

Compliance with Applicable Federal and State Anti-Fraud and False Claims Laws

Purpose

Parkway Manor Health Care Center is committed to its role in preventing health care fraud and abuse and complying with applicable state and federal law related to health care fraud and abuse. The deficit Reduction Act of 2005 requires information about both the federal False Claims Act and other laws, including state laws, dealing with fraud, waste, and abuse and whistleblower protections for reporting those issues. To ensure compliance with such laws, Parkway Manor Health Care Center has policies and procedures in place to detect and prevent fraud, waste, and abuse, and also supports the efforts of federal and state authorities in identifying incidents of fraud and abuse. The policy sets forth Parkway Manor Health Care Center policies and procedures for detecting and preventing fraud, waste, and abuse and an overview of the Federal Civil False Claims and Programs Fraud Civil Remedies Acts and applicable state laws.

Parkway Manor Health Care Center takes health care fraud and abuse very seriously. It is our policy to provide information to all employees, contractors and agents about the federal and state false claims acts, remedies available under these provisions and how employees and others can use them, and about whistleblower protections available to anyone who claims a violation for the federal or state false claims acts. We also advise our employees, contractors and agents of the steps Parkway Manor Health Care Center has in place to detect health care fraud and abuse.

Federal and State False Claims Laws

The Role and Federal and State Laws in Preventing Fraud, Waste, and Abuse: The Centers of Medicare & Medicaid Services (CMS) defines “fraud” as the intentional deception or misrepresentation that an individual knows to be false (or does not believe to be true) and makes, knowing that the deception could result in an unauthorized benefit to himself or another person. CMS defines “abuse” as incidents or practices of providers that are inconsistent with sound medical practice and may result in unnecessary cost, improper payment, or the payment for services that either fail to meet professionally recognized standards of care or are medically unnecessary.

The Federal Government and the State of NJ have enacted criminal and civil laws pertaining to the submission of false or fraudulent claims for payment or approval to the federal and state governments and to private payers. These false claims laws, which provide for criminal, civil, and administrative penalties, provide governmental authorities with broad authority to investigate and prosecute potentially fraudulent activities, and also provide anti-retaliation provisions for individuals who make good faith reports of waste, fraud and abuse.

The Federal Civil False Claims and Programs Fraud Civil Remedies Acts, applicable State laws, and anti-retaliation provisions are summarized in the following sections.

1. Federal Civil False Claims Act

The Civil False Claims Act (31 U.S.C § 3729 *et seq.*) is a statute that imposes civil liability on any person who:

- Knowingly presents, or causes to be presented, a false or fraudulent claim, record or statement for payment or approval,
- Conspires to defraud the government by getting a false or fraudulent claim allowed or paid,
- Uses a false record or statement to avoid or decrease and obligation to pay the Government, and
- Other fraudulent acts enumerated in the statute.

The term “**knowingly**” as defined in the Civil False Claims Act (“FCA”) includes a person who has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

The term “**claim**” includes any request or demand for money or property if the United States Government provides any portion of the money requested or demanded.

Potential civil liability under the FCAS currently includes penalties of between five thousand five hundred and eleven thousand per claim, treble damages, and the costs of any civil brought to recovery such penalties or damages.

The **Attorney General of the United States** is required to diligently investigate violations of the FCA, and may bring a civil action against a person. Before filing suit the Attorney General may issue an investigative demand requiring production of documents and written answers and oral testimony.

The FCA also provides for **Actions by Private Person** (*qui tam* lawsuits) who can bring a civil action in the name of the government for a violation of the Act Generally, the action may not be brought more than six years after the violation, but in no event more than ten. When the action is filed it remains under seal for at least sixty days. The United States Government may choose to intervene in the lawsuit and assume primary responsibility for prosecuting, dismissing or settling the action. If the Government chooses not to intervene, the private party who initiated the lawsuit has the right to conduct the action.

In the event the government proceeds with the lawsuit, the *qui tam* plaintiff may receive fifteen to twenty-five per cent of the proceeds of the action or settlement. If the *qui tam* plaintiff proceeds with the action without the government, the plaintiff may receive twenty-five to thirty per cent of the recovery. In either case, the plaintiff may also receive an amount for reasonable expenses plus reasonable attorneys’ fees and costs.

If the civil action is frivolous, clearly vexatious, or brought primarily for harassment, the plaintiff may have to pay the defendant its fees and costs. If the plaintiff planned or initiated the violation, the share of proceeds may be reduced and, if found guilty of a crime associated with the violation, no share will be awarded the plaintiff.