



CORPORATE COMPLIANCE POLICY AND PROCEDURE

Title: Fraud Waste and Abuse Laws in Health Care	Policy # 1011	
Sponsor: Corporate Compliance	Issued: June 25, 2007	Page: 1 of 6
Approved by: Russell J. Matuszak, Vice President, Compliance, Privacy & Ethics Chief Compliance Officer	Last Reviewed/Revised: 5/22/2020	

I. PURPOSE

The purpose of this policy is to educate HealthNow workforce members and promote compliance with the federal and state fraud, waste, and abuse (FWA) laws regarding false claims, statements, or any other type of fraudulent activity prohibited by relevant fraud laws. These laws are intended to prevent and deter FWA.

II. APPLICABILITY

This Policy Rule and Procedure applies to the following groups:

- Management (Supervisor and Above)**
- Salaried/Exempt**
- Hourly/Non-exempt (excluding bargaining unit)**
- Bargaining Unit**
- Temporaries, Coops/Interns, Consultants/Contractors, Vendors**

III. POLICY/RULE

Applicable Fraud Laws:

The **Federal False Claims Act** (31 U.S.C. § 3729) and amended by **The Fraud Enforcement Recovery Act of 2009 (FERA)** is violated if a person 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 federal government. The potential penalties for violating the False Claims Act include treble damages (damages equal to three times the amount of the false claims), civil penalties of up to \$11,000 per claim and exclusion from federal health care programs. In addition, the federal government may impose administrative sanctions of up to \$5,500 plus twice the amount of the false claim under the Federal Program Civil Remedies Act of 1986 (31 U.S.C. § 3801).

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.



CORPORATE COMPLIANCE POLICY AND PROCEDURE

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).

Anti-Kickback Statute – prohibits persons or entities from knowingly and willingly offering, soliciting, or receiving remuneration in order to induce or reward the referral of business payable by a federal health care program. (42 USC § 1320a-7b (b))

To avoid potential violations of the federal anti-kickback statutes, as a HealthNow employee, you may never solicit anything of value from a broker, vendor, supplier, provider, or subscriber. In addition, you should not accept any gifts of money, gift cards that can be redeemed for cash, or bank cards (e.g. Visa or MasterCard) no matter the amount from these sources.

The Stark Law – prohibits a physician from referring Medicare patients for designated health services to an entity with which the physician has a financial relationship and prohibits the designated health services entity from submitting claims to Medicare for those services resulting from prohibited referral. (42 USC §§1395 nn)

Deficit Reduction Act - The Deficit Reduction Act (DRA) of 2005 instituted a requirement for health care entities, which receive or make \$5.0 million or more in Medicaid payments during a federal fiscal year to establish policies and procedures informing and educating their employees, providers and contractors about federal and state false claims acts and whistleblower protections. The Fraud, Waste, and Abuse (Whistleblower) Policy #1010 provides additional information for detecting FWA.

Types of Conduct Implicating the Fraud Laws:

HealthNow workforce members may be subject to liability under the fraud laws for knowingly, with deliberate ignorance, and/or reckless disregard engaging in the following types of conduct:

- Submitting premium claims to the Medicaid program for individuals who are not HealthNow members.
- Submitting cost reports to Medicaid which are inaccurate or incomplete.
- Accepting overpayments under the Medicare program.
- Denying members access to medically necessary services.

The above list is intended to be illustrative and not exhaustive. False Claims Act liability exists for



CORPORATE COMPLIANCE POLICY AND PROCEDURE

any knowing or intentional submission of false claims or statements that result in payment by a federal health care program and for the retention of federal monies to which HealthNow is not entitled.

All workforce members are strictly prohibited from engaging in any conduct that violates the fraud laws. Workforce members must take all steps specified in this policy to protect HealthNow and its workforce members from Fraud laws.

Reporting of Fraud Law Violations by Workforce Members

Workforce members of HealthNow will be expected to report the preparation or submission to Medicaid or any other federal health care program of any claim or report that appears to be false or fraudulent, or any other conduct that appears to violate the fraud laws. Workforce members may make such reports through any of the mechanisms described in HealthNow Code of Conduct and Compliance Program booklet, in HealthNow's Compliance policies and in the HealthNow's Whistleblower Policy. All reports received from workforce members will be evaluated and investigated as necessary pursuant to such policy. Workforce members are encouraged to contact their supervisor or the Compliance Officer if they have questions as to whether certain practices violate any fraud laws.

Qui Tam

Workforce members have the legal right to file *qui tam* lawsuits if they become aware that HealthNow has submitted claims for reimbursement to Medicaid or other government programs in violation of the False Claims Act. In a *qui tam* lawsuit, the workforce member, referred to as a "relator", files the case under seal and requests that the federal government intervenes and takes over prosecution of the matter. If the relator's lawsuit is successful, the relator may share in a portion of the recovery. HealthNow will not seek to impede any workforce member from filing a *qui tam* lawsuit, through threats of retaliation, intimidation, or otherwise. However, all workforce members are encouraged to report and attempt to resolve suspected False Claims Act violations through the internal report procedures established by HealthNow prior to exercising *qui tam* rights.

Workforce Member Education

HealthNow provides compliance training to workforce member that includes a component addressing the False Claims Act as well as State laws punishing the making of false claims or statements. HealthNow requires that in connection with the execution of each contract by HealthNow, the contractor receives relevant information regarding these laws.

Internal Auditing

HealthNow requires that periodic audits conducted by or on behalf of HealthNow cover the submission of accurate claims and cost reports to the Medicaid program, as well as any other activities deemed by the Compliance Officer to raise potential risks under the False Claims Act. The



CORPORATE COMPLIANCE POLICY AND PROCEDURE

Compliance Officer will oversee the development and implementation of a corrective action plan to address any compliance issues identified through such audits.

Disclosure of False Claims

Under the False Claims Act, HealthNow may avoid treble damages and civil penalties if it discloses to the relevant federal health care program any false or fraudulent claims within 30 days of discovery of the false claim and makes appropriate restitution of any overpayments within 60 days of when the overpayment was identified.

IV. PROCEDURE

N/A

V. DEFINITIONS

Abuse practices that are inconsistent with sound fiscal, business or medical practices and result in an unnecessary cost to the state or federal government or HealthNow, or in reimbursement of services that are not medically necessary or fail to meet professionally recognized standards for health care.

Claim any request or demand for money or property and whether or not the federal, state or local government has title to the money or property that is presented to an officer, employee, contractor or government employee or 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.

Fraud any type of intentional deception or misrepresentation made by a person with the knowledge that the deception or misrepresentation could result in some unauthorized benefit to himself/herself or another person.

Knowing and knowingly 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. No proof of a specific intent to defraud is required for a person to act knowingly.

Waste is the overutilization of services, or other practices that, directly or indirectly, result in unnecessary costs to a healthcare program. Waste is generally not considered a criminally negligent act, but rather a misuse of resources.

Work Force Members - Employees, temporary personnel, interns, consultants, contractors, board members, agents, and vendors



CORPORATE COMPLIANCE POLICY AND PROCEDURE

V. RESPONSIBILITIES

All workforce members are accountable for following this policy and the related provision of the HealthNow Code of Conduct. Workforce members are responsible to ensure that they do not engage in conduct that violates the federal False Claims Act as well as fraud laws and state laws punishing the making of false claims and statements. As stated above in the “Reporting of False Claims Act Violations by Workforce Members” section, workforce members are expected to report the preparation or submission to Medicaid or any other federal health care program of any claim or report that appears to be false, fraudulent, or other conduct that appears to violate the False Claims Act or other fraud laws to the Compliance Officer or the Special Investigations Unit.

The Compliance Officer is responsible for ensuring the prompt investigation of all reports of potential fraud law violations to provide HealthNow with an opportunity to make disclosure and restitution, as needed.

All management staff will be accountable for communicating and administering this policy and taking action in conjunction with other responsible components of HealthNow. It is HealthNow policy to take appropriate disciplinary action ranging from a verbal warning up to and including termination for workforce members who are encouraging, directing, facilitating, or permitting non-compliant behavior or fail to comply with this policy.

This policy is fairly and firmly enforced.

VII. RELATED POLICIES/REFERENCES

- Federal False Claims Act (31 USC 3729)
- New York State False Claims Act, Article 13 Sections 187 - 194
- Federal Deficit Reduction Act (DRA) of 2005 Section 6032 [(42 USC 1396a(a)(68)]
- Fraud Enforcement Recovery Act of 2009
- The Deficit Reduction Act (DRA) of 2005
- Anti-Kickback Statute [42 USC Section 1320a-7b(b)]
- The Stark Law (42 USC Section 1395 nn)
- Patient Protection and Affordable Care Act, Section 6402(d) (2)
- HealthNow’s Code of Conduct



CORPORATE COMPLIANCE POLICY AND PROCEDURE

VIII. DISTRIBUTION

This Policy Rule and Procedure is available to all employees via the Intranet, managers should communicate the policy to their staff within their respective span of control.

IX. REVISION

It shall be the responsibility of the Compliance Officer (or designee) to review this Rule/Policy and Procedure on a regular basis and make revisions as appropriate. All rule/policy and procedure changes may be completed without prior notice. (As a policy applies to Bargaining Unit employees, the current agreement between HealthNow and the Office and Professional Employees International Union will be followed.)