

# **Beech Tree Manor Policy and Employee Handbook Insert For Fraud and Abuse Education As Required by the Deficit Reduction Act of 2005**

## **Purpose**

Beech Tree Manor 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, the facility has in place a code of conduct and 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. This policy sets forth information concerning the facility's existing policies and procedures, including avenues for reporting concerns internally, and an overview of the Federal Civil False Claims and Program Fraud Civil Remedies Acts and applicable state laws.

## **Policies and Procedures**

Beech Tree manor 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 of the federal or state false claims acts. These policies are designed to detect and prevent fraud, waste and abuse in its hospital or system, including fraud, waste and abuse in the Federal and State health care programs. We also advise our employees, contractors, and agents of the policies that Beech Tree Manor has in place to detect health care fraud and abuse.

## **Federal and State False Claims Laws**

The Centers for Medicare and 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 or providers that are inconsistent with sound medical practice and may result in unnecessary costs, 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 Tennessee 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 Program Fraud Civil Remedies Acts, applicable State laws, and anti-retaliation provisions are summarized in the following sections.

## 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 an 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 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 FCA currently includes penalties of between five thousand five hundred and eleven thousand per claim, treble damages, and the costs of any civil action brought to recovery such penalties or damages. The failure to report an overpayment has also qualified as a possible violation of the FCA.

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 persons (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 year after the violation, but in no event more than ten. When the action is filed it is not disclosed (known as "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 a portion of the proceeds of the action or settlement. If the qui tam plaintiff proceeds with the action without the government, the plaintiff may receive a larger portion 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.

The FCA provides protection to qui tam relators who are discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. 31 U.S.C. 3730(h). Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

### **Federal Program Fraud Civil Remedies Act of 1986**

The Program Fraud Civil Remedies Act of 1986 ("Administrative Remedies for False Claims and Statements" at 38 U.S.C. §3801 et seq.) 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 due to an assertion or omission to an assertion or omission to certain federal agencies (including the Department of Health and Human Services). The term "knows or has reason to know" is defined in the Act as 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 property or money, e.g., grants, loans, insurance, or benefits, when the United States Government provides or will reimburse any portion of the money.

The authority, i.e., federal department, may investigate and with the Attorney General's approval commence proceedings if the claim is less than one hundred and fifty thousand dollars. A hearing must begin within six years from the submission of the claim. The Act allows for civil monetary sanctions to be imposed in administrative hearings, including penalties of five thousand five hundred dollars per claim and an assessment, in lieu of damages, of not more than twice the amount of the original claim.

### **Tennessee's False Claims Act**

Similar to its federal counterpart, the Tennessee Medicaid False Claims Act (Tenn. Code Ann. §71-5-181 et seq.) is designed to detect and prevent fraud, waste, and abuse in the healthcare system. A person violates this Act if he or she either:

1. Presents or causes to be presented a claim to the state for payment under the Medicaid program knowing such claim is false;
2. Makes, uses, or causes to be made or used, a record or statement to get a false claim paid or approved by the state under Medicaid plan knowing such claim is false;
3. Conspires to defraud the state by getting a claim allowed or paid under the Medicaid program knowing such claim is false; or
4. Makes, uses, or causes to be made or used, a record or statement to conceal, avoid, or decrease an obligation to pay or transmit money to the state under the Medicaid program, knowing such statement is false.

The term "knowing" is defined as when a person either has actual knowledge, 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. The Act does not require proof of specific intent to defraud. An individual who violates this Act is liable to the state for a civil penalty between five thousand dollars and twenty-five thousand dollars, plus three times the amount of damages which the state sustains because of the act of that person.

A court may assess a lower penalty, not less than two times the amount of damages the state sustains because of the act of the person, if the Court finds that the individual committing the violation:

1. Supplied officials with all information known to the individual about the violation within thirty days after the date on which the defendant first obtained the information;
2. Fully cooperated with any state investigation; and

3. Had no knowledge of the existence of an investigation into the violation and that there was no criminal prosecution, civil action, or administrative action with respect to the violation at the time the individual supplied officials with information about violation.

Individuals may bring a civil action violation for the individual and in the name of the state of Tennessee. The individual bringing the action can receive part of the proceeds of the action depending upon the person's contributions to the prosecution, the state's involvement in the prosecution, and the culpability of that individual in the violation. If the state elects not to proceed with the action, the person who initiated the action can bring the action alone. However, if a Court finds that the claim was clearly frivolous or for purposes of harassment, the Court will award the defendant reasonable attorneys' fees.

There is a whistleblower provision under the Act designed to protect workers who report violations from retaliation or other illegal treatment. Any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in any manner by his or her employer as a result of lawful acts done by the employee in furtherance of an action under this section is entitled to all relief necessary to make the employee whole. The employee is entitled to reinstatement with the same seniority status, two times the amount of back pay, interest on the back pay and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

The State of Tennessee has also adopted several other false claims statutes that are intended to prevent fraud and abuse in a state Medicaid program, including TennCare. These laws generally prohibit the filing of any false or fraudulent claim or documentation in order to receive compensation from the Tennessee Medicaid program either providers or beneficiaries.

#### **Reporting Possible Billing and Improper Claim Issues**

Each employee and contractor of the Facility must understand that the Facility is committed to full compliance with all federal health care program requirements. The Facility is particularly committed to preparing and submitting accurate claims consistent with such requirements. Failure to comply with the Facility Code of Conduct, with applicable laws, or with requirements for participation in federal health care programs by the Facility or any of its employees, agents, contractors, or medical staff members may result in disciplinary action against that individual.

Examples of a possible improper claim include:

1. Making false statements regarding a claim for payment;
2. Falsifying information in the medical record;
3. Double-billing for items or services;
4. Billing for services or items not performed or never furnished.

If an individual associated with the Facility believes that non-compliance may have occurred, they should report that issue in one of the following ways:

1. Contact Darlene Herald, Administrator, who is also the Facility's Corporate Compliance Officer at 423-784-6626 or [DHerald@jlcbtn.com](mailto:DHerald@jlcbtn.com).
2. Mail a notice to the Compliance Officer. You may also anonymously contact the Compliance Officer by mail: Compliance Officer, 240 Hospital Lane, Jellico, TN, 37762.

3. Call the Facility Compliance Hotline. You can anonymously contact the Compliance Officer by calling 423-784-6626 at any time.

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An employee is required to report any suspicion of non-compliance to the Facility. A report may also be made directly to federal or state authorities responsible for federal health care programs. In many instances Beech Tree Manor believes that the use of its internal reporting process is a better option because it allows Beech Tree Manor to quickly address potential issues. Beech Tree Manor encourages employees to consider first reporting suspected false claims to Darlene Herald, Administrator and Compliance Officer, but the choice is up to the employee. Beech Tree Manor will not retaliate against any employee for informing the nursing home or the federal or state government of a possible FCA violation.

An employee with questions regarding this policy should contact Darlene Herald, Administrator/Corporate Compliance Officer at 423-784-6626 or by email at DHerald@jlcbtn.com.

#### References

Tenn.Code Ann. §§ 4-18-101, *et seq.*  
Tenn.Code Ann. §§ 71-5-181, *et seq.*  
Tenn.Code Ann. § 71-5-2601

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31 U.S.C. §§ 3801-3812  
31 U.S.C. §§ 3729-3733