The Lifetime Healthcare Companies

Corporate Administration
Detection and Prevention of Fraud and Abuse
CP3030

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PURPOSE:

To facilitate the development of controls, which will aid in the detection and prevention of fraud and abuse against The Lifetime Healthcare Companies. To promote consistent organizational behavior regarding the detection and prevention of fraud and abuse. To ensure compliance with the 'Summary of Federal and New York State Laws on False Claims and False Statements and Whistleblower Protections'.

APPLIES TO:

This policy applies to all officers, employees, and contractors of The Lifetime Healthcare Companies, including its subsidiaries and affiliates (collectively the "Corporation"), except as noted under "Exceptions."

POLICY:

It is the policy of the Corporation to review, investigate and document fraudulent or abusive acts with respect to enrollment, receipt of services, claims, provider billing misappropriations, and any other instances of fraud and abuse that are discovered. The Corporation complies with all applicable reporting requirements, both state and federal. The Corporation is committed to abiding by all applicable laws and regulations, including those pertaining to the state and federal programs it administers, and to assuring that its employees, contractors, and agents comply with those laws.

PROCESS:

Definitions:

FRAUD: Health care fraud is defined as an intentional deception or misrepresentation made by an individual or entity knowing that the misrepresentation may result in some unauthorized benefit to the individual, the entity, or some other party.

ABUSE: Improper and excessive use of insurance, health care or long-term care benefits or services, by providers, members, insureds and/or patients. Abuse is a form of fraud which does not require intent.

REPORTING: All personnel must report all potential noncompliance with state or federal laws, or the Code of Business Conduct. In the event that the suspected noncompliance involves a potential violation of any federal or state law, Code of Conduct, or regulation that prohibits fraud or abuse in connection with any federal or state health care program, personnel must report such concerns to:

- the Special Investigations Unit (SIU);

- the Pharmacy SIU;
- the Vice President (VP), Chief Compliance Officer, Medicare and Safety Net; or
- Enterprise Legal & Supplier Solutions.

Information may be reported anonymously. Those who report wrongdoing are protected from any form of retaliation.

Employees, officers, contractors, or agents of the Corporation must report information regarding a potential false claim or fraud and abuse violation to:

1. The SIU or Pharmacy SIU at the following location and number: 165 Court Street, Rochester, New York 14647, Fraud Hotline telephone: 800-378-8024

   Electronically at: https://news.excellusbcbs.com/about-us/fraud-abuse-prevention

   Employees may also submit emails to the SIU and/or Pharmacy SIU at SpecialInvestigationsUnitExcellus@excellus.com .

2. The VP, Chief Compliance Officer, Medicare and Safety Net at the following location and number: 165 Court Street,Rochester, New York 14647, telephone: 800-275-0170

   Employees may also submit emails to the VP, Chief Compliance Officer, Medicare, and Safety Net at ethics.and.compliance@excellus.com.

3. Enterprise Legal & Supplier Solutions can be contacted via e-tracker on LifeTimes Online at Brightflag.

Fraud and abuse investigations handled by the SIU are under the supervision of the Corporate Director, SIU. Investigations involving prescription drug and/or pharmacy related fraud and abuse are handled by the Pharmacy SIU under the supervision of the Corporate VP Audit. The SIU and Pharmacy SIU are authorized to investigate any allegations of fraudulent or abusive billing pertaining to all lines of business and to include all providers, members, and group representatives, as well as special investigations requested by management. The SIU and Pharmacy SIU have unrestricted access to claims, records, reports, and all correspondence pertaining to the insured, the provider, the hospital, or facility under investigation. The SIU and Pharmacy SIU adheres to all corporate rules of confidentiality and compliance.

It is the responsibility of the SIU and Pharmacy SIU to detect, investigate and document possible cases of fraudulent or abusive activity; refer documented cases to the proper legal or regulatory authorities for criminal prosecution or other sanctions; and initiate recovery of monies identified as fraudulent or improperly paid. Enterprise Legal & Supplier Solutions reviews documented cases of fraud and abuse. More information regarding the composition, structure, duties and functions of the SIU and Pharmacy SIU can be found in the Fraud, Waste and Abuse Detection and Prevention Manual located on the LifeTimes Online SIU landing page.

Responsibilities:

The following are areas of responsibility related to fraud and abuse within the Corporation:

Senior Management: It is the responsibility of the Senior Management of the Corporation to support and stress the importance of the anti-fraud and abuse program.

Employees: It is the responsibility of every employee of the Corporation to be aware of what constitutes fraud and abuse and to report suspected situations to the appropriate area for further investigation. Employees may provide information anonymously via the Fraud Hotline or electronically via the online Fraud Referral form. All details of any situation under investigation are considered confidential and no

mention of any investigation is to be relayed to a provider, member, or anyone other than the SIU or Pharmacy SIU.

SIU: It is the responsibility of the Corporate Director of SIU and SIU staff to conduct prompt, thorough reviews of fraud and abuse matters that are reported to or detected by the SIU.

Pharmacy SIU: It is the responsibility of the Corporate VP of Audit and Pharmacy SIU staff to conduct prompt, thorough reviews of pharmacy and/or prescription drug fraud and abuse matters that are reported to or detected by the Pharmacy SIU.

Enterprise Legal & Supplier Solutions: It is the responsibility of Enterprise Legal & Supplier Solutions to provide guidance, advice and counsel to the SIU and/or Pharmacy SIU concerning cases developed for referral of fraud and abuse, prosecution, civil action, etc.

Medical Directors: It is the responsibility of the Medical Directors to provide clinical interpretations and/or clarifications on issues that require the expertise of a Medical Director to determine over-utilization of services or inappropriateness of care that cannot be determined solely by the SIU or Pharmacy SIU.

Regulatory Compliance (including Chief Administrative Officer, VP, Chief Compliance Officer, Medicare and Safety Net): It is the responsibility of personnel to support the activity of the SIU and/or Pharmacy SIU when investigating cases of possible fraud and abuse and to correct any related compliance problems promptly and thoroughly.

ADMINISTRATION OF THIS POLICY:

This policy is reviewed on an annual basis.

VIOLATIONS:

Violation of this policy may result in disciplinary action, up to and including termination for employees, termination of vendor, contractor or consultant contracts, or dismissal of interns and volunteers. Additionally, individuals may be subject to loss of access privileges and/or civil or criminal prosecution.

EXCEPTIONS:

None

EFFECT ON PREVIOUS POLICIES:

This policy supersedes any previous policy with respect to this subject matter approved or adopted by The Lifetime Healthcare Companies, including its subsidiaries and affiliates, to which this policy applies.

At any time and without notice, the Corporation reserves the right to amend or establish its policies, requirements, and standards.

CP3030 - APPENDIX A

Summary of Federal and New York State Laws on False Claims and False Statements and Whistleblower Protections

FEDERAL LAWS

1.1 Federal False Claims Act [31 U.S.C. §§ 3729 – 3733]

The Federal False Claims Act allows the United States Attorney General or a private citizen to sue an individual or an entity for making certain "false claims" in connection with government business.

A person makes a false claim if they:

- knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim paid by the government;
- has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;
- is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or
- 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 Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

A person can be found to have "knowingly" made a false statement if they acted in deliberate ignorance or reckless disregard of the truth of the statement, or indirectly caused a false claim to be made, presented, or used.

A person who knowingly makes a false claim may be held liable to the federal government for a civil penalty of $5,000 to $10,000. They may also be liable for two or three times the amount of damages the federal government sustained. Whether the damages are doubled or tripled depends on whether the person cooperated with the government and other factors.

A suit for a false claim can be initiated by the United States Attorney General or by a private citizen who has independent knowledge of the facts. A private citizen wishing to bring a federal False Claims Act suit can only do so within the following time limits, whichever occurs last:

- within six years after the false claim was made; or
- within three years after the government should have become aware of the false claim, but in no event more than ten years from when the violation was committed.

A private citizen who brings a false claims suit must do so in the name of the federal government. After the private citizen (the "relator") prepares a formal complaint and serves it on the government, along with all information that they have, the government may decide to take over the suit. If the government takes over the suit, it is not bound by the decisions of the relator, and

the government can dismiss or settle the suit even if the relator objects. The relator may remain in the suit, or the court may limit the relator's participation.

If the government informs the court that it does *not* want to take over the suit, the private party can continue with the suit if they are an original source of the information on which it is based. If the private party continues with the suit but does not prevail, the private party may have to pay the defendant's reasonable attorney's fees and expenses, if the court finds that the action was frivolous or was brought to harass the defendant.

If the government prosecutes the suit and prevails, the relator who brought the case to the government may receive 15% to 25% of the court award or settlement, depending on their contributions to the proceeding. The relator will also be awarded reasonable expenses and attorney's fees. However, if the suit was based primarily on information from another case, a government report or the news media, the relator may be awarded no more than 10% of the award or settlement.

If the government does not take over the action and the relator prevails, the relator will receive 25% to 30% of the court award or settlement plus their reasonable expenses and attorney's fees. Whether or not the government proceeds with the action, however, if the relator planned or initiated the false claim in the first place, they may recover nothing.

An employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against because they brought or participated in a False Claims Act suit may be entitled to reinstatement, double back pay plus interest, and compensation for other damages that they prove. In order to seek such relief, the individual must bring a separate action in federal court.

1.2 Federal Administrative Remedies for False Claims and Statements [31 U.S.C. §§ 3801 - 3812]

In addition to a suit under the False Claims Act, the federal government (but *not* a private citizen) can seek administrative penalties against a person or entity for making false claims. An individual or entity may be subject to administrative penalties for making or submitting a claim that the person knows or has reason to know is:

- false, fictitious, or fraudulent;
- includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;
- is for payment for the provision of property or services which the person has not provided as claimed

Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that the person knows or has reason to know:

- asserts a material fact which is false, fictitious, or fraudulent; or
- omits a material fact; (is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement)
- and is false, fictitious, or fraudulent as a result of such omission;

Any person making such a false claim may be required, after a hearing, to pay a maximum penalty of $5,000 per claim and an assessment of up to double the amount of the claim.

1.3 Prohibitions Under the Social Security Act [42 USCS § 1320a-7a - § 1320a-7b]

The Social Security Act allows the government to impose civil penalties for various offenses. Examples of these offenses include improperly submitting claims for medical services (such as false claims or medically unnecessary claims), offering kickbacks, and making payments to induce the reduction or limitation of services.

The Social Security Act sets out criminal and civil penalties for making certain kinds of false statements in connection with federal health care programs, including Medicare. False statements made by a provider of items or services may constitute a felony punishable by of up to $100,000 or ten years in prison, or both. A provider found to have made false statements can also be excluded from participation in the federal health care programs. When false statements are made by someone else; the penalty may be a fine of up to $10,000 and one year in prison, or both.

Soliciting, receiving, offering, or making illegal payments, including kickbacks, bribes, or illegal rebates, is a felony punishable by a fine of up to $100,000 or ten years in prison, or both.

Knowingly and willfully making false statements to qualify an institution for which certification is required is a felony punishable by a fine of up to $100,000 or ten years in prison, or both. Certain "illegal patient admittance and retention practices" are also punishable by a fine of up to $100,000 or ten years in prison, or both.

1.4 Health Care Fraud [18 U.S.C. § 1347]

It is illegal to knowingly and willfully execute or attempt to execute a scheme to either defraud a health care benefit program or to obtain money or property from a health care benefit program by means of false pretenses or representations. The penalty for such actions in connection with the delivery of or payment for health care items or services may be a fine or up to ten years imprisonment, or both. If the violation results in serious bodily injury, the penalty may be a fine or imprisonment of up to twenty years, or both; if the violation results in death, the person may be fined or imprisoned for any terms of years or for life.

1.5 False Statements Relating to Health Care Matters [18 U.S.C. § 1035]

In a matter involving a health care benefit program, it is illegal for any person to knowingly and willfully falsify, conceal or cover up by a trick, scheme, or device a material fact; make any materially false, fictitious, or fraudulent statement or representation; or make or use a materially false document knowing that it contains materially false statements. The penalty may be a fine or imprisonment for up to five years, or both.

1.6 Theft or Embezzlement in Connection with Health Care [18 U.S.C. § 669]

It is illegal to knowingly and willfully embezzle, steal, convert or intentionally misapply money or assets of a health care program. The penalty may be a fine or up to ten years imprisonment, or both.

1.7.1 Mail and Wire Fraud [18 U.S.C. § 1341]

It is illegal to engage in a scheme to defraud or to obtain money or property by means of false or fraudulent pretenses, representations or promises by using the U.S. mail or a commercial interstate carrier. Penalties may be fines or imprisonment for up to twenty years, or both.

1.7.2 Laundering of Monetary Instruments [18 U.S.C. § 1956]

The federal money-laundering statute prohibits the laundering or transportation of funds from certain illegal activities or attempting to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity. The penalties for violation are fines of up to $500,000

or imprisonment of up to twenty years, or both.

1.7.3 Racketeer Influenced and Corrupt Organizations ("RICO") [18 U.S.C. §§ 1961 – 1968]

The RICO law prohibits certain "racketeering activity," including mail fraud. It is illegal to invest the profits from a pattern of racketeering activity or collection of an unlawful debt in any business which affects interstate or foreign commerce. The penalty is a fine or up to twenty years in prison (or life imprisonment if that penalty applies to the underlying crime) or both. The defendant may also be ordered to forfeit property to the government. Any person whose business or property is injured by the violation of these provisions can seek to recover in court three times the amount of damages they sustained, plus reasonable attorneys' fees and expenses.

NEW YORK STATE LAWS REGARDING FALSE CLAIMS OR STATEMENTS

2.1 False Statements Relating to the Medicaid Program [Social Services Law §145-b]

Under New York state law, it is illegal for a person, firm, or company to knowingly by means of a false statement or representation, or by deliberate concealment of any material fact, obtain or attempt to obtain payment from public funds for social services, including medical services, by:

- making a false statement or representation;
- deliberately concealing a material fact; or
- a fraudulent scheme.

Any person or entity that obtains or attempts to obtain such payment may be ordered to pay damages of three times the amount that was overstated. If the false statement was non-monetary, the damages may be three times the amount of loss that the state or other governmental entity incurred. In addition, if a provider of medical services is required to refund a payment received from the state or local government, the repayment must be made with interest.

In addition to requiring repayment of improperly claimed funds, the Department of Health may impose a penalty of up $10,000 per item or service; if the provider has been subject to another penalty within the prior five years, the maximum penalty is $30,000 per item or service. These penalties may be imposed for:

- failing to comply with the standards of the medical assistance program;
- failing to comply with generally accepted medical practices in a substantial number of cases;
- or gross and flagrant violation of generally accepted medical standards; *if that person also* receives payment for claims when the provide knew, or had reason to know, that:
  - the care, services or supplies ordered or provided were medically improper, unnecessary or in excess of the medical needs of the patient;
  - the care, services or supplies were not provided as claimed;
  - the person who ordered or prescribed the care, which was medically improper, unnecessary or in excess of the medical needs of the patient was suspended or excluded from the medical assistance program; or
  - the services or supplies were never provided to the patient.

Under New York law, actions involving false claims are brought by government officials, not by private parties. In July 2006, the New York State Legislature passed a bill regarding Medicaid fraud. Like the federal False Claims Act, this law *only* allows a private citizen to bring a false claim action on behalf of the government (a "qui tam" action) if filed by an attorney. [State Finance Law, Art. 13, §§187-194 (Current through 2019)]

2.2. Unacceptable Practices in the Medicaid Program [18 NYCRR §§ 515.2 - 515.3]

Under Medicaid provider regulations, false claims and false statements are unacceptable practices. Sanctions that the Department of Health may impose on a provider for unacceptable practices include censure, repayment, and exclusion from participation in the Medicaid program.

Making a false claim means submitting, or inducing or seeking to induce another person to submit, a claim or accepting payment or other consideration for:

- care, services or supplies that have not been furnished;
- care, services, or supplies provided at a frequency or in an amount that is not medically necessary;
- an amount that exceeds established Medicaid rates; or
- amounts substantially in excess of the customary charges or costs to the general public.

Making a false statement means making or inducing or seeking to induce another person to make, a false, fictitious, or fraudulent statement or misrepresentation of material fact in claiming a Medicaid payment or for use in determining the right to payment.

Concealing or failing to disclose an event that affects the right to payment, with the intention that a payment be made when unauthorized or in an amount greater than the amount due, is also an unacceptable practice in the Medicaid program.

2.3. Criminal Prohibitions under New York Law [New York Penal Law § 210.35 - 210.45]

In certain circumstances, a person who makes false statements may be charged criminally under New York law. Each of the following crimes may be a misdemeanor or a felony, depending on the intent of the perpetrator. Penalties include fines or imprisonment, or both.

2.3.1. Falsifying Business Records [New York Penal Law § 175.00 - 175.15]

Business records are defined as any writings, including computer data, which are kept or maintained by an enterprise to evidence its condition or activity. A person may be found guilty of falsifying business records if, with the intent to defraud, they:

- makes or causes a false entry in the business records;
- alters, erases, obliterates, deletes, removes, or destroys a true entry in the business records;
- omits to make a true entry in business records when required to do so by law or their position; or
- prevents the making of a true entry or causes the omission of a true entry in business records.

It is a defense to a charge of falsifying business records if the person was merely an employee who, without any personal benefit, executed the orders of a supervisor.

2.3.2. Tampering with Public Records [New York Penal Law §§ 175.20 -175.25]

A person may be found guilty of tampering with public records if they knowingly remove, mutilate, destroy, conceal, make a false entry in, or falsely alter any record or other written instrument filed with, deposited in, or otherwise constituting a record of a public office or public servant, when they know they do not have the authority to do so.

2.3.3. Offering a False Instrument for Filing [New York Penal Law §§ 175.30 -175.35]

A person may be found guilty of offering a false statement for filing if they, knowing that a written instrument contains false information: offer or present it to a public office or public benefit corporation with the knowledge or belief that it will be filed with, registered, or recorded in or otherwise become a part of the records of such public office, public servant, public authority, or public benefit corporation *and* with the intent to defraud the state.

NEW YORK LAWS PROHIBITING RETALIATION

2.4.1. Prohibitions on Employers [New York Labor Law §§ 740]

Under New York law, an employer cannot take any retaliatory personnel action (discharge, suspension, demotion, or other adverse employment action) against an employee because the employee:

- disclosed or threatened to disclose to a supervisor or to a public body an activity of the employer that is illegal and that presents a substantial and specific danger to public health or safety;
- provides information to or testifies before a public body that is conducting an investigation or hearing into the employer's violation of law;
- or objects to or refuses to participate in the illegal activity of the employer.

A "public body" includes the U.S. Congress, the state legislature, any elected local governmental body, any federal, state, or local judiciary, a grand jury or petit jury, any federal, state, or local regulatory, administrative, or public agency or authority, any law enforcement agency, a prosecutorial office, or a police officer.

For an employee to be protected against retaliatory action for disclosing to a public body an activity of the employer that is illegal and that presents a substantial and specific danger to public health or safety, the employee must first report the violation to their supervisor and give the employer a reasonable opportunity to correct the activity.

If the employee is subjected to retaliation, they have one year from the retaliatory personnel action to bring a civil action in court. If the employee prevails in that suit, they may be reinstated and may receive lost wages and reasonable costs and attorney's fees. If, however, the court finds that the employee brought the suit without a basis in law or fact, the court may award the employer its costs and reasonable attorney's fees.

In any court action brought under this law, it is a defense for the employer if the personnel action was based on grounds other than the employee's exercise of protected rights.

2.4.2. Health Care Facilities [New York Labor Law § 740-741]

Employees who perform health care services for certain health care facilities have additional protections against retaliatory personnel actions. Health care facilities include, among others: companies, nursing homes, and other facilities licensed under Article 28 of the Public Health Law; home care services agencies and certified home health agencies; and facilities that provide health care services under the Mental Hygiene Law. A health care facility employee covered by this statute may bring suit if they are subject to a retaliatory personnel action for:

- disclosing to a supervisor or public body that they reasonably believe, in good faith, that the employer is providing "improper quality of patient care," as defined below;
- or objecting to or refusing to participate in any practice of providing "improper quality of patient care."

"Improper quality of patient care" means a practice or action, or a failure to act, that violates a law or regulation if the violation relates to matters that may present a substantial and specific danger to public health or safety or a significant threat to the health of a specific patient. In order to be protected against retaliation, the employee must first bring the matter to the attention of their supervisor and give the employer a reasonable opportunity to correct the problem, unless there is an immediate threat to health or safety and the employee reasonably believes in good faith that reporting to the supervisor will not result in corrective action.

The court may award a covered employee back pay, costs and attorney's fees and may order that they be reinstated. If the court finds that the employer acted in bad faith, it may assess a civil penalty of up to $10,000, to be paid into a fund for improving quality of patient care.

In any court action brought under this law, it is a defense for the employer if the personnel action was based on grounds other than the employee's exercise of protected rights.

2.4.3. Retaliatory Action by Public Employers [Civil Service Law § 75-b]

Different protections are available to employees in the public sector, such as employees of state agencies and other governmental entities against dismissal or disciplinary action for disclosing a violation of law, rule, or regulation, or what the employee reasonably believes to be improper governmental action.