


<p>Wake County Department of Public Safety</p> <p>Title: State/Federal False Claims Act, Other State Related Laws &amp; Whistleblower Protections</p>	<p>Policy#</p> <p>Original Issue# 24 October 2007</p> <p>Effective# 24 October 2007</p> <p>Revision #</p> <p>Approval </p>
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1.0 Policy:

**PURPOSE**

Provide a written policy that details information about the Federal False Claims Act and other related state laws, including administrative remedies for false claims and statements, whistleblower protections under such laws; and Wake Department of Public Safety's Emergency Medical Services Division, (EMS), policies and procedures for preventing and detecting fraud, waste and abuse. To advise employees, contractors, agents and business associates about EMS Division process for reporting concerns about fraud, abuse and false claims.

**POLICY**

The EMS Division is committed to the highest standard of excellence, ethical behavior and the submission of accurate claims to all payers, including federally funded payers such as Medicare and Medicaid.

2.0 Scope:

This policy is created for the EMS.

3.0 Definitions:

**APPLICABILITY**

This policy applies to employees, contractors, subcontractors, agents and any other business associate that provide services for, or on behalf of, Wake County Department of Public Safety Emergency Services Division.

4.0 Responsibilities & Procedures

**WAKE COUNTY DEPARTMENT OF PUBLIC SAFETY - EMERGENCY MEDICAL SERVICES DIVISION'S POLICIES AND PROCEDURES FOR PREVENTING WASTE, FRAUD AND ABUSE**

The EMS Division has policies and procedures that prevent fraud, waste and abuse in the Medicaid and Medicare programs. All Wake County staff, along with its contractors,

subcontractors, agents and business associates, must be sensitive to the appearance of impropriety and avoid any possible public perception of self-interest or conflict of interest. (Reference: Wake County Human Resources Administrative Manual, 602.1 Ethics Policy, 603.1 Outside Employment, 604.1 Employment of Relatives, 605.1 Other Conflicts of Interest, Corporate Compliance Code of Code of Conduct-EMS Management & Consultants, Inc. and Emergency Management & Consultants, Inc. Compliance Plan.). Throughout the course of employment with Wake County, employees must disclose to their supervisor any employment or other business interest of any immediate family member that may create a real, potential, or perceived conflict of interest for the employee or the department as these situations arises. Wake County has a “zero tolerance” for employees, who engage in fraudulent activities and/or misuse of government funds, resources, or benefits. EMS polices and procedures help to ensure that appropriate claims are made to all payers, including government programs, through:

- ❖ Development of policies on appropriately submitting and processing claims for services.
- ❖ Education regarding policies and procedures.
- ❖ Monitoring and auditing to prevent or detect errors in coding or billing.
- ❖ Investigating all reported concerns and correcting errors that are discovered.

Violations of this policy may result in disciplinary action up to and including dismissal as well as criminal prosecution.

### FALSE CLAIMS ACT

The False Claims Act is a federal law that targets Medicaid and Medicare fraud in federally funded programs. A person may commit fraud under this act by engaging in the following:

1. Knowingly presenting a false or fraudulent claim for payment or approval.
2. Knowingly making or using a false record or statement to get a false claim or fraudulent claim paid or approved.
3. Conspiring with another to get a false or fraudulent claim paid or allowed.
4. Knowingly making or using a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property.

The False Claims Act does not require an element of intent by the person to commit fraud. A person engages in act knowingly by showing either: (1) actual knowledge, (2) deliberate ignorance of the truth or falsity of the information, or (3) reckless disregard of the truth or falsity of the information.

**Penalties:** Violations of the Federal False Claims Act can result in penalties of not less than \$5,500.00 and not more than \$11,000.00 per claim with inflation, plus three times the amount of damages that the government sustains.

## **OTHER REMEDIES FOR FALSE CLAIMS**

The Department of Health and Human Services may impose on a person who submits certain claims to the government of the United States a penalty of up to \$5,500.00 for each False Claim, plus twice the amount of the False Claim.

The law applies to any claim that a person knows or has reason to know:

1. Is false, fictitious, or fraudulent;
2. Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;
3. Includes or is supported by any written statement that (i) omits a material fact, (ii) is false, fictitious, or fraudulent as a result of such omission, and (iii) is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or
4. Is for payment for the provision of property or services, which the person has not provided as claimed.

Chapter 38 of Title 31 of the United States Code imposes the same penalty of \$5, 500.00 on any person who has made an express certification of the truthfulness and accuracy of the written statement and who makes a written statement that the person knows or has reason to know:

1. Asserts a material fact which is false, fictitious, or fraudulent; or
2. Omits a material fact, (ii) such is false, fictitious, or fraudulent as a result of such omission, and (iii) the person submitting such statement has a duty to include such material fact.

## **FEDERAL QUI TAM "WHISTLEBLOWER" ACTIONS**

There is a private cause of action under the False Claims Act. A person, who is called a Qui Tam Relator under this act, may bring a civil action for any false claim in the name of the United States government. The federal government may review a complaint brought by a Qui Tam Relator and the disclosure of substantially all of the material evidence and information the person possesses to decide whether to intervene. If the federal government intervenes, then the federal government may proceed with a cause of action under the False Claims Act, and the person who originally brought the action, the Qui Tam Relator, may receive from 15% to 25% of the proceeds of the action or settlement of the claim. If the federal government does not proceed with a cause of action and Qui Tam Relator continues with the action or settles the claim, he or she may receive an amount from 25% to 30% of the proceeds of the action or settlement. The Qui Tam Relator may also receive an amount for reasonable expenses, including reasonable attorney fees and costs incurred in connection with bringing the lawsuit.

## STATE AND FALSE CLAIMS ACT AND OTHER RELATED STATE LAWS

North Carolina enacted the Medical Assistance Provider False Claims Act. This act provides that it shall be unlawful for any provider of medical assistance under the Medical Assistance Program to:

1. Knowingly present, or cause to be presented to the Medical Assistance Program a false or fraudulent claim for payment or approval; or
2. Knowingly make, use or cause to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Medical Assistance Program.

The North Carolina Medical Assistance Provider False Claims Act states that a provider acts "knowingly" when that provider: (1) has actual knowledge of the information, (2) deliberately ignores the truth or falsity of the information, or (3) recklessly disregards the truth or falsity of the information. The North Carolina Medical Assistance Provider False Claims Act defines the term "claim" as an application for payment or approval that is submitted to the Medical Assistance Program and that identifies a service, good, or accommodation as reimbursable under the Medical Assistance Program.

Each claim presented or caused to be presented in violation of this act is a separate violation. A court shall assess against any provider of medical assistance under the Medical Assistance Program who violates this section a civil penalty of not less than five thousand dollars (\$5,000.00) and not more than ten thousand dollars (\$10,000.00) plus three times the amount of the damages which the Medicaid Assistance Program sustained because of the act of the provider. The Court may also assess additional damages pursuant to this act.

The North Carolina Medical Assistance Provider False Claims Act "is to be interpreted and construed to be consistent with the federal False Claims Act, 31 U.S.C. §3729, et. seq., and any subsequent amendments to that act."

Unlike the Federal False Claims Act, a cause of action may be brought only by the North Carolina Attorney General's Office. A private citizen may not bring a cause of action under this act.

North Carolina also enacted statutes that provide for criminal penalties for Medicaid fraud. The Medicaid Assistance Provider Fraud statute provides that a violation of this statute by a medical assistance provider is a Class I felony. This type of fraud includes: (1) fraudulent applications where a Medicaid provider willfully and knowingly makes or causes to be made a false statement or representation of a material fact in an application for payment or an application for Medicaid eligibility, or that allows a provider to remain eligible or to qualify to provide Medicaid services; and (2) concealment of a relevant fact by a provider who knowingly and willfully conceals or fails to disclose a fact or event that effects entitlement to Medicaid payment or the amount of Medicaid payments received.

The Medicaid Fraud by Recipient statute provides that violation of this statute by a recipient is a Class I felony, where the amount wrongfully obtained exceeds \$400.00 (four hundred dollars), otherwise it is punishable as a Class I misdemeanor. This type of fraud includes: (1) fraudulent application by a Medicaid recipient where the patient knowingly and willfully, with intent to defraud, makes or causes to be made a false statement or representation of a material fact in an application for payment or an application for Medicaid eligibility; and (2) concealment of fact affecting a Medicaid recipient's eligibility where an applicant or recipient of Medicaid or a person acting on his or her behalf knowingly and willfully conceals or fails to disclose a fact or event that effects entitlement to Medicaid payment.

The Medicaid Card Fraud statute provides that a person who is guilty of medicaid card fraud maybe punished as a Class I felony. A person is guilty of this type of fraud when that person knowingly and willfully, with intent to defraud obtains or attempts to obtain or assists, aids, or abets another person to obtain any money, service or anything of value to which the person is not entitled as a Medicaid recipient; or when that person deliberately misuses a Medicaid identification card.

### **FEDERAL AND STATE WHISTLEBLOWER PROTECTIONS**

Federal and state laws protect individuals who investigate or report possible false claims made by their employer against discharge or discrimination in employment because of such investigation. Employees who are discriminated against based on whistle blowing activities may sue for acts of retaliation in court for damages. Under either the federal or state law, any employer who violates whistle blower protection laws is liable to the employee for (1) reinstatement of the employee's position without loss of seniority, (2) two times the amount of lost back pay, (3) interest and compensation for any special damages, and such other relief necessary to make the employee whole.

### **POLICES AND PROCEDURES FOR DETECTING AND PREVENTING FRAUD, WASTE AND ABUSE**

The EMS Division in its commitment to excellence and compliance with all laws and regulations that apply to health care has implemented the following policy:

If you are an employee, volunteer, vendor, agent or contractor with EMS, you must:

- 1) Exercise good faith and honesty in all dealings and transactions.
- 2) Observe all laws and regulations that govern EMS, including requirements of Medicare, Medicaid and other federal healthcare programs. Maintain complete and accurate medical records and submit complete and accurate claims for services provided.
- 3) Provide accurate and truthful information for all transactions.  
You may contact one of the following resources available within the EMS Department if you have any knowledge or concern regarding a potential false claim:

- a) Speak with your supervisor or another manager.
- b) If the manager is not available, or you are not comfortable speaking with him/her, or you believe the matter has not been adequately resolved, contact the Wake County Internal Auditor. You may report the incident anonymously.

EMS Division policy strictly prohibits retaliation, in any form, against any individual making a report, complaint, or inquiry in good faith. Retaliation is subject to discipline, up to and including dismissal from employment or termination of business or contractual relationship with the EMS Division.

To report instances of suspected fraud, abuse or waste, please contact the following:

Wake County Internal Auditor  
 Wake County Finance Department  
 337 S. Salisbury Street  
 Raleigh, NC 27601  
 (919) 856-6120  
 (919) 856-6880 (fax)

**AUTHORITY**

This policy is enacted pursuant to Section 6032 of the Deficit Reduction Act of 2005.

- (1) The Federal Civil False Claims Act, Section 3279 of Chapter 31 of the United States Code.
- (2) The North Carolina Medical Assistance Provider False Claims Act, N.C. GEN. STAT. §108A-70.10, et seq.
- (3) North Carolina Medical Assistance Provider Fraud, N.C. GEN. STAT. §108A-63
- (4) North Carolina Medical Recipient Fraud, N.C. GEN. STAT. §108A-64
- (5) Wake County Human Resources Administrative Manual, Section 602.1, 603.1, 604.1, 605.1
- (6) Corporate Compliance Code of Conduct – EMS Management & Consultants & Inc. (Revised June 16, 2005)
- (7) Emergency Management & Consultants, Inc. Compliance Plan

5.0 Revision History

Date	Revision#	Changes	Referenced Section

