GOVERNMENT PROGRAMS COMPLIANCE POLICY

Title: Deficit Reduction Act					**Policy No**: **014**
					Effective Date: 12/8/15
Policy Applies to the Following Products with an "X":					
	Medicare Part D		Medicare Advantage and Part D	X	IL Medicare Medicaid Alignment Initiative (MMAI)
X	TX State of Texas Access Reform (STAR)/STAR Kids/ Children's Health Insurance Plan (CHIP)	X	NM Centennial Care	X	Healthy Montana Kids
X	IL Blue Cross Community Health Plans				

Owners:		
Melissa Lupella	Senior Director	Government Programs Compliance
Approved:		
Kim Green	Government Program Compliance Officer	Government Programs Compliance

Regulation Requirement:

Senate Bill 1932 (109th Congress), sections 6031, 6032, 6034, codified at United States Code, Title 42, Sections 1396a(a)(68) and 1396h (the "Deficit Reduction Act of 2005" or "DRA"); United States Code, Title 31, sections 3729 through 3733 (the "Federal False Claims Act"); United States Code, Title 31, sections 3801-3812 (the "Program Fraud Civil Remedies Act"); Public Law No. 111-21 (the "Fraud Enforcement and Recovery Act of 2009" or "FERA"); United States Code, Title 42, Section 1320a-7a ("Civil Monetary Penalties"); United States Code, Title 28, Section 2461 (the "Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015"); 45 C.F.R. Part 102 ("Adjustment of Civil Monetary Penalties for inflation"); [New Mexico] 27-14-1 through 27-14-15 NMSA 1978 New Mexico Medicaid False Claims Act; 30-44-1 through 30-44-8 NMSA 1978 Medicaid Fraud Act; 44-9-1 through 44-9-14 NMSA 1978 Fraud Against Taxpayers Act; [Texas] Texas Human Resources Code, Title 2, Subtitle C, Chapter 32 Medical Assistance Program; 42 C.F.R. Section 1001.952; Texas Medicaid Fraud Prevention Act, Texas Human Resources Code, Title 2, Subtitle C, Chapter 36 Medicaid Fraud Prevention; [Illinois] 740 ILCS 175 (P.A. 96 1304, eff. 7/27/2010, amended 8/17/2012); [Montana] Montana False Claims Act – Mont. Code Ann. 17-8-401, et. seq.

Purpose

The purpose is to comply with Sections 6031 and 6032 of the DRA relating to establishment and communication of policies and information concerning Federal and State False Claims Acts and Whistleblower Protections.

Scope

This policy applies to HCSC employees, contractors, agents and contingent workers, including the chief executive and senior administrators, managers, governing body members and first tier, downstream and related entities (FDRs), as well as subcontractors with similar status under any Medicaid program who are involved in the administration or delivery of the Government Programs (GP) referenced above.

Policy

Health Care Service Corporation ("HCSC") is committed to operating its business in a manner that respects and obeys all applicable laws, regulations and contractual obligations, including but not limited to the Deficit Reduction Act of 2005, the Federal False Claims Act, applicable state false claims acts, and the CMS Medicaid Integrity Program.

HCSC expects a high level of ethics and integrity from its employees, contractors, agents and contingent workers every day, including adherence to the principles of the HCSC Corporate Integrity and Compliance

Program ("HCSC Compliance Program") and the Code of Ethics and Conduct when making business decisions.

The HCSC Workforce and Employment Policies are located on the company intranet web site, FYI Blue, and contains employee specific policies and procedures including, but not limited to the following:

Section 3 – Employment Standards

- C-02: Cooperating with the GovernmentG-01: Accuracy of Records
- G-02B: Corrective Action Policy
- G-07: Proper Use of Company Assets

Section X1: Appendix – Compliance Policies

- X1.01: Compliance with the Law
- X1.02: Confidential Information
- X1.03: Conflict of Interest
- X1.04: Fair Competition
- X1.05: Non-Retaliation/Non-Retribution
- In addition, the company intranet site includes The HCSC Corporate Integrity and Compliance Program Charter, which includes: Appendix A: The Code of Ethics and Conduct, which has sections relating to;
  - Core Values
  - Know your responsibilities
  - Voice Your Concerns: Corporate Integrity Hotline
  - Compliance with the Law
  - Fraud, Waste and Abuse
  - Accuracy of records
  - Cooperating with the Government
  - When the Government is Our Client
  - Helpful resources
- Appendix B: Health Care Criminal and Civil Penalties
- Appendix C: Non-Retaliation Policy
- Appendix D: Corporate Records & Information Management Policy
- Appendix E: Government Programs Policies
- Appendix F: Vendor Code of Business Ethics and Conduct

HCSC maintains information about the Federal False Claims Act, the Deficit Reduction Act, state False Claims Acts, and other laws implicating fraud, waste and abuse or other wrongdoing in Appendix B to the HCSC Compliance Program.

HCSC provides general compliance as well as FWA training to all employees, contingent workers, agents and contractors within 90 days of hire and annually thereafter. This training is mandatory for all employees and is closely monitored to ensure compliance. This training includes information on the federal and state false claims acts, as applicable, and the role of such laws in preventing and detecting fraud, waste and abuse in federal health care programs. Employees, contractors and agents performing services under a Medicaid contract also receive training, as applicable, on the federal and state Deficit Reduction Act including additional education related to the False Claims Act and whistleblower protections under those laws upon hire and annually thereafter. In addition, the Special Investigations Department (SID) has developed web-based fraud awareness training programs as well as providing instructor-led education on fraud, waste, and abuse including how to report suspected cases.

The HCSC Compliance Program outlines the activities taken to prevent, detect and deter FWA in our Government Programs. The Special Investigations Department (SID) plays an integral role in administering the FWA Program and works closely with the state Medicaid operations staff, Audit Services, and Prime Therapeutics LLC to administer this program.

Any employee, contractor, agent or contingent worker who performs services for the Medicaid contract with

knowledge or who believes in good faith that a violation of law, policy, procedure or the Code of Business Ethics and Conduct has occurred has an ethical responsibility to report such concern to:

1. their immediate supervisor or a higher level supervisor,
2. another Corporate Resource or the Compliance Officer,
3. the Corporate Integrity HOTLINE at 1-800-838-2552,
4. they may send an e-mail to CorporateCompliance@bcbsil.com; or,
5. fax the Compliance Officer at (312) 938-5431.

HCSC encourages all employees, contractors, agents and contingent workers to report any concerns regarding the False Claims Act, FWA or any other ethical or potential compliance matter to a member of the management team or directly to the Corporate Compliance Department.

HCSC will ensure that all reports of potential FWA are thoroughly investigated and actions taken to resolve and mitigate any potential problem. All reports to the Corporate Integrity HOTLINE are investigated to determine whether or not a violation of law, federal or state regulations, policy, procedure or the Code of Business Ethics and Conduct has occurred. Violations are reported to government agencies, as warranted. HCSC cooperates fully with state and/or federal agencies investigations.

Employees, contractors, agents and contingent workers of HCSC have the right to be protected as whistleblowers. HCSC will not retaliate against any employee, contractor or agent for reporting any potential compliance concern, in good faith, in accordance with HCSC's policies, procedures and Code of Business Ethics and Conduct. Additionally, HCSC will not retaliate against any employee, contractor or agent for taking action under the False Claims Act or any state equivalent. This does not insulate the reporter from disciplinary action if he or she is involved in the reported wrongdoing.

Relevant laws and regulations can be found in Appendix B of the HCSC Compliance Program on the company's intranet. Information on the following laws may be found in the addendum to the Employee Handbook, which is also on the intranet:

1. False Claims Act;
2. Administrative Remedies for False Claims;
3. Applicable state false claims laws;
4. Applicable federal and state whistleblower provisions; and
5. Policies and procedures for detecting and preventing FWA.
6. CMS Medicaid Integrity Program

The following information is provided to satisfy the requirements of §6032 of the Deficit Reduction Act of 2005 by providing information related to certain federal and state laws relating to liability for false claims and statements; and protections against reprisal or retaliation for those who report potential wrongdoing. These laws are intended to prevent and control FWA in federal and state health care programs by giving appropriate government agencies the authority to seek out, investigate and prosecute violations in the three available forums: criminal, civil and administrative.

Federal False Claims Act – 31 USC §§3729 – 3733 as revised by the Fraud and Enforcement Recovery Act of 2009 (FERA)- Public Law No. 111-21, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 USC §2461.

The False Claims Act (FCA) imposes civil liability on any person or entity who:

- files a false or fraudulent claim for payments to Medicare, Medicaid or other federally funded health care program;
- uses a false record or statement to obtain payment on a false or fraudulent claim from Medicare, Medicaid or other federally funded health care program;
- conspires to defraud Medicare, Medicaid or other federally funded health care program by attempting to have a false or fraudulent claim paid;
- knowingly retains an overpayment, improperly avoids an obligation to pay or decreases an amount of obligation to pay or transmit money to the government.

FERA eliminates the need for the government to show knowledge or an intent to defraud as long as an entity's false statements were material, that is, capable of influencing the payment or receipt of government

funds, for liability to attach.

If a claim is paid or government funds are received falsely or fraudulently, the FCA can be enforced whether or not statements were made to the government, whether or not the government had custody of the money or property at issue and whether or not the entity intended to get the government to pay or approve the claim as long as the wrongdoer knows that federal funds are at stake.

Liability
A person or entity found liable under the Federal False Claims Act is subject to a civil monetary penalty of between $10,957.00 and $21,916.00 as of February 3, 2017 (adjusted annually under 45 C.F.R. Part 102) for each false claim, plus an assessment up to three times the amount of each claim submitted. In addition, criminal penalties may be imposed, including a fine not more than $25,000, imprisonment up to 5 years, or both. If a person or entity is found liable under the FCA, the U.S. Office of the Inspector General (OIG) may seek to exclude the person or entity from participation in federal health care programs.

Qui Tam and Whistleblower Provisions §3730
A qui tam action allows any private citizen with actual knowledge of allegedly false claims to file a lawsuit on behalf of the United States government. Such persons are referred to as "relators" or "whistleblowers". As an incentive to bring these cases, the law provides that whistleblowers who file a qui tam action may receive a percentage of the money recouped as a reward. This reward, which is a percentage of any monetary recovery, may be reduced, if the court finds that the whistleblower planned and initiated the violation. If the whistleblower is convicted of criminal conduct related to his or her role in the preparation or submission of the false claims, the whistleblower will be dismissed from the civil action without receiving any portion of the proceeds. The act also provides that whistleblowers who prosecute clearly frivolous qui tam claims can be held liable to a defendant for its attorneys' fees and court costs. The amount of the reward also depends on the contribution of the whistleblower to the prosecution of the case.

The qui tam case is initiated by filing the complaint in a federal district court; the complaint remains under seal (confidential) for at least 60 days, and will not be served on the defendant. During this time, the government investigates the complaint and gathers additional evidence as necessary to determine if it wishes to pursue the case. If the government decides not to pursue the case, the person who filed the action has the right to continue with the case on his or her own.

Anti-discrimination
The FCA also offers whistleblowers certain protection against retaliation. This applies to any employee, contractor or agent who is terminated, demoted, suspended or in any way discriminated against because of acts in support of an action under the FCA. Anyone initiating a qui tam case may not be discriminated against or retaliated against in any manner by their employer, including termination, demotion, suspension, or harassment. The employee, contractor or agent is authorized under the FCA to initiate court proceedings to make themselves whole for any job-related losses resulted from any such retaliation or discrimination. The whistleblower may bring an action in the appropriate federal district court for reinstatement, back pay and other damages.

Federal Program Fraud Civil Remedies Act of 1986, as revised by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 USC §2461.

The Program Fraud Civil Remedies Act of 1986 (PFCRA) ("Administrative Remedies for False Claims and Statements") is a statute that establishes an administrative remedy against any person who presents or causes to be presented a claim or written statement that the person knows or has reason to know:

- is false, fictitious, or fraudulent;
- includes or is supported by any written statement that contains false, fictitious or fraudulent information;
- includes or is supported by a written statement that omits a material fact, which causes the statement to be false, fictitious or fraudulent, and the person or entity submitting statement has a duty to include the omitted fact;
- is payment for property or services not provided as claimed.

The federal government may investigate and with the Attorney General's approval begin proceeding if the value of money or services involved is $150,000 or less. A hearing must begin within 6 years from the submission of the claim. The Act allows for civil monetary sanctions to be imposed in administrative hearings, including penalties of $10,781 (adjusted annually for inflation) for each claim or statement made and an assessment, in lieu of damages, of not more than twice the amount of the original claim. These penalties are separate from and in addition to any liability that may be imposed under the FCA.

Additionally, a person or entity violates the PFCRA if they submit a written statement which they know or should know:

- asserts a material fact that is false, fictitious or fraudulent; or
- omits a material fact that they had a duty to include, the omission caused the statement to be false, fictitious or fraudulent, and the statement contained a certification of accuracy.

CMS Medicaid Integrity Program (MIP)

Section 6034 of the Deficit Reduction Act of 2005 (DRA) established the Medicaid Integrity Program in section 1936 of the Social Security Act. The MIP directed the Secretary to establish a comprehensive five-year plan to combat fraud, waste and abuse beginning in 2006. Because Medicaid fraud, waste and abuse is continually evolving, the Comprehensive Medicaid Integrity Plan (CMIP) will be revised and published annually. The intent of this program is to make available to states a variety of tools and best practices.

New Mexico State Law

New Mexico Medicaid False Claims Act

The purpose of the New Mexico Medicaid False Claims Act, also known as the Medicaid False Claims Act, is to deter persons from causing or assisting to cause the state to pay Medicaid claims that are false and to provide remedies including treble damages and civil penalties for such acts.The New Mexico laws provide that it is unlawful to present false claims or statements to receive payments under the Medicaid program. They establish civil and criminal liability for persons that submit false or fraudulent claims. In addition, the New Mexico Medicaid False Claims Act is similar to the federal False Claims Act in that it allows private citizens to file civil lawsuits to recover monetary damages for violations and protects employees from being discharged or discriminated against in terms of employment because of lawful acts taken by employees under the Act.

A person is in violation of the New Mexico Medicaid False Claims Act if he/she knowingly:

- presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- makes use of a false record or statement or record to obtain approval or payment on a false or fraudulent claim;
- conspires to defraud the state by obtaining approval or payment for a false claim;
- delivers, or causes to be delivered, less property or money than the amount indicated on a certificate or receipt;
- makes or delivers a document certifying receipt of property to be used by the state or delivering a receipt that falsely represents the property;
- buys or receives public property from any person that may not lawfully sell the property;
- uses a false record to conceal, avoid or decrease an obligation to pay or transmit money or property to the state;
- fails to disclose a false claim to the state within a reasonable time after discovery.

Proof of intent to defraud is not required for a violation to occur.

Liability:

- three times the amount of damages sustained by the state;
- civil penalty of not less than $5,000 and not more than $10,000 for each violation;
- the costs of a civil action brought to recover damages or penalties;
- reasonable attorney fees, including fees for state agency counsel.

A court may assess two times the amount of damages and no civil penalty if all of the following are met:

- the person committing the violation furnished all information known to them about the violation within 30 days after the date the information was first obtained;
- no criminal prosecution, civil action or administrative action has commenced and the person did not have knowledge that an investigation was in progress;
- the person fully cooperated with any investigation by the state.

The state agency will investigate any suspected violations and bring actions against any person found in violation of the Act. The state agency may also delegate cases to the attorney general.

Civil Action by Qui Tam Plaintiff
A person may bring a civil action for a violation on behalf of the person and the state, in the name of the state. Once filed, the action can only be dismissed with the written consent of the court. Complaints will remain under seal for at least 60 days. The state agency may intervene and proceed with the action within 60 days after receiving the complaint and material evidence. If the state agency intervenes the seal will be lifted and the action will be conducted by the state agency. If the state agency declines, the seal is lifted and the qui tam plaintiff may proceed with the action.

The qui tam plaintiff may receive a portion of the proceeds if the state prevails under specified circumstances.

Employer Interference with Employee Disclosure – Private Action for Retaliation Employers may not prevent employees from, or interfere with employees disclosing, information to the government or law enforcement or from participating in an action filed pursuant to this Act. An employer cannot discharge, demote, suspend, threaten, harass, deny promotion to or discriminate against an employee for disclosing information or participating in an action.

Medicaid Fraud Act

New Mexico's Medicaid Fraud Act imposes penalties on persons who submit false or fraudulent claims or documents in connection with the Medicaid program. The Act also gives the State Attorney General the power to investigate and prosecute such cases.

A person committing Medicaid fraud is liable for a civil penalty of up to three times the amount of Medicaid payments to which he was not entitled, interest on those payments, a civil penalty of up to $10,000 for each false or fraudulent claim and payment of legal fees and costs of investigation and enforcement of civil remedies. Medicaid fraud is also a crime that is punishable by a fine of up to $20,000 and imprisonment for up to 9 years, depending on the nature of the offense and the amount of payment received as a result of the false or fraudulent claims or statements. Entities convicted of committing Medicaid fraud are subject to a fine of not more than $50,000 for each misdemeanor violation, or not more than $205,000 for each felony conviction.

TEXAS STATE LAW

Texas Fraud Prevention Laws

Texas False Claims Act -
Texas Human Resources Code, Title 2, Subtitle C, Chapter 32 Medical Assistance Program
The purpose of the Texas False Claims Act is to deter persons from causing or assisting to cause the state to pay Medicaid or Children's Health Insurance Plan (CHIP) claims that are false and to provide remedies including double damages and civil penalties for such acts. The Act provides that it is unlawful to present false claims or statements to receive payments under the Texas medical assistance program or to pay bribes or kickbacks to induce people to present claims under the program. It also specifically prohibits certain wrongful conduct by managed care organizations in their dealings with members and in performance of their obligations under their contracts with the Texas Health and Human Services Commission (HHSC).

Unlawful Conduct

The Texas False Claims Act is violated if a person:

1. Presents or causes to be presented a claim containing a statement that the person knows, or should have known, is false;
2. Pays or accepts money or something of value for the referral or patronage of a patient or other;
3. Solicits or receives (kickback, bribe, or rebate) money or something of value for referring a person to obtain an item or service to be paid for by Medicaid or CHIP;
4. Solicits or receives (kickback, bribe or rebate) money or something of value for obtaining something that would be paid for in whole or part by Medicaid or CHIP;
5. Offering or paying (kickback, bribe or rebate) money or something of value to induce a person to refer someone for services or items to be paid for by Medicaid or CHIP;
6. Offers or pays (kickback, bribe or rebate) money or something of value to induce a person to purchase something that would be paid for by Medicaid or CHIP;
7. Provides, offers or receives an inducement to or from a person to influence a decision regarding (a) selecting a provider or services to be paid for by Medicaid or CHIP (b) using a good or service to be paid for by Medicaid or CHIP, or (c) including or excluding a good or service available under Medicaid or CHIP.

In addition, the Texas False Claims Act, unlike the federal False Claims Act, specifically identifies conduct that is prohibited for a managed care organization. The Texas False Claims Act specifies the following prohibited conduct for managed care organizations:

1. Failing to provide to individuals the benefits and services required under the MCO's contract;
2. Failing to provide HHSC information that is required to be provided;
3. Engaging in fraud in enrolling members or marketing to potential members;
4. Engaging in a pattern of wrongfully denying payment for benefits and services required to be paid under the MCO's contract;
5. Engaging in a pattern of wrongfully delaying payment for at least 45 days for benefits and services required to be paid under the MCO's contract.

Liability for Violations of Texas FCA

A person who commits a violation of the Texas FCA is liable to the department for:

1. the amount paid, if any, as a result of the violation and interest on that amount determined at the rate provided by law for legal judgments and accruing from the date on which the payment was made; and
2. payment of an administrative penalty of an amount not to exceed twice the amount paid, if any, as a result of the violation, plus an amount:
    (a) not less than $5,000 or more than $15,000 for each violation that results in injury to an elderly person, a disabled person, or a person younger than 18 years of age; or
    (b) not more than $10,000 for each violation that does not result in injury to a person described above.

Debarment

A person is permanently prohibited from providing or arranging to provide health care services under the medical assistance program if:

1. the person is convicted of an offense arising from a fraudulent act under the program; and
2. the person's fraudulent act results in injury to an elderly person, a disabled person, or a person younger than 18 years of age.

A person found liable for a violation that resulted in injury to an elderly person, a disabled person, or a person younger than 18 years of age may not provide or arrange to provide health care services under the medical assistance program for a period of 10 years.

A person found liable for a violation that did not result in injury to an elderly person, a disabled person, or a person younger than 18 years of age may not provide or arrange to provide health care services under the medical assistance program for a period of three years.

The Texas FCA does not prohibit a person from engaging in:

1. generally accepted business practices, as determined by department rule, including:
   (a) conducting a marketing campaign;
   (b) providing token items of minimal value that advertise the person's trade name; and providing complimentary refreshments at an informational meeting promoting the person's goods or services;
2. providing a value-added service if the person is a managed care organization; or
3. other conduct specifically authorized by law, including conduct authorized by federal safe harbor regulations (42 C.F.R. Section 1001.952).

Jail

A person commits a state jail felony if the person intentionally or knowingly commits a violation of the FCA.

Texas Medicaid Fraud Prevention Act Texas Human Resources Code, Title 2, Subtitle C, Chapter 36 Medicaid Fraud Prevention

In addition to the Texas False Claims Act, Texas has also enacted the Texas Medicaid Fraud Prevention Act (TMFPA), specifically aimed at preventing Medicaid fraud. The purpose of the TMFPA, like the Texas False Claims Act, is to deter persons from causing or assisting to cause the state to pay Medicaid claims that are false and to provide remedies including double damages and civil penalties for such acts. Similar to the Texas False Claims Act, the TMFPA provides that it is unlawful to present false claims or statements to receive payments under the Medicaid program

Unlawful Conduct

While similar to the federal and state false claims acts, the TMFPA contains its own list of prohibited conduct. Specifically, the Act prohibits:

1. Knowingly making or causing to be made a materially false statement that allows a person to receive a benefit under Medicaid that the person is not authorized to receive;
2. Knowingly concealing or not disclosing information that allows a person to receive a benefit under Medicaid that the person is not authorized to receive;
3. Knowingly applying for and receiving a benefit for a person under Medicaid and misappropriating it so the person does not receive the benefit;
4. Knowingly making, causing to be made, inducing or making a false statement concerning facility conditions or operations so that the facility can get certified or recertified and participate and receive program funds;
5. Knowingly paying or receiving money or something of value as a condition of receiving a service or good to be paid for under Medicaid, except as allowed;
6. Knowingly making a claim under Medicaid for
   (a) a service or item not approved by a provider
   (b) a service or item that is inadequate or inappropriate per industry standards, or
   (c) a product that has been adulterated, debased, mislabeled or that is otherwise inappropriate;
7. Knowingly making a claim without indicating license and identification of the provider of the service;
8. Aiding another to obtain an unauthorized benefit under Medicaid;
9. Knowingly obstructing the Attorney General in a Medicaid investigation;
10. Knowingly making a false statement to avoid or decrease an obligation to pay or transmit money or property under Medicaid; and
11. Knowingly engaging in conduct that violates the Texas False Claims Act.

Like the Texas False Claims Act, the TMFPA sets forth liability for conduct of a managed care organization. Specifically, the following conduct is prohibited under this statute just as it is under the Texas False Claims Act:

1. Failing to provide to members the benefits or services required under the MCO's contract;
2. Failing to provide HHSC information that is required to be provided;
3. Engaging in fraud in enrolling members or marketing to potential members.

Liability under the Texas Medicaid Fraud Prevention Act can result in:

- Amount of any payment or the value of any monetary or in-kind benefit provided as result

of the wrongful act, including payment to a third party;

- Interest on the amount or value of the payment or benefit;
- A civil penalty of not less than $5,000 or more than $15,000 for each violation that results in injury to an elderly person, a disabled person, or a person younger than 18 years of age; or
- A civil penalty of not less than $5,000 or more than $10,000 for each violation that does not result in injury to a person describe above; and
- Two times the amount of the payment or value of the benefit resulting from the wrongful act.
- Debarment for 10 years from medical assistance program;
- Revocation of license/permit/certification that was granted by the agency.
- Attorney general may recover costs, fees and expenses.

The Texas HHSC, along with the Office of the Attorney General and any other appropriate law enforcement agency, may investigate any suspected violations and bring actions against any person found in violation of the Act.

Employee Protection

A person who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms of employment by the person's employer because of a lawful act taken by the person in furtherance of the TMFPA, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under the TMFPA, is entitled to be compensated and to have the wrong corrected.

An aggrieved employee is entitled to:

- reinstatement without loss of seniority,
- not less than two times the amount of back pay,
- interest on back pay, and
- compensation for any special damages
- litigation costs, and
- reasonable attorney's fees.

Civil Action by Qui Tam Plaintiff

Under the Texas Medicaid Fraud Prevention Act, a person may bring a civil action for a violation on behalf of the person and the State, in the name of the State. This person is called a Qui Tam Plaintiff. The State may intervene and proceed with the action if it chooses. The action may also be dismissed by mutual consent of the Attorney General and the Court. If the State declines to intervene, the qui tam plaintiff may proceed with the action. The qui tam plaintiff may receive a portion of the proceeds if the State prevails under specified circumstances.

Employer Interference with Employee Disclosure – Private Action for Retaliation

Employers may not prevent employees from, or interfere with employees, disclosing information to the government or law enforcement or from participating in an action filed pursuant to the Texas fraud prevention acts. An employer cannot discharge, demote, suspend, threaten, harass, deny promotion to or discriminate against an employee for disclosing information or participating in an action. Furthermore, a person is not civilly or criminally liable for providing access to documentary materials pursuant to the Texas MFPA to specified state or federal law enforcement or agencies.

Reporting Potential Violations

Employees have a legal and ethical responsibility to report any suspected violations of the law, regulation, policy or procedure as well as potential FWA. The Company makes a variety of resources available for reporting purposes including, but not limited to:

- any member of the management team;
- the Special Investigations Department;
- the Fraud Hotline: 1-877-211-2290; or

- the Corporate Integrity Hotline: 1-800-838-2552

ILLINOIS STATE LAW

Illinois False Claims Act – 740 ILCS 175/1 (as amended 8/17/202)

Unlawful Conduct

The Illinois False Claims Act seeks to prevent and deter fraudulent acts that impact the Illinois Medicaid program. A person commits an offense if the person:

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
(C) has possession, custody, or control of property or money used, or to be used, by the State and knowingly delivers, or causes to be delivered, less than all the money or property;
(D) 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 State, makes or delivers the receipt without completely knowing that the information on the receipt is true;
(E) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the State, or a member of the Guard, who lawfully may not sell or pledge property; or
(F) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the State, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State; or
(G) conspires to violate the Act through the commission of an act in (A)–(F) above.

Liability for Violations of the Illinois FCA

A person who commit an offense is liable to the State:

(1) for a civil penalty of not less than $5,500 nor more than $11,000 for each false claim;
(2) for 3 times the amount of damages which the State sustains because of the violation;
(3) For the costs of suit to recover penalties and damages.

The person may also be subject to criminal prosecution for the same conduct.

Actions Against Violators

An action against a violator may be brought by the Illinois Attorney General. A person may also bring an action for the State and in the name of the State for redress of a violation, and may recover 15-25% of the proceeds of the action or settlement of the claim.

Employee Protection

In general, any employee, contractor, or agent shall be entitled to all relief necessary to make that person whole if that person is discharged, demoted, suspended, threatened, harassed, or in any manner discriminated against in the terms and conditions of employment because of lawful acts done by the person in furtherance of an action to stop one or more violations of the Illinois FCA. Relief may include reinstatement with the same seniority status that the person had prior to the discrimination, 2 times amount of back pay, interest on back pay, and compensation for any special damages.

MONTANA STATE LAW

Montana False Claims Act – Mont. Code Ann. 17-8-401, *et. seq*.
The Montana False Claims Act allows whistleblowers to file "qui tam" lawsuits if they know of violations of that state law. The Montana False Claims Act imposes liability on persons who knowingly present false or

fraudulent claims for payment to the state, misappropriate state property, or deceptively conceal or avoid binding obligations to pay the state, among other violations.

A defendant may be ordered to pay up to three times the actual harm to the state, plus a fine of between $5,500 and $11,000 (adjusted for inflation) for each violation of the Act.

A whistleblower filing a Montana False Claims Act case may receive between 15 and 25 percent of amounts recovered if the state intervenes and prosecutes the matter. If the state does not intervene, and the whistleblower successfully prosecutes the case alone, the whistleblower may receive between 25 and 30 percent of the award. The court may reduce the value of the award if the whistleblower planned and initiated the fraud, or if the action is largely based on information disclosed in the media or public hearings.

The Montana False Claims Act also protects whistleblowers from retaliation by their employers.

Unlawful Conduct and Liability

A person is liable to a governmental entity for a civil penalty of not less than $5,000 and not more than $10,000 for each act, plus three times the amount of damages that a governmental entity sustains because of the person's act, along with expenses, costs, and attorney fees, if the person:

a. knowingly presents or causes to be presented to an officer or employee of the governmental entity a false or fraudulent claim for payment or approval;
b. 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 governmental entity;
c. conspires to defraud the governmental entity by getting a false or fraudulent claim allowed or paid by the governmental entity;
d. has possession, custody, or control of public property or money used or to be used by the governmental entity and, with the intent to defraud the governmental entity or to willfully conceal the property, delivers or causes to be delivered less property or money than the amount for which the person receives a certificate or receipt;
e. is authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and, with the intent to defraud the governmental entity or to willfully conceal the property, makes or delivers a receipt without knowing that the information on the receipt is true;
f. knowingly buys or receives as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;
g. 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 governmental entity or its contractors; or
h. as a beneficiary of an inadvertent submission of a false or fraudulent claim to the governmental entity, subsequently discovers the falsity of the claim or that the claim is fraudulent and fails to disclose the false claim to the governmental entity within a reasonable time after discovery of the false or fraudulent claim.

The government attorney (either the attorney general or the chief attorney for a governmental entity) investigates alleged false claims violations and may file a civil action against any person who has violated or is violating the Act.

Civil Actions Brought by Government Attorney or Private Citizen

In a civil action brought by the government attorney or a private citizen, a court shall assess a civil penalty of not less than $5,000 and not more than $10,000 for each act specified, plus not less than two times and not more than three times the amount of damages that a governmental entity sustains because of the person's act if the court finds all of the following:

(i) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.
(ii) The person fully cooperated with any investigation of the act by the government attorney.
(iii) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

A person who violates the Act is also liable to the governmental entity for the expenses, costs, and attorney fees of the civil action brought to recover the penalty or damages.

Liability is joint and several for any act committed by two or more persons.
A person may not file a complaint or civil action:

a) against a governmental entity or an officer or employee of a governmental entity arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the governmental entity;
b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil penalty proceeding in which an agency of the governmental entity is already a party;
c) that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing or in an investigation, report, hearing, or audit conducted by or at the request of the senate or house of representatives, the state auditor or legislative auditor, the auditor or legislative body of a political subdivision, or the news media, unless the private citizen has direct and independent knowledge of the information on which the allegations are based and, before filing the complaint or civil action, voluntarily provided the information to the agency of the governmental entity that is involved with the claim that is the basis for the complaint or civil action and unless the information provided the basis or catalyst for the investigation, report, hearing, or audit that led to the public disclosure; or
d) that is based upon information discovered by a present or former employee of the governmental entity during the course of employment unless the employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the governmental entity failed to act on the information provided within a reasonable period of time.

If a private citizen brings a civil action for a violation of the Act**, t**he action may be dismissed only if the court and the government attorney give written consent to the dismissal and provide their reasons for consenting to the dismissal.

Limitation of Actions

a) A complaint or civil action must be brought by the later of:
b) 6 years after the date on which the violation was committed; or
c) 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the governmental entity charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation was committed.

Damages and Penalties

If the government attorney intervenes in an action brought by a private citizen, the person must receive at least 15% but not more than 25% of the proceeds recovered and collected in the action or in settlement of the claim, depending on the extent to which the person substantially contributed to the prosecution of the action. The person may receive a maximum of 10% of the proceeds in an action that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions disclosed through:

(i) a criminal, civil, or administrative hearing;
(ii) a legislative, administrative, auditor, or inspector general report, hearing, audit, or investigation; or
(iii) the news media.

The person must also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. The expenses, fees, and costs must be awarded against the defendant.
If the government attorney does not intervene, and the whistleblower successfully prosecutes the case alone, the whistleblower may receive between 25 and 30 percent of the. proceeds recovered and collected in the action or settlement of the claim and must be paid out of the proceeds. The person must also receive an amount for reasonable expenses that the court finds were necessarily incurred, plus reasonable attorney fees and costs. All expenses, fees, and costs must be awarded against the defendant.
Whether or not the government attorney proceeds with the action, if the court finds that the action was brought by a person who planned, initiated, or knowingly participated in the violation, the court may, to the extent the court considers appropriate, reduce or eliminate the share of the proceeds of the action that the person would otherwise receive. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation, the person must be dismissed from the civil action and may not receive any

share of the proceeds of the action. The dismissal does not prejudice the right of the government attorney to continue the action.
The governmental entity is entitled to any damages and civil penalty not awarded to the person.
The governmental entity that filed a civil action or intervened is entitled to its reasonable costs and attorney fees if the action is settled favorably for the governmental entity or the governmental entity prevails.

Employee Protection
A governmental entity or private entity may not adopt or enforce a rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation of a false claims violation.

A governmental entity also may not discharge, demote, suspend, threaten, harass, or deny promotion to or in any other manner discriminate against an employee in the terms and conditions of employment because of the employee's disclosure of information to a government or law enforcement agency pertaining to a false claims violation.
A governmental entity that violates this provision is liable for:

(i) reinstatement to the same position with the same seniority status, salary, benefits, and other conditions of employment that the employee would have had but for the discrimination;
(ii) back pay plus interest on the back pay;
(iii) compensation for any special damages sustained as a result of the discrimination; and
(iv) reasonable court or administrative proceeding costs and reasonable attorney fees.

An employee may file an action to seek such relief.

Definitions

CHIP means Children's Health Insurance Program

CMS means the Centers for Medicare and Medicaid Services

DRA means the Deficit Reduction Act

Downstream Entity: any party that enters into a written arrangement, acceptable to CMS, with persons or entities involved with the MA benefit or Part D benefit, below the level of the arrangement between an MAO or applicant or a Part D plan sponsor or applicant and a first tier entity. These written arrangements continue down to the level of the ultimate provider of both health and administrative services. (See, 42 C.F.R. §, 423.501).

FCA means the False Claims Act

FDR: is defined as First Tier, Downstream or Related Entity.
FERA means the Fraud and Enforcement Recovery Act

First Tier Entity: is any party that enters into a written arrangement, acceptable to CMS, with an MAO or Part D plan sponsor or applicant to provide administrative services or health care services to a Medicare eligible individual under the MA program or Part D program. (See, 42 C.F.R. § 423.501).

Government Programs (or "GP") refers to the operations of any Medicare Advantage, Medicare Part D, Medicaid or CHIP Contracts.

MIP means CMS Medicaid Integrity Program

PFCRA means the Program Fraud Civil Remedies Act

Related Entity: any entity that is related to an MAO or Part D sponsor by common ownership or control and:

- performs some of the MAO or Part D plan sponsor's management functions under contract or delegation,

- furnishes services to Medicare enrollees under an oral or written agreement, or
- leases real property or sells materials to the MAO or Part D plan sponsor at a cost of more than $2,500 during a contract period (See, 42 C.F.R. §423.501).

SID means the Special Investigations Department
TMFPA means the Texas Medicaid Fraud Prevention Act

Additional Resource

CMS Medicaid Integrity Program

HCSC Government Programs Fraud, Waste and Abuse Program

Illinois Medicaid FWA Plan and Fraud Policy and Procedures

Centennial Care Medicaid FWA Plan and Fraud Policy and Procedures

Texas Medicaid FWA Plan and Fraud Policy and Procedures

Montana Medicaid FWA Plan and Fraud Policy and Procedures

Review Date	Ratification Date	Author	Description of Changes
8/20/2018	12/4/2008	Meredith Fahrner	Removed reference to MT HELP. Modified section related to the FYIBlue website contents.
10/30/2017	12/05/2017	Chris Buley	Updated penalties for False Claims Acts and update name of IL Medicaid Plans.
09/01/2016	12/06/2016	Chris Buley	Updated policy to include new Montana Medicaid program, added relevant federal and state statutory references, and revised monetary penalties language to include annual inflation increase from recent legislation and regulations.
05/27/2015	12/08/2015	Chris Buley	Created consolidated Government Programs DRA policy to replace individual state policies.