted by the investigation.
4. The Compliance Officer will assure that this document is attached with the letter [Schedule A] and provided to outside contractors or agents.
5. The Compliance Officer will assure that the contract wording [Schedule B] is distributed to appropriate departments and personnel so that it is included in all contracts, agreements and work plans.

Schedule A

Contractor & Agents letter DRA

THE FOLLOWING LETTER IS TO BE PLACED ON ISSUING AREA'S LETTERHEAD:

Date:

Dear _____.

Catholic Charities of the Roman Catholic Diocese of Syracuse, NY and its entities ['Charities'] is committed to comply with all applicable federal and state laws and regulations.

Recently enacted federal and state laws require the distribution of the 'Charities' policies and procedures related to the prevention and detection of fraud, waste and abuse to contractors and agents providing health-related services and supplies. Please find attached to this letter a copy of 'Charities' *False Claims Act and Whistleblower* document and our website at www... to read and review 'Charities' *Compliance Plan* for further explanation of these and related policies.

Any questions may be directed to our Corporate Compliance Officer:

Insert name, address, phone, email for Area Compliance Officer

Thank you in advance for your prompt attention to this matter.

Sincerely,

Schedule B

DRA CONTRACTOR WORDING

THE FOLLOWING LETTER IS VENDOR CONTRACT WORDING AND IS TO BE ADDED TO ALL CONTRACTS:

Attached as Exhibit ___ is Catholic Charities of the Roman Catholic Diocese of Syracuse, NY and its related entities ['Charities'] Compliance Plan procedure regarding Charities abidance with relevant federal and state fraud and abuse laws. The Vendor agrees to abide by the terms as outlined in Exhibit ___ when delivering services to 'Charities' and shall ensure that each individual that provides such services to 'Charities' is provided with a copy of Exhibit __ from 'Charities' Compliance Plan.