

NEIGHBORHOOD HEALTH PLAN POLICY

POLICY TITLE: Fraud Reporting & Whistleblower Protections
ORIGINATOR: Richard Dropski
APPROVED BY: Standards Expectations and Compliance Committee

POLICY #:
DATE APPROVED: 12/15/06

IMPLEMENTATION DATE: 01/01/07

DATE OF LAST REVISION:

RESPONSIBLE DEPARTMENT: Quality and Compliance

IMPACTED TEAMS: All NHP

IMPACTED PROGRAMS: All programs

POLICY COMMUNICATION/ACKNOWLEDGEMENT: (Select all that apply)

Audience: _____

- Manual Distribution with Signature Required
- E-Mail Notification by Policy Originator to Select Group/No Return Receipt Required
- E-Mail Notification by Policy Originator to Select Group/Return Receipt Requested
- Notification in PlaNet

Please note that as a standard procedure, an e-mail notification of non-confidential Policies will be sent to "NHP All" by the Centralized Policies Administrator (TBD) once the Policy has been uploaded to the Intranet Policy Database.

CONFIDENTIALITY:

Internal:

- Please check box if policy should not be accessible to all NHP employees. Policy will be listed but not accessible to all employees in the centralized policy database.

External:

- Please check box if policy should not be shared outside of NHP.

Please note that any external requests for policies that are not a part of public record must be approved by the Director of Regulatory Affairs.

POLICY

NHP is committed to complying with all applicable federal and state laws concerning the detection and prevention of fraud and abuse. This Policy sets forth NHP's policies and procedures for detecting and preventing fraud and abuse. Additionally, the Policy provides detailed information about the Federal Civil False Claims Act, The Federal Program Fraud Civil Remedies Act, the Massachusetts False Claims Act, and the rights of employees to be protected as whistle-blowers.

All employees, agents and contractors of NHP are required to and are responsible for reporting healthcare billing, financial reporting and other compliance concerns, including actual or potential violations of law, regulation, policy, or procedure.

NHP considers it a serious breach of responsibility for any employee, agent or contractor of NHP to knowingly refrain from reporting healthcare billing, financial reporting and other compliance concerns to an appropriate authority. NHP may take appropriate disciplinary action for failure to report, up to, and including termination of employment or contractual relationships.

NHP will not retaliate against any employee, agent or contractor of NHP who has reported, in good faith, a healthcare billing, financial reporting or other compliance problem, whether that report is made internally, according to established procedures, or externally to oversight agencies, such as the Office of Inspector General, the Office of the Attorney General or the state Medicaid Fraud Unit.

PURPOSE

Without the cooperation from employees, agents, and contractors, it is difficult to learn of possible compliance problems and to make necessary corrections through prevention, detection and resolution of instances that do not conform to appropriate healthcare billing and financial reporting compliance.

This Policy therefore is established to assist employees, agents and contractors of NHP to understand their responsibility to report potential compliance problems that will allow NHP to make reasonable efforts towards the prevention, detection and correction of any potential fraud, abuse or waste in the Medicaid program.

PROCEDURE

All employees are required to go through orientation when they are hired. As part of that orientation, all employees are to be provided with a copy of *NHP's Code of Ethics*. *NHP's Code of Ethics* prohibits employees from engaging in work-related fraudulent or illegal activities, identifies the responsibility to report compliance problems, and provides directions for reporting such problems.

Departmental Directors, Managers and Supervisors are responsible for continuing the employee's orientation to *NHP's Code of Ethics* by discussing the implications of the Code with respect to the individual's specific job responsibilities. This should include providing examples of fraudulent or abusive incidents that could occur or be observed within the specific department and how to report such suspicions.

The Compliance Office, in conjunction with Departmental Directors, will provide to selected departments an annual mandatory training session on identifying and reporting suspected instances of fraud or abuse. This training will include an overview of both the federal and state False Claims Act and related laws, as well as a discussion of internal and external vehicles for reporting suspected instances of fraud or abuse. Selected departments will be identified on the basis of proximity to being able to identify potential problems and will include Claims, Provider Audit, Provider Network Management, Clinical Operations, Customer Care Center, CMA and MHSPY.

In accordance with NHP's policy on *Problem Reporting and Non-Retaliation*, every NHP employee has a responsibility to report a suspected compliance problem through one of several channels if they see something that looks suspicious. Departmental Directors, Managers and Supervisors are responsible for reviewing the procedures with all employees at least annually.

Although NHP does not allow any form of retaliation against employees who report instances of noncompliance, employees and others may feel more comfortable reporting the situation without revealing their identity. Therefore, in accordance with *NHP's Policy on the Compliance Hotline*, employees, agents and contractors may report concerns or problems anonymously via the Hotline Services.

NHP will provide education regarding the responsibility of its agents and contractors to report healthcare billing, financial reporting and other compliance concerns via *NHP's Provider Manual*.

NHP will contract only with entities who affirm their willingness to abide by applicable federal and state laws regarding the prevention, detection and reporting of health care fraud.

The Compliance Office will investigate, or oversee the investigation of, all referred matters to determine what corrective actions are necessary.

Federal and State Statutes Concerning the Detection and Prevention of Fraud and Abuse

The Federal Civil False Claims Act

The Federal False Claims Act ("FCA") imposes civil liability on any person or entity that submits a false or fraudulent claim for payment to the government. The FCA includes Medicare and Medicaid programs.

Summary of Provisions: The FCA imposes civil liability on any person who knowingly: (1) presents (or causes to be presented) to the Federal Government a false or fraudulent claim for payment or approval; (2) knowingly uses (or causes to be used) a false record or statement to get a claim paid by the Federal Government; (3) conspires with others to get a false or fraudulent claim paid by the Federal Government; and (4) uses (or causes to be used) a false record or statement to conceal, avoid, or decrease an obligation to pay money or transmit property to the Federal Government.

In general, the FCA covers fraud involving any federally funded contract or program, with the exception of tax fraud. A broad array of scenarios can constitute FCA violations. Some examples include the following: a contractor falsifies test results or other information regarding the quality or cost of products it sells to the Federal Government; a health care provider bills Medicare and Medicaid for services that were not provided or were unnecessary; or a grant recipient charges the Federal Government for costs not related to the grant.

Penalties: The FCA imposes civil penalties and is not a criminal statute.

Persons (including organizations and entities such as hospitals) may be fined a civil penalty of not less than \$5,500 nor more than \$11,000, plus treble damages, except that double damages may be ordered if the person committing the violation furnished all known information within (30) days. The amount of damages in health care terms includes the amount paid for each false claim that is filed.

Qui Tam (Whistleblower) Provisions: Any person may bring an action under this law (called a qui tam relator or whistleblower suit) in federal court. The case is initiated by causing a copy of the complaint and all available relevant evidence to be served on the federal government. The case will remain sealed for at least 60 days and will not be served on the defendant so the government can investigate the complaint. The government may obtain additional time for good cause. The government on its own initiative may also initiate a case under the FCA.

After the 60 day period, or any extensions, has expired, the government may pursue the matter in its own name, or decline to proceed. If the government declines to proceed, the person bringing the action has the right to conduct the action on their own in federal court. If the government proceeds with the case, the qui tam relator bringing the action will receive between 15 and 25 percent of any proceeds, depending upon the contributions of the individual to the success of the case. If the government declines to pursue the case, the successful qui tam relator will be entitled to between 25 and 30 percent of the proceeds of the case, plus reasonable expenses and attorney's fees and costs awarded against the defendant.

A case cannot be brought more than six years after the committing of the violation or no more than three years after material facts are known or should have been known but in no event more than ten years after the date on which the violation was committed.

Non-retaliation and Anti-discrimination: Anyone initiating a qui tam case may not be discriminated or retaliated against in any manner by their employer. The employee is authorized under the FCA to initiate court proceedings for any job related losses resulting from any such discrimination or retaliation.

Reduced Penalties: The FCA includes a provision that reduces the penalties for providers who promptly self-disclose a suspected FCA violation. The Office of Inspector General self-disclosure protocol allows providers to conduct their own investigations, take appropriate corrective measures, calculate damages and submit the findings that involve more serious problems than just simple errors to the agency.

The Federal Program Fraud Civil Remedies Act of 1986

The Federal Program Fraud Civil Remedies Act (the “Act”) creates administrative remedies against any person who makes false claims separate from and in addition to the remedies provided by the FCA.

The Act deals with submission of improper “claims” or “written statements” to a federal agency. Specifically, a person violates the Act if they know or have reason to know they are submitting a claim that is:

- False, fictitious or fraudulent; or,
- Includes or is supported by written statements that are false, fictitious or fraudulent; or,
- Includes or is supported by a written statement that omits a material fact, the statement is false, fictitious or fraudulent as a result of the omission, and the person submitting the statement has a duty to include the omitted facts; or
- For payment for property or services not provided as claimed.

A violation of the Act carries a \$5,000 civil penalty for each such wrongfully filed claim. In addition, a penalty of two times the amount of the claim may be assessed, unless the claim has not actually been paid.

A person also violates the Act if they submit a written statement which they know or should know:

- Asserts a material fact which is false, fictitious or fraudulent; or,
- Omits a material fact and is false, fictitious or fraudulent as a result of the omission. In this situation, there must be a duty to include the fact and the statement submitted contains a certification of the accuracy or truthfulness of the statement.

A violation of the prohibition for submitting an improper statement carries a civil penalty of up to \$5,000.

Massachusetts False Claims Act (MFCA)

The MFCA is a state statute that is modeled after the FCA and is directed at prosecuting fraud against the Commonwealth of Massachusetts.

Summary of Provisions: The MFCA prohibits knowingly making a false claim against the Commonwealth. False claims can take the form of overcharging for a product or service, making a false statement to conceal, avoid or decrease a financial obligation to the Commonwealth, using a false record to obtain payment from the Commonwealth, or conspiring to defraud the Commonwealth by allowing the payment of a false claims.

Penalties: The MFCA imposes civil penalties and is not a criminal statute. Persons (including organizations such as hospitals) may be fined a civil penalty of not less than \$5,000 nor more than \$10,000 per violation, plus three (3) times the amount of damages, including consequential damages, sustained by the government because of the act of that person. The amount of damages in health care terms includes the amount paid for each false claim that is filed.

Whistleblower Provisions: The MFCA contains provisions that allow for an individual to bring suit in state court. Under the MFCA, the case will remain sealed for at least 120 days and the Commonwealth may obtain additional time for good cause.

After the 120 day period, or any extensions, has expired, the Commonwealth may pursue the matter in its own name, or decline to proceed. If the Commonwealth declines to proceed, the person bringing the action has the right to conduct the action on his own in state court. If the Commonwealth proceeds with the case, the person bringing the action, called the “relator,” will receive between 15 and 25 percent of any proceeds, depending upon the contributions of the individual to the success of the case. If the Commonwealth declines to pursue the case, the relator, if successful, will be entitled to between 25 and 30 percent of the proceeds of the case, plus reasonable expenses and attorney’s fees and costs awarded against the defendant.

Non-retaliation and Anti-discrimination: The MFCA prohibits an employer from discharging, demoting, suspending, threatening, harassing, denying promotion to, or in any other manner discriminating against an employee in the terms or conditions of employment for disclosing information in furtherance of a false claims action. An employee is authorized under the MFCA to initiate court proceedings to make himself or herself whole for any job related losses resulting from any such discrimination or retaliation, including reinstatement with the same seniority status, two times the amount in back pay, interest on back pay, and reimbursement of litigation costs.

Reduced Penalties: The MFCA includes a provision that reduces the penalties for individuals who, within established time periods, fully cooperate with the Commonwealth’s investigation of alleged violations.