

**Government Business Division
Policies and Procedures**

Section (Primary Department) Medicaid Compliance Governance		SUBJECT (Document Title) False Claims Act - WNY	
Effective Date 12/14/2016	Date of Last Review 12/05/2022	Date of Last Revision 12/07/2021	Dept. Approval Date 12/05/2022
Department Approval/Signature:			

Policy applies to health plans operating in the following State(s). Applicable products noted below.

Products	<input type="checkbox"/> Arkansas	<input type="checkbox"/> Iowa	<input type="checkbox"/> Nevada	<input type="checkbox"/> Tennessee
<input checked="" type="checkbox"/> Medicaid/CHIP	<input type="checkbox"/> California	<input type="checkbox"/> Kentucky	<input type="checkbox"/> New Jersey	<input type="checkbox"/> Texas
<input type="checkbox"/> Medicare/SNP	<input type="checkbox"/> Colorado	<input type="checkbox"/> Louisiana	<input type="checkbox"/> New York – Empire	<input type="checkbox"/> Virginia
<input type="checkbox"/> MMP/Duals	<input type="checkbox"/> District of Columbia	<input type="checkbox"/> Maryland	<input checked="" type="checkbox"/> New York (WNY)	<input type="checkbox"/> Washington
	<input type="checkbox"/> Florida	<input type="checkbox"/> Minnesota	<input type="checkbox"/> North Carolina	<input type="checkbox"/> Wisconsin
	<input type="checkbox"/> Georgia	<input type="checkbox"/> Missouri	<input type="checkbox"/> South Carolina	<input type="checkbox"/> West Virginia
	<input type="checkbox"/> Indiana	<input type="checkbox"/> Nebraska		

POLICY:

Amerigroup Partnership plan (“APP”) on behalf of Highmark Blue Cross Blue Shield of Western New York (Highmark BCBSWNY) is committed to complying with all applicable Federal and state laws including the Federal False Claim Act (“FCA”) and the New York False Claims Act. The FCA mandates that APP make information and education regarding the FCA available to all employees and contractors. This information and education will include whistleblower protection under the law and the available administrative remedies. APP will incorporate the FCA in its ongoing efforts to detect and prevent fraud, abuse, and waste in the state and federal health programs. The Federal FCA and the New York False Claims Act are comparable and the New York False Claims Act will be discussed in a separate section of this policy.

Section 6032 of the Deficit Reduction Act of 2005 mandates that all entities receiving payments from or making payments to the state of at least \$5,000,000 will:

- Establish written policies for all employees of the entity (including management), and any contractor or agent of the entity, that provide detailed information about the False Claims Act, administrative remedies for false claims and statements, any state laws concerning civil or criminal penalties for false claims or statements, and whistleblower protection under such laws;
- Include, as part of such written policies, detailed provisions concerning the entity’s policies and procedures for detecting and preventing fraud, waste, and abuse; and
- Include in the employee handbook a specific discussion of these laws, the rights of employees to be protected as whistleblowers, and the entity’s policies and procedures for detecting and preventing fraud, waste, and abuse

DEFINITIONS:

- 1. False Claim** means any claim which is, either in whole or part, false or fraudulent.
- 2. “Knowing” and “knowingly”**
(a) mean that a person, with respect to information;

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- (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 defraud.

PROCEDURE:

This policy is intended to inform all APP associates and contractors regarding the requirements of the FCA and related state laws. This policy will identify the persons and entities subject to the FCA, conduct prohibited by the FCA, and who may report and pursue a suspected violation of the FCA. It will also identify remedies available for violation of the FCA.

Federal False Claims Act

The FCA is intended to prevent fraud against the government. This includes preventing fraudulent billing or the submission of fraudulent claims to any Federal health care program. This encompasses the New York Medicaid program.

Who is covered by the False Claims Act?

The FCA applies to individuals (natural persons) and business entities including, but not limited to corporations, partnerships, firms, or associations. It includes physicians and hospitals.

Conduct Prohibited by FCA

The FCA prohibits any person or entity from:

- Knowingly presenting, or causing to be presented, to the government, a false or fraudulent claim for payment or approval;
- Knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the government;
- Conspiring to defraud the government by getting a false or fraudulent claim allowed or paid;
- Falsely certifying the type or amount of property to be used by the government;
- Certifying receipt of property used (or to be used) by the government on a document without completely knowing that the information is true;
- Knowingly buying or receiving government property from an unauthorized agent; and
- Knowingly making, using, or causing 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.

***Prima facie* elements required by the FCA**

The above listed behavior is the starting point for an alleged violation of the FCA. In addition, the intent of the person or entity to defraud the government must be established; the person or entity must act “knowingly.” This intent can be established by showing:

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- The person or entity had actual knowledge of the information;
- The person or entity acted in deliberate ignorance of the truth or falsity of the information; or
- The person or entity acted in reckless disregard of the truth or falsity of the information.

There must also be a fraudulent (false) claim. A claim is the request or demand for money or property from a contractor or other recipient if the government provides any portion of the money or property requested or demanded. This also applies if the government will reimburse any portion of the money or property requested or demanded.

The government must suffer damages as the result of the alleged false claim. The damages must be identifiable and quantifiable.

Who may allege a violation of the FCA?

The Attorney General of the United States may allege a FCA violation. A private person, acting on behalf of him or herself, and for the government, may also allege a FCA violation. The individual alleging violation of the FCA on behalf of the government may be called a relator, a *qui tam* plaintiff, or a whistleblower.

When and where may an alleged violation of the FCA be reported?

The statute of limitations and venue rules for an alleged violation of the FCA are beyond the scope of this policy. These are factors that are important to the litigation of an alleged violation. This policy is intended to make APP associates and contractors aware of the FCA and the need to report suspected violations.

Administrative remedies

Administrative remedies for violation of the FCA include penalties of \$5,000 to \$10,000 per occurrence. Depending upon the circumstances, up to three times the amount of the damages may be assessed against the violator. There are other federal regulations allowing penalties up to \$5,000 per false claim or statement and up to twice the amount of the claim determined to be in violation of the law.

Whistleblower recovery

The individual claiming a violation of the FCA on behalf of the government may be entitled to a monetary recovery. This individual must be the first person to report this alleged violation of the FCA. If the government decides to intervene in the alleged violation, the whistleblower may receive between 15% and 25% of the action or settlement proceeds. This presumes the whistleblower took no part in the prohibited conduct. A whistleblower who actively participated in the prohibited conduct will not be entitled to any minimum guaranteed recovery from the proceeds. The whistleblower may also receive reasonable expenses and attorneys' fees. If the government declines to intervene, the whistleblower may pursue the claim. The recovery will be between 25% and 30% of the proceeds, plus reasonable attorneys'

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fees and expenses, if the whistleblower prevails. If the whistleblower does not prevail, the defendant may be awarded attorneys' fees to be paid by the whistleblower.

Protection for the whistleblower

Federal law provides protection for the whistleblower. A whistleblower, who is an employee, cannot be discharged, demoted, suspended, threatened, harassed, or discriminated against in any way for lawful acts done to further an action under the FCA. The employer shall not develop, adopt, or enforce any rule or policy that prevents or deters an employee from reporting alleged violations of the FCA.

New York False Claims Act

There is a comparable New York State False Claims Act (Article 13 of the NYS Finance Law) governing claims submitted to state and local government agencies. Violations of this law may be punished by treble damages and penalties of \$6,000 to \$12,000 per claim. The successful *qui tam* plaintiff will also recover reasonable costs, expenses, and fees.

Several other New York State laws also prohibit the making of false claims and statements. In addition, criminal penalties may be imposed for intentionally submitting a false claim to the Medicaid program (Section 366-b of the Social Services Law), knowingly making a false entry in a business record or filing a false instrument with a government agency (Article 175 of the NYS Penal Law), committing a fraudulent insurance act (Article 176 of the NYS Penal Law) or engaging in health care fraud (Article 177 of the NYS Penal Law).

REFERENCES:

- 31 USC §§ 3729-3733
- 31 USC § 3801 *et seq.*
- Deficit Reduction Act of 2005, Pub. L. No. 109-171 § 6032, 42 USC § 1396(a)(68)
- New York State Finance Law, Chapter 56. Of the Consolidated Laws, Article XIII. New York False Claims Act, § 187.
- Standards of Ethical Business Conduct

RESPONSIBLE DEPARTMENTS:

Primary Department: Medicaid Compliance Governance

EXCEPTIONS:

None

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REVISION HISTORY:

Review Date	Changes
12/05/2022	<ul style="list-style-type: none">• Annual Review—no changes
12/07/2021	<ul style="list-style-type: none">• Annual Review• Updated Policy Section
12/22/2020	<ul style="list-style-type: none">• Annual Review—no changes
01/13/2020	<ul style="list-style-type: none">• Annual review. No changes.
01/29/2019	<ul style="list-style-type: none">• Annual Review. No changes.
02/19/2018	<ul style="list-style-type: none">• Annual review. No changes.
12/14/2016	<ul style="list-style-type: none">• New