



## BACKGROUND

As a condition of receiving Medicaid Title XIX payments, effective Jan. 1, 2007, KH is required to comply with Section 6032 of the Federal Deficit Reduction Act of 2005. This condition requires KH to ensure that all associates and any contractors or agents are educated regarding the federal and state false claims statutes and the role of such laws in preventing and detecting fraud, waste and abuse in federal health care programs.

### A. The Deficit Reduction Act of 2005 (DRA)

1. Section 6032 of the DRA requires KH to establish written policies that:
  - a. Provide detailed information about the federal False Claims Act and comparable state anti-fraud statutes, including whistleblower provisions in those laws;
  - b. Establish policies for detecting and preventing fraud, waste, and abuse;
  - c. Provide employees with specific discussion of their right to be protected as whistleblowers; and
  - d. Certify compliance with Section 6032 for each calendar year.

### B. The Federal False Claims Act

The False Claims Act exists to fight fraud, or false claims, against the federal government. A false claim may take many forms, including, for example, overcharging for a product or service, failing to perform a service, delivering less than the promised amount or type of goods or services, underpaying money owed to the government, and charging for one thing while providing another.

## PURPOSE

To satisfy the requirements of Section 6032 of the Deficit Reduction Act of 2005 by setting forth required information concerning:

1. The federal False Claims Act and other laws pertaining to civil and criminal penalties for false claims;
2. New Jersey False Claims laws;
3. Protections against reprisals or retaliation for those who report wrongdoing; and
4. KH procedures to detect and prevent fraud, waste, and abuse.

## POLICY

It is the policy of Kennedy Health:

1. To obey all federal and state laws including the NJ Deficit Reduction Act;
2. To implement and enforce procedures to detect and prevent fraudulent or misleading claims to any government agency or payer; and
3. To educate KH associates as well contractors and agents of KH about federal, New Jersey, and KH's whistleblower rules; and
4. To provide protections for those who report actual or suspected wrong doing.

## PROCEDURES

### **Detecting and Responding to Fraud, Waste, and Abuse**

1. KH's policies and procedures for detecting and preventing fraud are incorporated into its Code of Ethics Handbook and Compliance Program.
2. In accordance with these policies and procedures, associates are encouraged to take initiative to ensure a culture of compliance by bringing to management's attention any potential violations of its Code of Ethics and any laws, including those referenced in Exhibit A – C below.

#### **A. Reporting Fraud, Waste, and Abuse**

- 1) KH's associates, contractors, or agents may make reports by:
  - a. Informing their supervisor;
  - b. Contacting KH's Chief Compliance Officer at 856-566-5264 or via email at [Corporate\\_Compliance@kennedyhealth.org](mailto:Corporate_Compliance@kennedyhealth.org).
  - c. Calling KH's compliance hotline phone number, 1-855-235-1959; or
- 2) Any information associates provide to their supervisors, or any member of KH administration, the Chief Compliance Officer, or other Compliance staff member, will be kept in confidence to the extent feasible and legal.
- 3) In the event of a government investigation or lawsuit, or if the need otherwise arises for KH to disclose the information, such information may be disclosed at the direction of legal counsel.

#### **B. Education for KH Associates**

Associates receive information concerning fraud, waste, and abuse, as well as whistleblower protection policies upon orientation, annual education, and in KH's Code of Conduct Handbook, which is given to each associate at orientation and is available online on the KH intranet.

#### **C. Dissemination to Contractors and Agents**

- 1) This policy is available to all contractors, vendors and agents via Kennedy Health's website at [www.kennedyhealth.org/aboutus](http://www.kennedyhealth.org/aboutus) and selecting the tab on Corporate Compliance.
- 2) Each vendor contract includes a reference to the Web address of KH's Compliance Program.
- 3) In signing the contract, the vendor agrees to review KH's Deficit Reduction Act Education materials as required by the Deficit Reduction Act and comply with the applicable federal and state laws summarized therein. The materials may be viewed by going to [www.kennedyhealth.org/aboutus](http://www.kennedyhealth.org/aboutus) and selecting the tab on Corporate Compliance. Consultants working on behalf of KH further agree to make the materials available to their associates and agents performing the work.

**D. Whistle Blower Protection (Non-Retaliation)**

- 1) KH will not take adverse action against an associate for reasonably requesting assistance from, or reporting potential violations of law or KH policy to, a supervisor, the compliance hotline, or the Compliance Office.
  - a. No adverse action or retribution of any kind will be taken by KH against an associate because he or she reports in good faith a suspected violation of the Code of Ethics, laws, regulations or other irregularity by any person other than the reporting associate.
  - b. Any KH Associate who retaliates against someone who has reported a violation of the Code of Ethics or other irregularity in good faith is subject to discipline up to and including termination.
  - c. KH will attempt to treat such reports confidential to the extent possible, consistent with the need to conduct an adequate investigation for fair and rigorous enforcement of the Code of Ethics.
  - d. By reporting his or her own misconduct, however, an associate will not insulate himself or herself from potential disciplinary action for such a violation.
  - e. Associates should report concerns about possible retaliation or harassment to the Compliance Officer.
  - f. KH will not tolerate abuse of the reporting process. Any associate who makes an intentionally false statement, or makes a report of alleged misconduct in bad faith, shall be subject to appropriate disciplinary action up to and including termination.

**E. Regulatory Reporting**

- 1) The Compliance Officer will report, as deemed appropriate, evidence of fraud, waste or abuse in Medicaid to the appropriate authorities.
- 2) The Compliance Officer will report any evidence of fraud, waste or abuse in Medicare, or any other federal healthcare program, to the appropriate authorities.

**EXHIBIT A**  
**OVERVIEW OF FALSE CLAIMS ACT**

1. The False Claims Act (FCA), 31 U.S.C. §§ 3729-3733, makes any person or entity that knowingly submits a false or fraudulent claim for payment of United States government funds liable for significant penalties and fines. These sanctions include a penalty of up to three times the government's damages, civil penalties ranging from \$5,500 to \$11,000 per false claim, and exclusion from the Medicare program. This law applies generally to federally funded programs, including healthcare programs, such as Medicaid and Medicare.
2. The FCA also provides that a private person with knowledge of a false claim may bring a civil action on behalf of the United States government to recover funds it has paid as a result of that false claim. The government will investigate the individual's allegations and may or may not choose to join in the lawsuit. If the government chooses to join, it assumes responsibility for all of the subsequent expenses associated with the lawsuit. If the lawsuit is ultimately successful, the court may award the individual who initially brought the suit a percentage of the funds recovered. That percentage is lower when the government joins in the action. Regardless of whether the government participates, the court may reduce the individual's share of the proceeds if it finds he or she planned and initiated the false claim violation. If the individual is convicted of criminal conduct related to his or her role in the preparation or submission of the false claim, the individual will be dismissed from the civil action without receiving any portion of the proceeds.
3. The FCA also contains a provision that protects a private person from retaliation by his or her employer for participation in a false claims action. That provision applies to any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against because of the employee's lawful conduct in furtherance of a false claim action.

**EXHIBIT B**  
**OVERVIEW OF CIVIL REMEDIES ACT**

The Program Fraud Civil Remedies Act (PFCRA) provides for administrative remedies against those who knowingly submit false claims and statements. Under the PFCRA, a violation may result in a maximum penalty of \$5,500 per claim, plus an assessment of up to twice the amount of each false or fraudulent claim.

**EXHIBIT C**  
**OVERVIEW OF NEW JERSEY FALSE CLAIMS LAWS**

1. The New Jersey Medical Assistance and Health Services Act Criminal Penalties, N.J.S. 30:4D-17(a)-(d)
  - a. This statute provides criminal penalties for individuals and entities engaging in fraud or other criminal violations relating to Title XIX-funded programs. They include: (a) fraudulent receipt of payments or benefits: fine of up to \$10,000, imprisonment up to three years, or both; (b) false claims, statements or omissions, or conversion of benefits or payments: fine of up to \$10,000, imprisonment up to three years, or both; (c) kickbacks, rebates and bribes: fine of up to \$10,000, imprisonment up to three years, or both; and (d) false statements or representations about conditions or operations of an institution or facility to qualify for payments: fine of up to \$3,000, or imprisonment up to one year, or both.
  
2. Civil Remedies, N.J.S. 30:4D-17(e)-(i); N.J.S. 30:4D-17.1.a
  - a. In addition to the criminal sanctions above, violations of N.J.S. 30:4D(a)-(d) can also result in the following civil sanctions: (a) unintentional violations: recovery of overpayments and interest; (b) intentional violation: recovery of overpayments, interest, up to triple damages, and up to \$2,000 for each false claim. Recovery actions can be maintained against any individual or entity responsible for or receiving the benefit or possession of the incorrect payments.
  - b. In addition to recovery actions, violations can result in the exclusion of an individual or entity from participation in all healthcare programs funded in whole, or in part, by the N.J. Division of Medical Assistance and Health Services. Recovery and exclusion can also be obtained as part of a criminal prosecution.
  
3. Health Care Claims Fraud Act , N.J.S. 2C:21-4.2 & 4.3; N.J.S. 2C:51-5

This statute provides criminal penalties for healthcare claims fraud, with penalties that vary according to intent:

  - a. A practitioner who knowingly commits healthcare fraud in the course of providing professional services is guilty of a crime of the second degree, and is subject to a fine of \$150,000, or five times the monetary benefits obtained or sought to be obtained, as well as permanent forfeiture of his/her license;
  - b. A practitioner who recklessly commits healthcare fraud in the course of providing professional services is guilty of a crime of the third degree, and is subject to a fine of up to five times the pecuniary benefit obtained or sought to be obtained and the suspension of his/her license for up to one year;
  - c. A person who is not a practitioner subject to paragraph a. or b. above (for example, someone who is not licensed, registered or certified by an appropriate state agency as a healthcare professional) is guilty of a crime of the third degree if that person knowingly commits healthcare fraud. Such a person is guilty of a crime of the second degree, if that person knowingly commits five or more acts of healthcare claims fraud, and the aggregate monetary benefit obtained or sought to be obtained is at least \$1,000. In addition to all other criminal penalties allowed by law, such a person may be subject to a fine of up to five times the monetary benefit obtained or sought to be obtained; and
  - d. A person who is not a practitioner subject to paragraph a. or b. above is guilty of a crime of the fourth degree if that person recklessly commits healthcare claims fraud. In addition to all other criminal penalties allowed by law, such a person may be subject to a fine of up to five times the monetary benefit obtained or sought to be obtained.
  
4. The Uniform Enforcement Act, N.J.S. 45:1-21. b
  - a. A licensure board within the N.J. Division of Consumer Affairs “may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board” who as engaged in “dishonesty, fraud, deception, misrepresentation, false promise or false pretense,” or has “advertised fraudulently in any manner.”

5. Conscientious Employee Protection Act, "Whistleblower Act," N.J.S.A. 34:19-4
  - a. New Jersey law prohibits an employer from taking any retaliatory action against an employee because the employee does any of the following:
  - b. Discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy or practice of the employer or another employer, with whom there is a business relationship, the employee reasonably believes is in violation of a law, or a rule or regulation issued under the law, or, in the case of an employee who is a licensed or certified healthcare professional, reasonably believes constitutes improper quality of patient care;
  - c. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation issued under the law by the employer or another employer, with whom there is a business relationship, or, in the case of an employee who is a licensed or certified healthcare professional, provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into quality of patient care;
  - d. Provides information involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity;
  - e. Provides information regarding any perceived criminal or fraudulent activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity; or
  - f. Objects to, or refuses to participate in, any activity, policy or practice which the employee reasonably believes:
    - i. Is in violation of a law, or a rule or regulation issued under the law or, if the employee is a licensed or certified healthcare professional, constitutes improper quality of patient care;
    - ii. Is fraudulent or criminal; or
    - iii. Is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.
  - g. The protection against retaliation when a disclosure is made to a public body does not apply unless the employee has brought the activity, policy or practice to the attention of a supervisor of the employee by written notice and given the employer a reasonable opportunity to correct the activity, policy or practice. However, disclosure is not required where the employee reasonably believes the activity, policy or practice is known to one or more supervisors of the employer or where the employee fears physical harm as a result of the disclosure, provided the situation is emergent in nature.
6. The New Jersey False Claims Act NJSA 2A:32C
  - a. A person shall be jointly and severally liable to the state for a civil penalty of not less than and not more than the civil penalty allowed under the federal False Claims Act, as may be adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub.L.101-410, for each false or fraudulent claim, plus three times the amount of damages which the state sustains, if the person commits any of the following acts:
    - i. Knowingly presents or causes to be presented to an employee, officer or agent of the state, or to any contractor, grantee, or other recipient of state funds, a false or fraudulent claim for payment or approval;
    - ii. 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 state;
    - iii. Conspires to defraud the state by getting a false or fraudulent claim allowed or paid by the state;
    - iv. Has possession, custody, or control of public property or money used or to be used by the state and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;
    - v. Is authorized to make or deliver a document certifying receipt of property used or to be used by the state and, intending to defraud the entity, makes or delivers a receipt without completely knowing the information on the receipt is true;

- vi. Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property; or
  - vii. Knowingly makes, uses, or causes 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 state.
- b. The New Jersey False Claims Act also provides a private person with knowledge of a false claim may bring a civil action on behalf of the state to recover funds it has paid as a result of false claim. The Attorney General will investigate the individual's allegations and may or may not choose to join in the lawsuit. If the Attorney General chooses to participate, it assumes responsibility for all of the subsequent expenses associated with the lawsuit. If the lawsuit is ultimately successful, the court may award the individual who initially brought the suit a percentage of the funds recovered.