



ASPIRUS, INC.

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APPROVALS: SVP and General Counsel: 4/1/08; Compliance Officer: 4/01/08.

SUBJECT: FALSE CLAIMS ACT/WHISTLEBLOWER PROTECTION

INTRODUCTION AND PURPOSE:

The purpose of this policy is to educate employees, contractors, and agents of Aspirus on the requirements of the federal Deficit Reduction Act of 2005, which contains provisions to combat fraud and abuse in government health care programs. Under the Deficit Reduction Act, Aspirus is required to provide employees, contractors, and agents with information regarding federal and state false claims laws, administrative remedies under those laws, whistleblower protections to employees who report incidents of false claims, and Aspirus' program for detecting and preventing fraud, waste, and abuse in Medicare, Medicaid, and other government programs.

AREAS AFFECTED/STAKEHOLDERS:

All Aspirus entities and personnel and contractors.

POLICY:

I. FEDERAL FALSE CLAIMS ACT

- A. The primary purpose of the federal False Claims Act is to combat fraud and abuse with regard to federal health care programs. The False Claims Act does this by making it possible for the federal government to bring legal action against health care providers who submit "false claims." The False Claims Act also permits lawsuits brought by individuals, typically employees or former employees, who have knowledge of fraudulent activities. These individuals are called "qui tam relators" or "whistleblowers."
- B. The False Claims Act prohibits any individual or organization from knowingly submitting a false or fraudulent claim for payment of services (e.g., health care services) pursuant to a federally funded program (e.g., Medicare, Medicaid). The False Claims Act imposes civil liabilities on any person or organization who:

1. Knowingly presents a false or fraudulent statement or claim for payment or approval;
 2. Knowingly makes or uses a false record or statement to get a false or fraudulent claim paid or approved;
 3. Conspires with another to get a false or fraudulent claim paid or allowed; or
 4. Knowingly makes or uses a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property
- C. A wide variety of conduct may lead to the submission of fraudulent claims to the government, including knowingly making false statements, falsifying records, double-billing for items or services, or submitting bills for items or services never furnished. There is no requirement that there be an intent to defraud the government. The requirement of doing something in a knowing manner is met by showing either (1) actual knowledge; (2) deliberate ignorance of the truth or falsity of the information; or (3) reckless disregard of the truth or falsity of the information.
- D. Federal Civil Penalties
Violations of the federal False Claims Act can result in penalties of not less than \$5,500 and not more than \$11,000 per claim (subject to inflationary increases), plus up to three times the amount of the damages that the government sustains.

II. FEDERAL QUI TAM "WHISTLEBLOWER" ACTIONS

- A. Any private person ("Qui Tam Relater") with actual knowledge of allegedly false claims may file a lawsuit on behalf of the United States government. The federal government gets an opportunity to review the complaint and the disclosure of substantially all of the material evidence and information the person possesses to decide whether to intervene. If the federal government decides to intervene, then it has the primary responsibility for prosecuting the action for the False Claims, and the person who originally brought the action, the Qui Tam Relater, may receive from 15% to 25% of the proceeds of the action or settlement of the claim. If the federal government does not proceed with the action and the Qui Tam Relater continues with the action or settles the claim, he or she may receive an amount from 25% to 30% of the proceeds of the action or settlement. The Qui Tam Relater may also receive an amount for reasonable expenses, including reasonable attorney fees and costs incurred in connection with bringing the lawsuit.

III. WISCONSIN FALSE CLAIMS ACT

- A. Wisconsin has enacted a Wisconsin False Claims Act. Any person who does any of the following is liable to the state for three (3) times the amount of the damages sustained by the State because of the actions of the person, and shall forfeit not less than \$5,000 nor more than \$10,000 for each violation:
1. Knowingly presenting a false claim for medical assistance.
 2. Knowingly making a false record or statement to obtain approval or payment of a false claim for medical assistance.

3. Conspiring with another to get a false or fraudulent claim paid.
4. Knowingly making or using a false record or statement to conceal, avoid, or decrease any obligation to pay or transmit money or property to the medical Assistance program.
5. Being a beneficiary of the submission of a false claim for medical assistance, knowing that the claim is false, and failing to disclose the false claim to the state within a reasonable time after the person becomes aware that the claim is false.

IV. MICHIGAN FALSE CLAIMS ACT

- A. Michigan has enacted a Michigan False Claims Act. This act imposes prison terms of up to four (4) years and fines of up to \$50,000 for:
 1. Knowingly making a false statement or false representation of a material fact in any application for Medicaid benefits or for use in determining rights to a Medicaid benefit;
 2. Soliciting, offering, or receiving kickbacks or bribes for referrals to another for Medicaid-funded services (fine up to \$30,000);
 3. Entering into an agreement with another to defraud Medicaid through a False Claim; or
 4. Making or presenting to the State of Michigan a False Claim for payment.

V. WHISTLEBLOWER PROTECTION LAWS

- A. Both the federal and state laws protect employees from retaliation if they, in good faith, report fraud. Employees are protected against retaliation such as being fired, demoted, threatened, or harassed as a result of filing a False Claims Act lawsuit. An employee who suffers retaliation can sue, and may receive up to twice his or her back pay, plus interest, reinstatement at the seniority level he or she would have had if not for the retaliation, and compensation for his or her costs or damages. This does not insulate the reporter from disciplinary action if it turns out that he or she is involved in the reported wrongdoing.

VI. ASPIRUS RELATED POLICIES AND EDUCATION

- A. Aspirus Nonretaliation Policy
 1. Aspirus has adopted a "Nonretaliation" Policy through the Aspirus Corporate Compliance Plan that provides protection for personnel who make a good faith report of issues or concerns, including reports of suspected fraud, waste, and abuse. (See Aspirus Policy/Procedure 08-9000-910, Aspirus Corporate Compliance Plan.)
- B. Aspirus Programs to Prevent and Detect Fraud
 1. As part of the Aspirus Corporate Compliance Plan, Aspirus hospitals have enacted policies entitled, "Ethics Hotline Policy" that provide a detailed procedure for identifying and reporting potential fraud and

abuse. Under the policies, personnel are obligated to report suspected fraud and abuse, including false or misleading claims or statements, through either the chain of command, directly to the Wausau Compliance Auditor at Ext. 72181, to the Aspirus Business Ethics Hotline at 1.800.450.2339, or to the Ontonagon Compliance and Ethics Hotline at 906.884.8181. The confidentiality of all calls to the Ethics Hotlines are maintained to the fullest extent permitted by law.

- C. Educating Employees, Medical Staff, Contractors, and Agents on the Wisconsin False Claims Act Policy
 - 1. Aspirus will provide and make this Aspirus False Claims Act/Whistleblower Protection Policy available to all employees, medical staff, contractors, and agents and provide them an opportunity for discussion of the policy.

REFERENCES:

Federal False Claims Act, 31 USC 3729-3733

Wisconsin False Claims Act, Wis. Stat. § 20.931

Michigan Medicaid False Claims Act, Sections 400.603 – 400.607

Aspirus Administrative Policy/Procedure (Ethics Hotline Policy 07-04-239)

Aspirus Administrative Policy/Procedure (Corporate Compliance Plan 08-9000-910)

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