

# NorthCare Network

## Deficit Reduction Act – FY07 Training

### **The new “Medicaid Integrity Program**

The first major change to the enforcement reform in the DRA is the creation of the Medicaid Integrity Program. This program will allow government to bring private contractors into the business of Medicaid oversight. The program’s financial goals are ambitious. Congress expects to get back the money it appropriated for the program through paybacks, recoupments and fines. Appropriation in 2007 and 2008 is \$50M each year, expecting to recover \$175M federal share, over \$350M total.

### **The program’s activities encompass four areas:**

1. **Reviewing the actions** of Medicaid providers under any type of payment system to determine if their actions have produced fraud, abuse or waste, are likely to, or may potentially result in unintended expenditures on the part of the Medicaid program.
2. **Auditing of claims for payment** of Medicaid services, items, or administrative services rendered including cost reporting, consulting contracts, and various risk contracts.
3. **Identification of overpayments** to individuals or entities receiving Medicaid Federal funds.
4. **Education of providers**, managed care companies, beneficiaries, and others with respect to payment integrity and quality of care.

### **Incentives for states to Create False Claims Acts**

The federal False Claims Act is one of the most well-known and powerful weapons in the arsenal of the OIG. Three notable provisions:

1. Civil prosecutions do not require proof of fraud, but only proof that provider acted in “reckless disregard” or “deliberate ignorance.” No “ostrich defense.”
2. Qui tam, or “whistleblower” provisions that allow private citizens to bring suit against providers and collect a portion of monies recovered.
3. Very high penalties assessed on a per claim basis for violators. Could be as much as \$11,000 per claim!

A number of states already have a False Claim Act, including Michigan. Under the Deficit Reduction Act (DRA), states, which pass false claims laws that are as tough as the federal law, keep an additional 10% of recoveries. This is in addition to state share of payments! The federal government has, for many years, encouraged health care providers and managed care plans to have compliance programs, built on the federal sentencing guidelines. The DRA, it is now a requirement for all providers or organizations that receives or pays out over \$5 Million a year.

### **Education requirements:**

The provisions of the DRA are very specific regarding compliance education:

1. **Implement employee, contractor and agent education** containing “detailed” information about the federal and state False Claims Acts, any other administrative remedies for false claims and all whistleblower provisions
2. **Develop written policies that include “detailed provisions”** regarding the policies and procedures of the entity for **detecting and/or preventing fraud, abuse and waste.**
3. **Include fraud and abuse laws in employee handbook.**

### **Compliance activities**

- Educational efforts with staff (annual training) and contractors
- Curriculum driven by DRA requirements
- Updating employee handbook to include information
- Reviewing Compliance Plan and related P&P to assure adequacy

- Re-iterating internal processes for reporting
- Employees given copy of the Compliance Plan at orientation and an acknowledgement form is signed and kept on file.

**As an employee of Pathways, d.b.a. NorthCare Network or other Network Provider, you have an obligation to report any “fraud, abuse or waste” of Medicaid to the organization. The Compliance Plan details methods for doing this.**

## **Federal False Claims Act**

### **The False Claims Act applies when a company or person:**

- Knowingly presents (or causes to be presented) to the Federal Government a false or fraudulent claim for payment,
- Knowingly uses (or causes to be used) a false record or statement to get a claim paid by the Federal Government,
- Conspires with others to get a false or fraudulent claim paid by the Federal Government,
- Knowingly uses (or causes to be used) a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Federal Government.

### **Time period for a claim to be brought**

The statute of limitations for suits under the False Claims Act is the later of: Within six years of the illegal conduct or within three years after the Government knows or should have known about the illegal conduct, but in no event later than ten years after the illegal activity.

### **What money can be recovered:**

A person who brings a False Claims Act (or qui tam) case is entitled to a proportional share of the funds that are recovered for the government. As a part of the process, the individual must provide the government with all of his or her information. If the government joins the case – individual usually entitled to 15 – 25% of recovered funds. If government does not join case – individual is entitled to 25 – 30% of the recovered funds. The individual shall also receive an amount for reasonable expenses plus reasonable attorney’s fees and costs.

### **Protections for people who bring Qui Tam cases:**

Anyone who lawfully acts to bring suit is protected from: discharge, demotion, suspension, threats, harassment, and discrimination. If violated, individual is entitled to reinstatement with seniority, double back pay, interest on back pay, compensation for discriminatory treatment and attorney’s fees.

## **Michigan False Claims Act**

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 civil actions to recover money received by reason of fraudulent conduct; ... to prohibit retaliation; to provide for certain civil fines; and to prescribe remedies and penalties.

### **Some definitions:**

- Claim – means any attempt to cause the department of social services (now DCH) to pay out sums of money under the social welfare act

- **Deceptive** – means making a claim or causing a claim to be made which contains a statement of fact or which fails to reveal a material fact, which statement or failure leads the department to believe the represented or suggested state of affair to be other than it actually is
- **False** – means wholly or partially untrue or deceptive
- **Knowing or knowingly** – means that a person is in possession of facts under which he or she is aware or should be aware of the nature of his or her conduct and that his or her conduct is substantially certain to cause the payment of a Medicaid benefit. Knowing or knowingly does not include conduct which is an error or mistake unless the person's course of conduct indicates a systematic or persistent tendency to cause inaccuracies to be present.

Any person may bring a civil action in the name of the State to recover losses at the time of filing, the person shall disclose, in writing, substantially all material evidence and information supporting the complaint. Attorney general may proceed, or if not, the individual may proceed with action. If a person other than the attorney general prevails in an action that the person initiates, the court shall award that person: costs, reasonable attorneys fees, and based on effort, a percentage of monetary proceeds. If attorney general intervenes, 15 – 25 %. If attorney general does not intervene, 25 – 30%

### **Court findings**

If the court finds an action under this section based primary on information from other than the person bringing the action, the court shall award costs, reasonable attorney's fees, and not more than 10% of monetary recovery. If court finds that the person bringing the action planned, initiated, or participated in the conduct upon which the action is brought, then court may reduce or eliminate the share of proceeds. A person other than the attorney general shall not bring an action that is already the subject of a civil suit, criminal investigation, prosecution or administrative investigation

### **Frivolous actions**

If a person proceeds with an action after the attorney general declines, and the court finds it to be frivolous, the court shall award prevailing defendant actual and reasonable attorneys fees and expenses and impose a civil fine of not more than \$10,000

### **Employers actions**

An employer shall not discharge, demote, suspend, threaten, harass, or otherwise discriminate against an employee who initiates, assists, or participates in a proceeding or court action. An employer, who violates this, is liable to the employee for all of the following:

- Reinstatement to position without loss of seniority
- 2 X back pay
- Interest on back pay
- Compensatory damages
- Other relief as necessary to make employee whole

## **Whistleblowers' Protection Act**

Is an ACT to provide protection to employees who report a violation or suspected violation of state, local, or federal law; to provide protection to employees who participate in hearing, investigations, legislative inquiries, or court actions; and to prescribe remedies and penalties.

### **Employer obligation**

An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding compensation, terms, conditions, location, or privileges of employment because the

employee reports or is about to report a violation. A person who alleges a violation of this act may bring a civil action for appropriate injunctive relief, or actual damages, within 90 days after the occurrence of the alleged violation. An employer is not required to compensate an employee for participation in an investigation, hearing or inquiry held by a public body in accordance with this Act. An employer shall post notices and use other appropriate means to keep employees informed of these protections. Provide education as required. Review existing plan and policies to assure adequacy.

**You will be given an Attestation Form to sign. This form acknowledges your obligation to report and attests that you have reported any issues of which you are aware. This is to be signed and submitted to the Compliance Officer w/in 2 weeks of this training.**