

Wake County Human Services Department	Date: October 24, 2007
Title: Notice of Contractors, Subcontractors, Agents and Other Business Associates False Claims Act, Other Related State Laws & Whistleblower Protections	Effective: Approval:

**NOTICE**

The Wake County Human Services Department, (WCHS), hereby notices and holds all contractors, subcontractors, agents and any other business associate who provide or furnish healthcare items or services for WCHS, who provide billing or coding services, or who are involved in the monitoring of healthcare provided by WCHS, responsible for compliance with federal and state laws that prohibit the making of false claims and for otherwise conducting our affairs lawfully. We are providing you with this Notice as one of our contractors, subcontractors, agents and any other business associate, in order to comply with our obligations under federal and state law.

The information in this Notice is an overview of some of the wrongful “false claims” activity that the federal and state governments are monitoring in the healthcare profession and the laws that govern such wrongful activity. This Notice is not intended as a comprehensive outline for every law that concerns healthcare providers. As a health care provider it is your responsibility to review and know all laws, rules and regulations that may apply to your activities and to ensure compliance with such laws.

**FEDERAL/STATE FALSE CLAIMS AND OTHER STATE RELATED LAWS**

The Federal False Claims Act aids the federal government in combating fraud and recovers losses due to fraud committed in federal programs, such as Medicare and Medicaid. Violations of the False Claims Act can include “knowingly”: (1) submitting a false claim for payment, (2) making or using a false record or statement to obtain payment for a false claim, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the U.S. Government.

The term “Knowingly” is defined under this act as a person who: (1) has actual knowledge that the information is false; (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.

The False Claims Act does not require an element of intent by the person to commit fraud. A person engages in an 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.

The False Claims Act contains provisions which permit individuals with information concerning fraud involving government programs to file a lawsuit on behalf of the government. If the lawsuit is successful, the individual may be eligible to receive a portion of the recoveries received by the government.

**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 (subject to inflationary increases), plus three times the amount of damages that the government sustains.

North Carolina has enacted a 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.

A medical provider that violates this provision may be liable for a civil penalty up to \$10,000.00, plus three times the amount of damages sustained by the Medical Assistance Program for each separate cause of action. A medical provider who violates this act is also subject to pay for any investigatory and court costs, in addition to interest on the amount of damages for violations of 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 1 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.

Examples of potential False Claims include:

1. Failure to obtain payment from beneficiaries who may have other primary payment sources;
2. Failure to refund overpayments made by a federal or state healthcare program;
3. Participating in kickbacks, bribes or rebates in exchange for referring goods, facilities, services or items that are reimbursed by government programs;
4. Altering, falsifying, destroying, or concealing medical records, income and expenditure reports or any other records that support reimbursement;
5. Making inaccurate, false or improper entries in medical records, cost reports and any other records used to support reimbursement;
6. Billing for services that were not documented or misrepresenting the services that were provided;
7. Billing for services that were not medically necessary or for services that fail to meet professionally recognized standards for healthcare;
8. Billing for non-covered service or characterizing a non-covered service, item or cost in a way that leads to reimbursement from a government program;
9. Double billing, which means to bill more than once for the same service or item?
10. Charging rates in excess of established Medicare or Medicaid rates;
11. Accepting a gift, money, donation or other compensation as a condition of admission or continued stay in the facility;

### **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.

### **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 whistleblower 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.

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

WCHS Department 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 WCHS, you must:

- 1) Exercise good faith and honesty in all dealings and transactions.
- 2) Observe all laws and regulations that govern WCHS, 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 WCHS Department or 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.

WCHS Department 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 WCHS.

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