

## GENESIS HEALTHCARE SYSTEM POLICY/PROCEDURE

**Title: Medicaid Fraud, Abuse, and Waste, Providing Information to Employees, Agents, and Contractors about laws pertaining to civil and criminal penalties for**  
**Effective:** 01/01/2007

**Manual:** HIPAA Privacy/Security & Compliance

**Number:** 21

**Developed By:** Corporate Integrity Program

**Review Dates:**

**Approved By:** QICC

**Revised Dates:**

### **Purpose**

As required by 42 U.S.C. §1396a(a)(68) and Ohio Revised Code 5111.101, it is the policy of Genesis HealthCare System to provide the following detailed information to all employees, agents, and contractors of Genesis HealthCare System about federal and state False Claims Acts and laws pertaining to civil and criminal penalties for false claims and statements, and whistleblower protections under such laws, and Genesis HealthCare System's policies and procedures to detect and prevent fraud, waste, and abuse.

### **Scope:**

This information shall be included in the Genesis employee handbook and distributed to all employees, agents, and contractors of Genesis HealthCare System.

### **Definitions:**

"Knowing" and "knowingly" means that a person, with respect to information: (a) has actual knowledge of the information; (b) acts in deliberate ignorance of the truth or falsity of the information; or (c) acts in reckless disregard of the truth or falsity of the information.

### **Procedure:**

#### **A. Federal False Claims Act**

The federal False Claims Act, among other things, applies to the submission of claims by health care providers for payment by Medicare, Medicaid, and other federal health care programs. The False Claims Act provides the federal government a civil remedy for improper or fraudulent claims. It applies to all federal programs, from military procurement contracts to welfare benefits to health care benefits.

The False Claims Act prohibits, among other things:

- a) Knowingly presenting or causing to be presented to the federal government a false or fraudulent claim for payment or approval;
- b) Knowingly making or using, or causing to be made or used, a false record or statement in order to have a false or fraudulent claim paid or approved by the government;
- c) Conspiring to defraud the government by getting a false or fraudulent claim allowed or paid; and
- d) Knowingly making or using, or causing 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 government.

The United States Attorney General may bring civil actions for violations of the False Claims Act. As with most other civil actions, the government must establish its case by presenting a preponderance of the evidence rather than by meeting the higher burden of proof that applies in criminal cases.

The False Claims Act allows private individuals to bring "qui tam" actions on behalf of the federal government for violations of the Act.

### **B. Program Fraud Civil Remedies Act of 1986**

The Program Fraud Civil Remedies Act of 1986 (PFCRA) authorizes federal agencies such as the Department of Health and Human Services ("HHS") to investigate and assess penalties for the submission of false claims to the agency.

The conduct prohibited by the PFCRA is similar to that prohibited by the False Claims Act. For example, a person may be liable under the PFCRA for making, presenting, or submitting, or causing to be made, presented, or submitted, a claim that the person knows or has reason to know:

- a) Is false, fictitious, or fraudulent;
- b) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;
- c) 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
- d) Is for payment for the provision of property or services which the person has not provided as claimed.

If a government agency suspects that a false claim has been submitted, it can appoint an investigating official to review the matter. The investigating official may issue a subpoena to further the investigation, or may refer the matter to the Department of Justice for proceedings under the False Claims Act.

If, based on the investigating official's report, an agency concludes that further action is warranted, it may issue a complaint (following approval from the Department of Justice) regarding the false claim. A hearing would be held, following the detailed due process procedures set forth in the regulations implementing the PFCRA.

### **C. State Law**

There may also be liability under the state laws for false or fraudulent claims with respect to Medicaid program expenditures, including:

- a) Medicaid Fraud, Ohio Revised Code Sec. 2913.40

The Medicaid Fraud Act imposes criminal penalties for among other things:

- i. Knowingly making or causing to be made a false or misleading statement or representation for use in obtaining Medicaid reimbursement.
- ii. Doing either of the following with the purpose to commit fraud or knowingly facilitating a fraud:
  - 1. Charging, soliciting, accepting or receiving any amount in addition to the amount of reimbursement due from Medicaid and any authorized deductibles or co-payments;
  - 2. Soliciting, offering or receiving any remuneration other than authorized deductibles and co-payments, in cash or in kind, including kickbacks or rebates, in connection

with the furnishing of goods or services for which payment may be made under the Medicaid program.

- iii. Knowingly altering, destroying concealing or removing any records necessary to support a Medicaid claim or cost report.
- b) Medicaid Eligibility Fraud, Ohio Revised Code Sec. 2913.401  
The Medicaid Eligibility Fraud Act imposes criminal penalties on persons from knowingly making false or misleading statements, concealing an interest in property, or failing to disclose a transfer of property for purposes of determining eligibility to receive Medicaid benefits.
- c) Falsification, Ohio Revised Code Sec. 2921.13.  
Ohio criminal law prohibits persons from knowingly making false statements or swearing or affirming the truth of a false statement for the purpose of securing payment of benefits administered by a governmental agency or paid out of a public treasury, for the purpose of securing a provider agreement with the government, or in connection with any report that is required or authorized by law, such as the Medicaid cost report.
- d) Any other state law pertaining to civil or criminal penalties for false claims and statements with respect to the Medicaid program, including any law that prohibits:
  - i. Knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval to the Medicaid program;
  - ii. Knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Medicaid program;
  - iii. Conspiring to defraud the Medicaid program by getting a false or fraudulent claim allowed or paid;
  - iv. Knowingly making, using, or causing 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 Medicaid program.

#### **D. Protection for "Whistleblowers"**

It is the policy of Genesis HealthCare System to detect and prevent any activity that may violate the False Claims Act, the Program Fraud Civil Remedies Act of 1986 or the State Medicaid Fraud Laws cited in this policy. If any employee has knowledge or information that any such activity may have taken place, the employee should notify his or her supervisor or call the **Integrity Compliance Hotline at (740) 454-5555**. Information may be reported to the Hotline anonymously. In addition, federal and state law and Genesis HealthCare System policy prohibit any retaliation or retribution against persons who report suspected violations of these laws to law enforcement officials or who file "whistleblower" lawsuits on behalf of the government. Anyone who believes that he or she has been subject to any such retribution or retaliation should also report this to the **Integrity Compliance Hotline**.

#### **E. Fraud, Waste and Abuse Prevention and Detection**

Genesis has developed, as part of its Corporate Compliance Program, detailed written policies for the prevention and detection of fraud, waste, and abuse in government and commercial health care programs, and for the role of employees, contractors, and agents in preventing and detecting fraud, waste and abuse in such programs. The Genesis policies and procedures for the prevention and detection of fraud, waste and abuse may be accessed in the HIPAA Privacy/Security and Compliance Policy and Procedure Manual either electronically on igenesis or hardcopy located in the Genesis Good Samaritan and Bethesda Hospital Emergency and Nursing Administration departments. If any employee has any questions regarding such policies and procedures, the employee should contact the Director of Corporate Integrity at (740) 586-6712.