

VNS HEALTH CORPORATE POLICY & PROCEDURE

TITLE: Federal Deficit Reduction Act of 2005: Policy Regarding the Detection & Prevention of Fraud, Waste and Abuse and Applicable Federal and State Laws

APPLIES TO: VNS Health Home Care, VNS Health Hospice Care, VNS Health Personal Care, Medical Care at Home, P.C., VNSNY Care Management IPA, VNS Health Health Plans, and VNS Health MSO (collectively, “VNS Health”)

POLICY OWNER: Corporate Compliance Department

FIRST ISSUED: August 2010

NUMBER: CCD.2

PURPOSE:

VNS Health is committed to complying with the requirements of Section 6032 of the Federal Deficit Reduction Act of 2005 (“DRA”) and to preventing and detecting any fraud, waste, and abuse. In furtherance of these requirements, and to promote compliance with the DRA, VNS Health disseminates this policy to all personnel (including management, contractors, volunteers, consultants, and other agents) to ensure they are aware of relevant federal and state laws regarding fraud, waste, and abuse, including the submission of false claims.

POLICY:

VNS Health prohibits the submission of a false claim for payment from a federal or state-funded health care program. The submission of a false claim (i) violates federal and state law; (ii) may result in significant administrative and civil fines and/or penalties under the federal False Claims Act and/or New York State False Claims Act; and (iii) may also violate federal and state criminal laws.

To assist VNS Health in meeting its legal and ethical obligations, any individual who reasonably suspects or is aware of the preparation or submission of a false claim or report, or any other potential fraud, waste, or abuse related to a federal or state-funded healthcare program, is required to report such information to his or her supervisor, and the VNS Health Chief Compliance and Privacy Officer, see the CCD.7 Reporting Non-Compliance and Fraud, Waste and Abuse policy. Any individual who reports such information has the right to do so anonymously and will be protected against retaliation and intimidation for reporting such information under VNS Health’s internal compliance policies and procedures, as well as federal and state law. However, VNS Health retains the right to take appropriate action against any individual who has participated in a violation of federal or state law, or VNS Health policy.

VNS Health is committed to the prompt and thorough investigation of actual or potential fraud, waste or abuse, and requires all personnel to assist in such investigations. If an individual believes

VNS Health is not responding to his or her report of fraud, waste, or abuse within a reasonable time, he or she is required to bring the matter to the attention of the VNS Health Chief Compliance and Privacy Officer. Failure to report and disclose, or assist in an investigation of, fraud, waste, or abuse is a breach of the duty that all personnel have to VNS Health and may result in disciplinary action, up to and including termination.

Fraud, waste, and abuse concerns may be reported to:

VNS Health Chief Compliance & Privacy Officer:

Annie Miyazaki-Grant

SVP, Chief Compliance & Privacy Officer

Phone Number: (212) 609-7470

Email: Annie.Miyazaki-Grant@vnshealth.org

VNS Health Hotline: (888) 634-1558

VNS Health Online Reporting Tool:

www.vnshealth.ethicspoint.com

VNS Health Health Plans Compliance Officer:

Doug Goggin-Callahan

VP, VNS Health Health Plans Compliance & Regulatory Affairs

Phone Number: (347) 804-8601

Email: Doug.Goggin-Callahan@vnshealth.org

VNS Health Health Plans Hotline: (888) 634-1558

VNS Health Health Plans Online Reporting Tool:

www.vnshealth.ethicspoint.com

A written report may be mailed to:

VNS Health

Attn: Compliance Department

220 East 42nd Street, 6th Floor

New York, NY 10017

Federal and New York State Laws Relating to False Claims

Following is a summary of the federal and New York State laws regarding false claims and whistleblower protections.

I. FEDERAL LAWS

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

In general, the federal False Claims Act (“FCA”) imposes liability on any person who submits a claim to the federal government or submits a claim to entities administering government funds that he or she knows (or should know) is false. An example is a physician who submits a bill to Medicare for medical services she knows she has not provided. The FCA also imposes liability on an individual who knowingly submits a false record to obtain payment from the government. An example of this is a government contractor who submits records that he knows (or should know) falsely indicates compliance with certain contractual or regulatory requirements. There is also a third area of FCA liability, known as “reverse false claims,” which includes those instances in which a person obtains money from the federal government to which they are not entitled, and then uses false statements or records to retain the money. An example is a health care facility that obtains interim payments from Medicare or Medicaid throughout the year, and then knowingly files a false cost report at the end of the year to avoid making a refund to the Medicare or Medicaid program.

Select provisions of the FCA are excerpted below:

(1) (a) In general. Subject to Paragraph (2), any person who –

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; (C) conspires to commit a violation of subparagraphs (A), (B), (D) or (G); (D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property or (G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases 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 \$10,000¹, plus 3 times the amount of damages which the Government sustains because of the act of that person.

¹ Although the statutory provisions of the FCA authorize a range of penalties between \$5,000 and \$10,000, as of the effective date of this policy, those amounts have been adjusted for inflation and increased by regulation: penalties for violations occurring on or before November 2, 2015, to not less than \$5,500 and not more than \$11,000 (see 28 CFR § 85.3(a)(9)); and penalties for violations occurring on or after November 2, 2015, and assessed on or after February 3, 2017, to not less than \$10,957 and not more than \$21,916. Dollar amounts may be subject to change.

- (2) Reduced Damages. If the court finds that – (A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information; (B) such person fully cooperated with any Government investigation of such violation; and (C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than two (2) times the amount of damages which the Government sustains because of the act of that person.
- (3) Costs of civil actions. A person violating this subsection will also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Definitions.

For purposes of this section:

- (1) the terms “knowing” and “knowingly” (A) mean that a person, with respect to information – (i) has actual knowledge of the information; (ii) acts in deliberate ignorance of the truth or falsity of the information; or (iii) acts in reckless disregard of the truth or falsity of the information; and (B) require no proof of specific intent to defraud²;
- (2) the term “claim” (A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that – (i) is presented to an officer, employee, or agent of the United States; or (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government’s behalf or to advance a Government program or interest, and if the United States Government (I) provides or has provided any portion of the money or property requested or demanded; or (II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded;
- (3) the term “obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and
- (4) the term “material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

² Of note, 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.

* * *

(d) Exclusion.

This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

31 U.S.C. § 3729.

In addition, Section 3730(d)(1) of the FCA provides, with some exceptions, that, when the government has intervened in a lawsuit brought by a *qui tam* relator, the relator 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) of the FCA provides that the relator shall receive an amount that the court decides is reasonable, which shall be not less than 25 percent and not more than 30 percent.

Administrative Remedies for False Claims (31 U.S.C. §§ 3801–3812)

This statute allows for administrative recoveries by federal agencies. If a person submits a claim that the person knows is false, contains false information, or omits material information, then the agency receiving the claim may impose a penalty of up to \$5,000 for each claim. The agency may also recover twice the amount of the claim.

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

II. NEW YORK STATE LAWS

New York State's false claim laws include civil and administrative laws as well as criminal laws. Some of these laws apply specifically to recipient false claims, and others apply to provider false claims. Most of these statutes are specific to health care or Medicaid. In addition, there are some offenses covered by the criminal laws that apply generally to all areas of interaction with the government, including health care fraud.

Civil and Administrative Laws

New York False Claims Act (N.Y. Finance Law §§ 187-194)

The New York False Claims Act is similar to the federal FCA. It imposes penalties and fines on individuals and entities who knowingly file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. It also has a provision regarding "reverse false claims" similar to the federal FCA, such that a person or entity can be held liable for obtaining money from a state or local government to which the person is not entitled and then using false statements or records to retain the money.

The penalty for filing a false claim under the New York False Claims Act is \$6,000 to \$12,000 per claim, plus three times the amount of the damages which the state or local government sustains because of the act of that person. In addition, a person who violates this act is liable for costs, including attorneys' fees, of a civil action brought to recover any such penalty.

The New York False Claims Act allows private individuals to file lawsuits in state court just as if they were state or local government parties. If the suit eventually concludes with payments back to the government, the person who started the case can recover 25 to 30 percent of the proceeds if the government did not participate in the suit, or 15 to 25 percent if the government did participate in the suit.

N.Y. Soc. Servs. 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 three times the amount incorrectly paid. In addition, the New York State Department of Health may impose a civil penalty of up to \$10,000 per violation. If repeat violations occur within five (5) years, a penalty of up to \$30,000 per violation may be imposed if the repeat violations involve more serious violations of Medicaid rules, billing for services not rendered, or providing excessive services.

N.Y. Soc. Servs. 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 needs of the individual or that of his family shall not be taken into account for six months if a first offense, for twelve months if a second offense (or if benefits wrongfully received are at least \$1,000 and no more than \$3,900), for eighteen months if a third offense (or if benefits wrongfully received are in excess of \$3,900), and five years for any subsequent occasion of any such offense.

Criminal Laws

N.Y. Soc. Servs. 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.

N.Y. Soc. Servs. Law § 366-b – Penalties for Fraudulent Practices

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.

Any person who, with intent to defraud, presents for payment any false or fraudulent claim for furnishing services, knowingly submits false information to obtain greater Medicaid

compensation, or knowingly submits false information in order to obtain authorization to provide items or services is guilty of a class A misdemeanor.

N.Y. Penal Law Article 155 – Larceny

The crime of larceny applies to a person who, with intent to deprive another of his property, obtains, takes or withholds the property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior. It has been applied to Medicaid fraud cases.

155.30—Fourth degree grand larceny involves property valued over \$1,000. It is a class E felony.

155.35—Third degree grand larceny involves property valued over \$3,000. It is a class D felony.

155.40—Second degree grand larceny involves property valued over \$50,000. It is a class C felony.

155.42—First degree grand larceny involves property valued over \$1 million. It is a class B felony.

N.Y. Penal Law Article 175 – False Written Statements

Four crimes in this Article relate to filing false information or claims and have been applied in Medicaid fraud prosecutions:

175.05—Falsifying business records involves entering false information, omitting material information or altering an enterprise’s business records with the intent to defraud. It is a class A misdemeanor.

175.10—Falsifying business records in the first degree includes the elements of the §175.05 offense and includes the intent to commit another crime or conceal its commission. It is a class E felony.

175.30—Offering a false instrument for filing in the second degree involves presenting a written instrument (including a claim for payment) to a public office knowing that it contains false information. It is a class A misdemeanor.

175.35—Offering a false instrument for filing in the first degree includes the elements of the second degree offense and must include an intent to defraud the state or a political subdivision. It is a class E felony.

N.Y. Penal Law Article 176 – Insurance Fraud

This law applies to claims for insurance payments, including Medicaid or other health insurance, and includes six crimes:

176.10—Insurance fraud in the fifth degree involves intentionally filing a health insurance claim knowing that it is false. It is a class A misdemeanor.

176.15—Insurance fraud in the fourth degree is filing a false insurance claim for over \$1,000. It is a class E felony.

176.20—Insurance fraud in the third degree is filing a false insurance claim for over \$3,000. It is a class D felony.

176.25—Insurance fraud in the second degree is filing a false insurance claim for over \$50,000. It is a class C felony.

176.30—Insurance fraud in the first degree is filing a false insurance claim for over \$1 million. It is a class B felony.

176.35—Aggravated insurance fraud is committing insurance fraud more than once. It is a class D felony.

N.Y. Penal Law Article 177 – Health Care Fraud

This statute primarily applies to claims for health insurance payments, including Medicaid, and contains five crimes:

177.05—Health care fraud in the fifth degree – a person is guilty of this crime when, with intent to defraud a health plan, he or she knowingly and willfully provides material false information or omits material information for the purpose of requesting payment from a health plan. It is a class A misdemeanor.

177.10—Health care fraud in the fourth degree – a person is guilty of this crime upon filing such false claims on one or more occasions and annually receiving more than \$3,000. It is a class E felony.

177.15—Health care fraud in the third degree – a person is guilty of this crime upon filing such false claims on one or more occasions and annually receiving over \$10,000. It is a class D felony.

177.20—Health care fraud in the second degree – a person is guilty of this crime upon filing such false claims on one or more occasions and at least \$50,000 in the aggregate, within one year, is filed with a single health plan. It is a class C felony.

177.25—Health care fraud in the first degree – a person is guilty of this crime upon filing such false claims on one or more occasions and annually receiving over \$1 million from a single health plan. It is a class B felony.

WHISTLEBLOWER PROTECTIONS

Federal False Claims Act (31 U.S.C. § 3730(h))

The FCA provides protection to *qui tam* relators (individuals who commence a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment because of their furtherance of an action under the FCA. 31 U.S.C. § 3730(h). Remedies include reinstatement with comparable seniority 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 because of the discrimination, including litigation costs and reasonable attorneys' fees.

New York False Claims Act (N.Y. Finance Law § 191)

The New York State False Claims Act also 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 because of their furtherance of an action under the Act. Remedies include reinstatement with comparable seniority 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 because of the discrimination, including litigation costs and reasonable attorneys' fees.

N.Y. Labor Law § 740

An employer may not take any retaliatory 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 agency or public official. Protected disclosures are those that assert that the employer is in violation of a law that creates a substantial and specific danger to the public health and safety or which constitutes health care fraud under N.Y. Penal Law § 177 (knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions). The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation. If an employer takes 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 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.

N.Y. Labor Law § 741

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 agency 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 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 an employer takes 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 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.

Reviewed:	9/2010	11/2013	5/2014	10/2014	12/2015	11/2016	11/2017
Revised & Approved:	9/2010	11/2013	5/2014	10/2014		12/2016	1/2018
Reviewed:	11/2018	11/2019	9/2020	2/2022			
Revised & Approved:	1/2019	1/2020	3/2021	6/2022			