Section 5000 – Personnel

5100 Medicaid School Based Services Federal and State False Claim Acts (Reporting of Violations) (Cf. 5040) 5100

It is the policy of the Board of Education of the Wayne County Regional Educational Service Agency, Wayne RESA, to comply with Section 6032 of the Deficit Reduction Act of 2005. The Act requires providers of services to Medicaid beneficiaries ("Medicaid Providers") who receive more than $5,000,000.00 annual threshold in Medicaid dollars to establish written policies providing detailed information concerning:

I. The Federal False Claims Act ("FCA")

II. Administrative remedies under the FCA

III. State Laws imposing civil or criminal penalties for Medicaid false claims

IV. Whistleblower protections available under Federal and State Law

V. Provisions regarding Wayne RESA's policies and procedures for detecting and preventing fraud, waste and abuse

I. The Federal False Claims Act

The Department of Justice has provided the following official description of the Federal False Claims Act for use by Medicaid Providers who are subject to Section 6032 of the Deficit Reduction Act.

The 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 or a member of the Armed Forces of the United States 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 three times the amount of damages which the Government sustains because of the act of that person….[1]

(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 False Claims Act 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 Act. 31 U.S.C. 3729(b).

II. Administrative Remedies

In addition to the civil remedies available under the FCA, the Program Fraud Civil Remedies Act ("PFCRA"), 31 U.S.C. §§ 3801-12, provides the administrative remedies for False Claims and Statements made in

[1] The civil penalties for a violation of the FCA have been increased to not less than $5,500 and not more than $11,000 pursuant to 28 CFR § 85.3(9)

violation of the FCA.

A. **Administrative Remedies for False Claims**

Under the PFRCA, a false claim occurs when a person makes, or submits, or causes to be made or submitted, a claim that the person knows or has reason to know is fictitious, fraudulent or false, and includes or is supported by a written statement which asserts a material fact which is false, fraudulent or fictitious, or is fraudulent as the result of an omission of a material fact, or is for the payment for the provision of services or property which the person has not provided as claimed. Upon the finding of a false claim, the person shall be assessed a civil penalty of not more than $5,500.00 for each such claim in addition to other civil remedies, including those available under the FCA. The person may also be assessed twice the amount of the false claim, or twice the amount of any portion of a claim found to be fraudulent.

B. **Administrative Remedies for False Statements**

Under the PFRCA, a false statement occurs when a person makes or submits, or causes to be made or submitted, a written statement that the person knows or has reason to know asserts a material fact which is false, fraudulent or fictitious, or is fraudulent as the result of an omission of a material fact and is accompanied by an affirmation or an express certification of the truthfulness and accuracy of the statement. Upon the finding of a false statement, the person shall be subject to a penalty of not more than $5,500 per false statement.

5100 Medicaid School Based Services Federal and State False Claim Acts (Reporting of Violations) (Cf. 5040) 5100-4

III. State Laws imposing civil or criminal penalties for Medicaid false claims

In addition to the FCA, the State of Michigan has enacted the Michigan Medicaid False Claim Act, Act 72 of the Public Acts of 1977. This Act imposes civil and/or criminal penalties upon an individual who knowingly:

- Makes or causes to be made a false representation of a material fact in the application for, or the determination of Medicaid benefits; (MCL § 400.603)
- Fails to report any event affecting the initial or continued right to receive a Medicaid benefit or fails to report an event affecting the initial or continued right of any other person on whose behalf the individual has applied for Medicaid benefits; (MCL § 400.603)
- Solicits, offers, or receives a bribe or kickback in connection with the furnishing of goods or services for which payment is made to a Medicaid provider; (MCL § 400.604)
- Makes or receives a payment or the rebate of a fee for referring an individual to another for Medicaid services; (MCL § 400.604)
- Enters into a conspiracy or agreement to defraud the state by obtaining a Medicaid payment for a false claim; (MCL § 400.606)
- Makes or causes to be made a false claim under the social welfare act, Act 280 of the Public Acts of 1939, as amended, to an employee or officer of the state; (MCL § 400.607) or
- Makes or causes to be made a claim under the social welfare act, which claim represents that goods or services are medically necessary in accordance with professionally accepted medical standards when the goods or services are not medically necessary; (MCL § 400.607).

A violation of these provisions of the Act is a felony punishable by a fine of not more than $50,000.00, or imprisonment of not more than 4 years, or both. In addition, civil penalties may be assessed in the full amount of the payment received by the person as a result of the fraudulent claim, plus triple the amount of damages suffered by the state as a result of the person's conduct. (MCL § 400.612)

Like the qui tam provision in the FCA discussed below, the Michigan Medicaid False Claims Act allows an individual to bring an action in the name of the state if they believe there is evidence of a violation of this Act. The individual may share with the state in the recovery if the claim prevails. The Act prohibits the individual's employer from engaging in any retaliatory action due to the individual's reported violation under the Act. (MCL §400.610)

IV. Whistleblower protections available under Federal and State Law

A. Federal Protection

The Department of Justice has provided the following official description of the Whistleblower Protections provided under the FCA:

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," 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 shall be not less than 25 percent and not more than 30 percent.

The FCA provides protection to qui tam 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 FCA. 31 U.S.C. 3730(h). Remedies include reinstatement with comparable as 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 litigation costs and reasonable attorneys' fees.[2]

B. State Protection

In addition to Federal whistleblower protections, the State of Michigan has enacted the Whistleblowers' Protection Act, Act 469 of the Public Acts of 1980. This act provides protection for employees who report a violation or the suspected violation of a Michigan or Federal law, rule, or regulation.

[2] Centers for Medicare and Medicaid Services, Attachment 2 to the State Medicaid Director's Letter dated March 22, 2007, "Final Guidance Regarding Employee Education for False Claims Recovery".

Under the law, an employer may not "discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation...."

An employer found to be in violation of the act may be subject to a civil fine of not more than $500.00. In addition, the court shall order any appropriate remedy for the employee, including reinstatement, payment of back wages, full reinstatement of benefits and seniority rights and any actual monetary damages. The employee may also be awarded reasonable attorney fees.[3]

V. Provisions regarding Wayne RESA's policies and procedures for detecting and preventing fraud, waste and abuse

Wayne R.E.S.A. has long standing quality assurance and review procedures in place to assure the accuracy and validity of Medicaid reimbursement claims. These procedures include, but are not limited to the following:

1. Annual Internal Audits of each district to review specific Medicaid reimbursement documentation submitted by the providers.
2. Ongoing review and cross checking of Medicaid services provided by staff against Medicaid eligibility, IEP service recommendations, clinician log notes, and Medicaid service as reported.
3. Ongoing training programs for all Medicaid service providers, addressing mandatory documentation procedures.

[3] Centers for Medicare and Medicaid Services, Attachment 2 to the State Medicaid Director's Letter dated March 22, 2007, "Final Guidance Regarding Employee Education for False Claims Recovery."

4. Random review of all reported Medicaid services for appropriate documentation and authorizing signatures.
5. Distribution of a Medicaid Handbook to all service providers that provide detailed information on documentation requirements; billable paperwork services; billable meetings with parents and service providers; and appropriate primary disability codes.

A copy of this policy will be posted on the Wayne RESA website and a written coy of the policy will be disseminated to all local school districts in Wayne County.

Approved: August 17, 2016