

## **LAWS RELATING TO FILING FALSE CLAIMS**

### **I. Federal False Claims Act**

- A. The federal FCA prohibits any individual or company from knowingly submitting false or fraudulent claims, causing such claims to be submitted, making a false record or statement in order to obtain payment from a federally funded program for such a claim, or conspiring to get such a claim allowed or paid. “Knowing” and “knowingly” mean that a person (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. Examples of the type of activity prohibited by the FCA include billing for services that were not provided and upcoding, i.e., billing for a highly reimbursed service in lieu of the service actually provided. The FCA applies to billing and claims sent from the hospital to any government payor program, including Medicare and Medicaid.
- B. The FCA imposes civil penalties on individuals and companies who knowingly submit a false claim or statement to a federally funded program, or otherwise conspire to defraud the government, in order to receive payment. Any person or company determined to have violated the FCA may be fined between \$5,500.00 and \$11,000.00 for each such claim submitted, regardless of the size of the false claim, plus up to three times the amount of damages sustained by the federal government.
- C. The FCA also protects individuals who report suspected fraud. Any person who lawfully reports information about false claims or suspected false claims that are submitted by others, may not be retaliated against, demoted, suspended, threatened, or harassed for making such a report. The FCA also protects individuals who assist in an investigation, provide testimony, or participate in the government’s handling of a false claim.
- D. The FCA provisions are generally enforced by the U.S. Department of Justice. The FCA provides that an individual may initiate a formal claim if he or she is the “original source” of the information. This means that the person bringing the claim must have direct and independent knowledge of the alleged fraud. If any funds are recovered, a portion of the funds may be paid to the person who initiated the formal claim, at the discretion of a federal court. If a person wishes to file a claim regarding fraud or suspected fraud related to a healthcare payment directly with the government, he or she must first present a formal complaint,

## **LAWS RELATING TO FILING FALSE CLAIMS**

along with all material evidence relating to the alleged fraud, to the authorities at the U.S. Department of Justice. The authorities have sixty (60) days to investigate, during which time the complaint is kept confidential. Upon completion of the investigation, the government will decide either to pursue the case on its own or decline to proceed with the case. If the federal government declines the case, the individual may still proceed with the case on his or her own, but without the government's assistance, and at his or her own expense. A private legal action under the FCA must be brought with six (6) years from the date that the false claim was submitted to the government. A government initiated claim may be brought up to ten (10) years after the false claim, depending on the circumstances.

### **II. Federal Program Fraud Civil Remedies Act**

Individuals or companies that commit fraud on the federal government, by false claim or statement, can be assessed monetary penalties in addition to the penalties of the FCA under the Program Fraud Civil Remedies Act (the PFCRA). Specifically, PFCRA penalties of \$5,000.00 per false claim or statement apply if an individual or company submits or causes to be submitted a claim to the federal government that: the person knows or has reason to know is false, fictitious or fraudulent; includes or is supported by written statements containing false, fictitious or fraudulent information; includes or is supported by written statements that omit a material fact, which causes the statements to be false, fictitious or fraudulent, and the person submitting the statement has a duty to include the omitted fact; or is for payment of property or services that were not provided as claimed.

### **III. Maryland Medicaid Fraud Law**

A. Maryland has enacted a law similar to the federal False Claims Act that provides for criminal and civil remedies for the submission of false and fraudulent claims to the Medicaid program. Under the Maryland Medicaid Fraud law, it is a crime for an individual to knowingly and willfully:

- Defraud or attempt to defraud the Medicaid program in connection with the delivery of or payment for a health care service; or
- Obtain or attempt to obtain by means of false representation anything of value in connection with the delivery of or payment for a health care service through the Medicaid Program.

## **LAWS RELATING TO FILING FALSE CLAIMS**

False representations include knowingly and willfully:

- Concealing, falsifying, or omitting a material fact;
- Making a materially false or fraudulent statement; or
- Using a document that contains a statement of material fact that the user knows to be false or fraudulent.

B. Remedies for violating the Maryland Medicaid Fraud law include imprisonment, fines and civil penalties of up to three times the amount of the overpayment.