

MADISON COUNTY POLICY AND PROCEDURES

Subject: **Compliance Policy: False Claims Act and Whistleblower Provisions**

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Assigned to: Government Operations Committee

Responsible Dept. Compliance

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Purpose: Madison County is committed to prompt, complete, and accurate billing of all services provided to individuals. Affected Individuals of Madison County (as defined below) shall not make or submit any false or misleading entries on any claim forms, nor engage in any arrangement or participate in such arrangement at the direction of another person, including any department head or supervisor that results in the submission of a false or misleading entry on claims forms or documentation of services that result in the submission of a false claim.

Definitions: **Affected Individuals** shall mean all persons affected by Madison County's risk areas, including: employees¹ of certain County Departments/Programs, the County Administrator and other senior administrators and managers of the County, members of the Board of Supervisors, and corporate officers and certain elected officials, and Class A Contractors, as further defined on Attachment 1 of the Corporate Compliance Plan, as appropriate.

Class A Contractors shall mean any contractor, subcontractor, independent contractor or agent, which or who, (1) on behalf of the County, furnishes or otherwise authorizes the furnishing of Medicare and/or Medicaid health care items or services, performs billing or coding functions; or (2) provides administrative or consultative services, goods or services that are significant and material, are directly related to health care provision, and/or are included in or are a necessary component of providing items or services of Medicaid-funded programs; or (3) is involved in the monitoring of health care provided by the County; or (4) is determined by the County to be affected by its Compliance Risk Areas as identified in NYCRR § 521-1.3(d).

Reporting Responsibility:

It is the responsibility of all Affected Individuals to report ethics violations or suspected violations in accordance with this Policy. Madison County encourages Affected Individuals to share their questions, concerns, suggestions or complaints regarding the organization and its operations with someone who can address them properly. In most cases, Affected Individuals should present his or her concerns to their Department Head, the Compliance Officer, County Administrator, or County Attorney. However, if such individual is not comfortable speaking with Department Head, the Compliance Officer, County

¹ For purposes of this policy, employee means "an individual who performs services for and under the control and direction of an employer for wages or other remuneration, including former employees, or natural persons employed as independent contractors to carry out work in furtherance of an employer's business enterprise who are not themselves employers." N.Y. Labor Law § 740 (1)(a).

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Administrator, or County Attorney, such individual is encouraged to speak with any member the Board of Supervisors. Violations or suspected violations may be submitted on a confidential basis by the complainant or may be submitted anonymously. Reports or violations or suspected violations will be kept confidential unless the matter is subject to a disciplinary proceeding, referred to, or under investigation by, the Medicaid Fraud Control Unity (MFCU), the Office of Medicaid Inspector General (OMIG) or law enforcement, or disclosure is required during a legal proceeding or otherwise required by law. Anyone filing a complaint concerning a violation or suspected violation of the law or regulation must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation. Any allegations that prove not to be substantiated and which prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense.

No Retaliation:

No individual who reasonably believes and/or who, in good faith, reports any action or suspected action taken by or within the County that is illegal, fraudulent or in violation of any adopted policy of the County shall suffer intimidation, harassment, discrimination or other retaliation or, in the case of an employee, an adverse employment consequence (or threat of an adverse employment consequence), including but not limited to, termination, demotion, or suspension, or actions affecting employment or contractual relationships, or contacting U.S. Immigration authorities regarding citizenship or immigration status. This Whistleblower Policy is intended to encourage good faith participation in the Compliance Program and enable all individuals and others to raise serious concerns within the County prior to seeking resolution outside the County.

Overview of Relevant Laws:

I. The False Claims Act (31 USC, §§ 3729-3733)

The False Claims Act is a federal law designed to prevent and detect fraud, waste, and abuse in federal healthcare programs, including Medicaid and Medicare. Under the False Claims Act, anyone who “knowingly” submits false claims to the government is liable for damages up to three times the amount of the erroneous payment, plus mandatory penalties of \$5,000 to \$10,000 for each false claim submitted.

The law was revised in 1986 to expand the definition of “knowingly” to include a person who:

- Has actual knowledge of falsity of information in the claim;
- Acts in deliberate ignorance of the truth or falsity of the information in the claim; and
- Acts in reckless disregard of the truth or falsity of the information in a claim.

False claims suits can be brought against individuals and entities. The False Claims Act does not require proof of a specific intent to defraud the government. Providers can be prosecuted for a wide variety of conduct that leads to the submission of a false claim.

Some examples include:

- Knowingly making false statements;
- Falsifying records;

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- Submitting claims for services never performed or items never furnished;
- Double-billing for items or services;
- Using false records or statements to avoid paying the government;
- Falsifying time records used to bill Medicaid; or
- Otherwise causing a false claim to be submitted.

Whistleblower or “Qui Tam” Provisions

In order to encourage individuals to come forward and report misconduct involving false claims, the False Claims Act contains “*Qui Tam*” or whistleblower provision.

The government, or an individual citizen acting on behalf of the government, can bring actions under the False Claims Act. An individual citizen, referred to as a whistleblower or “Relator”, who has actual knowledge of allegedly false claims may file a lawsuit on behalf of the U.S. Government. If the lawsuit is successful, and provided certain legal requirements are met, the whistleblower may receive an award ranging from 15% - 30% of the amount received.

Employee Protections

The False Claims Act prohibits discrimination by Madison County against any employee for taking lawful actions under the False Claims Act. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in false claims actions is entitled to all relief necessary to make the employee whole. Such relief may include reinstatement, double back pay, and compensation for any special damages, including litigation costs and reasonable attorney fees.

II. Administrative Remedies for False Claims (31 USC, chapter 38, §§ 3801-3812)

This federal statute allows for administrative recoveries by federal agencies, including the Department of Health and Human Services, which operates the Medicare and Medicaid Programs.

The law prohibits the submission of a claim or written statement that the person knows or has reason to know is false, contains false information, or omits material information. The agency receiving the claim may impose a monetary penalty of up to \$5,500 per claim and damages of twice the amount of the original claim.

Unlike the False Claims Act, a violation of this law occurs when a false claim is submitted, not when it is paid. Also, unlike the False Claims Act, the determination of whether a claim is false, and imposition of fines and penalties is made by the administrative agency, and not by prosecution in the federal court system.

III. New York State Laws

A. Civil and Administrative Laws

New York State False Claims Act (State Finance Law, §§ 187-194)

The New York State False Claims Act closely tracks the Federal False Claims Act. It imposes fines on individuals and entities that file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. The penalty for filing a false claim is \$6,000-\$12,000 per claim, and the recoverable damages are between two and three

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times the value of the amount falsely received. In addition, the false claim filer may be responsible for the government's legal fees.

The government, or an individual citizen acting on behalf of the government (a "Relator"), can bring actions under the New York State False Claims Act. If the suit eventually concludes with payments back to the government, the party who initiated the case can recover 15%-30% of the proceeds, depending upon whether the government participated in the suit. The New York State False Claims Act prohibits discrimination against an employee for taking lawful actions in furtherance of an action under the Act. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in furtherance of an action under the False Claims Act is entitled to all relief necessary to make the employee whole.

Social Service Law, §145(b), False Statements

It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Services program, including Medicaid, by use of a false statement, deliberate concealment, or other fraudulent scheme or device. The state or the local Social Services district may recover up to three times the amount of the incorrectly paid claim. In the case of non-monetary false statements, the local Social Services district or state may recover three times the amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of up to \$2,000 per violation. If repeat violations occur within five years, a penalty of up to \$7,500 may be imposed if they involve more serious violations of the Medicaid rules, billing for services not rendered, or providing excessive services.

Social Service Law, § 145(c), Sanctions

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the person's and the person's family needs are not taken into account for a period of six months to five years, depending upon the number of offenses.

B. Criminal Laws

Social Service Law, § 145, Penalties

Any person who submits false statement or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor.

Social Service law, section 366(b), Penalties for Fraudulent Practices

Any person who, with intent to defraud, presents for payment any false or fraudulent claim for furnishing services or merchandise, knowingly submits false information for the purpose of obtaining Medicaid compensation greater than that to which he/she is legally entitled to, or knowingly submits false information in order to obtain authorization to provide items or services shall be guilty of a Class A misdemeanor.

Any person who obtains or attempts to obtain, for himself or others, medical assistance by means of a false statement, concealment of material facts, impersonation, or other fraudulent means is guilty of a Class A misdemeanor.

Penal Law, Article 155, Larceny

The crime of larceny applies to a person who, with intent to deprive another of property, obtains, takes or withholds the property by means of a trick,

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embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior. This law has been applied to Medicaid fraud cases.

Penal Law, Article 175, Written False Statements

There are four crimes in this Article that relate to filing false information or claims. Actions include: Falsifying business records or entering false information; Omitting material information; Altering a district's business records; Providing a written instrument (including a claim for payment), knowing that it contains false information. Depending upon the action and the intent, a person may be guilty of a Class A misdemeanor or a Class E felony.

Penal Law, Article 176, Insurance Fraud

This Article applies to claims for insurance payment, including Medicaid or other health insurance. The six crimes in this Article involve intentionally filing a false insurance claim. Under this article, a person may be guilty of a felony for false claims in excess of \$1,000.

Penal Law, Article 177, Health Care Fraud

This Article establishes the crime of Health Care Fraud. A person commits such a crime when, with the intent to defraud Medicaid (or other health plans, including non-governmental plans), he/she knowingly provides false information or omits material information for the purpose of requesting payment for a health care item or service and, as a result of the false information or omission, receives such a payment in an amount to which he/she is not entitled. Health Care Fraud is punished with fines and jail time, based on the amount of payment inappropriately received due to the commission of the crime.

New York Labor Law, §740

An employer may not take any retaliatory action against an employee if the employee, whether or not within the scope of the employee's job duties, discloses information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official.

This law offers protection to an employee who:

- discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy or practice of the employer that the employee reasonably believes is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety;
- provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such activity, policy or practice by the employer; or
- objects to, or refuses to participate in any such activity, policy or practice.

The employee's disclosure is protected under this law only if the employee has made a good faith effort to notify his or her employer by bringing the activity, policy or practice to the attention of a supervisor and has afforded the employer a reasonable opportunity to correct such activity, policy or practice. Such employer notification shall not be required where: (a) there is an imminent and serious danger to the public health or safety; (b) the employee reasonably believes that reporting to the supervisor would result in a destruction of

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evidence or other concealment of the activity, policy or practice; (c) such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor; (d) the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or (e) the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct such activity, policy or practice.

The law allows employees who are the subject of a retaliatory action to bring a suit in state court within two years after the alleged retaliatory action for (a) an injunction to restrain continued violation of this section; (b) reinstatement to the same, or an equivalent position, or front pay in lieu thereof; (c) the reinstatement of full fringe benefits and seniority rights; (d) the compensation for lost wages, benefits and other remuneration; (e) the payment by the employer of reasonable costs, disbursements, and attorney's fees; (f) a civil penalty of an amount not to exceed \$10,000.00; and/or (g) the payment by the employer of punitive damages, if the violation was willful, malicious or wanton.

New York Labor Law, § 741

Under this law, an employer may not take any retaliatory action against an employee if the employee discloses or threatens to disclose to a supervisor, to a public body, to a news media outlet, or to a social media forum available to the public at large, an activity, policy or practice of the employer or agent information about the employer's policies, practices or activities that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety; or objects to, or refuses to participate in any activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety.

The employee's disclosure is protected under this law only if the employee has brought the improper quality of patient care or improper quality of workplace safety to the attention of a supervisor and has afforded the employer a reasonable opportunity to correct such activity, policy or practice, unless the improper quality of patient care or improper quality of workplace safety described therein presents an imminent threat to the public health or safety or to the health of a specific patient or specific health care employee and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action. If the employer takes a retaliatory action against the employee, the employee may seek enforcement as outlined in New York Labor Law § 740, as set forth above.

Policy:

- A. It is the policy of Madison County to detect, prevent and correct fraud, waste, and abuse in federal healthcare programs.
- B. This policy explains the False Claims Act, 31 USC §§ 3729-3733, the Federal Administrative Remedies for False Claims (31 USC, Chapter 38, §§ 3801-3812), the New York State False Claims Act State Finance Law, §§ 187-194, and various New York State laws pertaining to civil and criminal penalties for false claims and statements, and Federal and State whistleblower protections, 31 USC § 3730(h) and NYS Finance Law § 191.

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- C. This policy also sets forth the procedures Madison County has put into place to prevent any violations of federal or New York State laws regarding fraud or abuse in its health care programs.
- D. This policy applies to all Affected Individuals.

Procedures:

- A. The Corporate Compliance Officer will ensure that all Affected Individuals receive training/education related to the contents of this policy and the False Claims Act. The Corporate Compliance Officer will ensure that records to document the receipt of training are maintained.
- B. The Corporate Compliance Officer will assure that a web link and language regarding the County's Corporate Compliance Plan and Policies, including this policy, is included in all contracts with outside contractors or agents and is communicated to vendors.
- C. Madison County will provide training/education in this policy and procedure to all Affected Individuals, including as part of their County orientation.
- D. Madison County will perform billing activities in a manner consistent with the regulations and requirements of third party payors, including Medicaid and Medicare.
- E. Madison County will conduct regular auditing and monitoring procedures as part of its efforts to assure compliance with applicable regulations.
- F. Any Affected Individual including any member of the public, including Medicaid recipients of services from the County, who has reason to believe that anyone is engaging in false billing practices or false documentation of services is expected to report the practice, according to Madison County's [Reporting of Compliance Concerns, Non-Intimidation and Non-Retaliation Policy](#).
- G. Any form of retaliation against any Affected Individual who reports a perceived problem or concern in good faith is strictly prohibited.
- H. This policy will be posted on Madison County's website.

Violations: Any Affected Individual who commits or condones any form of retaliation will be subject to discipline up to, and including, termination.