



**POLICIES AND PROCEDURES**

<b>DEPARTMENT:</b> Administration	<b>DATE ESTABLISHED:</b> June 26, 2007
<b>POLICY NAME:</b> False Claims Act	<b>DATE REVISED:</b> 6/10/10, 4/16/12
<b>LINE OF BUSINESS:</b> All Product Lines	<b>POLICY NO:</b> AD-37

**APPROVALS**

<b>RESPONSIBLE PARTY:</b> Nancy Kowal	<b>DATE:</b> 11/18/2016
SIGNATURE: 	

<b>MEDICAL DIRECTOR:</b> R.J. Arrington, Jr., MD	<b>DATE:</b> 11/18/2016
SIGNATURE: 	

<b>EXECUTIVE DIRECTOR:</b> Randy Narowitz	<b>DATE:</b> 11/18/2016
SIGNATURE: 	

*I attest to reviewing the referenced Policy and Procedure for accuracy and completeness.*

<b>REVIEWER:</b> Nancy Kowal	<b>DATE:</b> 11/18/2016
SIGNATURE: 	





## *Policies and Procedures*

<b>DEPARTMENT:</b> Administration	<b>DATE ESTABLISHED:</b> June 26, 2007
<b>POLICY:</b> False Claims Act	<b>DATE REVISED:</b> 06/10/2010, 04/16/2012
<b>APPLIES TO:</b> All Product Lines	<b>POLICY NO:</b> AD-37

### **POLICY:**

Total Health Care, through its Compliance program and other policies, is committed to the reduction of waste, fraud and abuse in the healthcare system. As a health plan that receives federal funds, Total Health Care is responsible for establishing and disseminating detailed information regarding Federal and Michigan False Claim Acts and related whistleblower protection laws to all employees, associates, agents and contractors.

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### **OVERVIEW**

#### **Federal False Claim Act**

The False Claim Act is a federal law that makes it a crime for any person or organization to:

- knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval;
- knowingly making, using, or causing to be made or used, a false record or statement material to a false or fraudulent claim;
- conspiring to commit a violation of the Federal False Claims Act; and
- knowingly making, using, or causing to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money or property to the Government.

#### **Michigan Medicaid False Claim Act**

The Medicaid False Claim Act (MMFCA) is an act to prohibit fraud in the obtaining of benefits or payments in connection with the medical assistance program; to

prohibit kickbacks or bribes in connection with the program; to prohibit conspiracies in obtaining benefits or payments; to authorize the attorney general to investigate alleged violations of this act; to provide for the appointment of investigators by the attorney general; to ratify prior appointments of attorney general investigators; to provide for civil actions to recover money received by reason of fraudulent conduct; to provide for receiverships of residential health care facilities; to prohibit retaliation; to provide for certain civil fines; and to prescribe remedies and penalties.

Violation under the Michigan Medicaid False Claim Act, include such actions by a person:

- who knowingly makes or causes to be made a false statement or false representation of a material fact in an application for Medicaid benefits;
- who knowingly makes or causes to be made a false statement or false representation of a material fact for use in determining rights to a Medicaid benefit;
- who having knowledge of the occurrence of an event affecting his initial or continued right to receive a Medicaid benefit or the initial or continued right of any other person on whose behalf he has applied for or is receiving a benefit, shall not conceal or fail to disclose that event with intent to obtain a benefit to which the person or any other person is not entitled or in an amount greater than that to which the person or any other person is entitled;
- who solicits, offers, or receives a kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made in whole or in part pursuant to a program established under Act No. 280 of the Public Acts of 1939, as amended, who makes or receives the payment, or who receives a rebate of a fee or charge for referring an individual to another person for the furnishing of the goods and services;
- who enters into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another to obtain the payment or allowance of a false claim under the social welfare act, Act No. 280 of the Public Acts of 1939, as amended, being sections 400.1 to 400.121 of the Michigan Compiled Laws;
- who makes, presents or causes to be made or presented to an employee or officer of this state a claim under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, upon or against the state, knowing the claim to be false;
- who makes or presents or causes to be made or presented a claim under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, that he or she knows falsely represents that the goods or services for which the claim is made were medically necessary in accordance with professionally accepted standards. Each claim violating this subsection is a separate offense;
- who 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 pertaining to a claim presented under the social welfare act.

## **Penalties**

Violations under the Federal and Michigan Medicaid False Claim Act can result in significant fines and/or imprisonment, including civil liability.

## **Whistleblower Protection Under the False Claims Act**

The False Claims Act protects employees who report a violation under the False Claims Act from discrimination, harassment, suspension or termination of employment as a result of reporting possible fraud. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement of their position without loss of seniority and (3) compensation for any costs or damages they incurred, (4) any other relief necessary to make the employee whole.

## **Qui Tam Plaintiff/Relator**

An individual (called a qui tam plaintiff or relator) who is an original source of information, can sue for violations of the False Claims Act. Under both the federal False Claims Act and the MMFCA, a qui tam plaintiff can receive between 15-25% of the total amount recovered if the government prosecutes and 25-30% if litigated by the qui tam plaintiff.

## **Regulations**

Public Law 109-171 (Deficit Reduction Act of 2005)

- (1) The Federal Civil False Claims Act, Section 1902(a)(68) of the Social Security Act
- (2) The Federal Civil False Claims Act, Section 3279 through 3733 of title 31 of the United States Code.
- (3) The Michigan Medicaid False Claims Act, Public Act 72 of 1977