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| Policy Title:   | Federal and State False Claims Act   |
| Policy Number:  | 100-14   |
| Effective Date:   | 8/1/2019   |
| Revised Date(s):  | 1/13/2022  |
| Regulation Reference<br>(if applicable):  | Federal False Claims Act, 31 USC §§ 3729 -3733, Program Fraud Civil Remedies Act, 31 USC §§ 3801-3812 (PFCRA), New York State False Claims Act 31 USC § 3730(h), New York State Finance Law § 191, New York State Finance Law §§ 187-194, Article 13; NYS Labor Law § 740, 741 |
| Reviewed/Approved By:   |  |
| <br><hr/> Michael Rulfes, Executive Director |  |
| _____ 2/15/22<br>Date   |  |

**I. Policy**

It is the policy of Crouse Medical Practice (CMP) to adhere to all applicable state and federal laws and regulations concerning the submission of claims to state and federal health care programs. Such laws include, without limitation, the Federal False Claims Act and the New York State False Claims Act.

**II. Purpose**

The purpose of this policy is to i) ensure that CMP employees, staff and other persons covered by this policy are provided with sufficient information concerning New York State and Federal False Claims Acts as required by CMP Corporate Compliance Program and the Deficit Reduction Act of 2005; ii) ensure that employee, staff and other persons covered by this policy are made aware of the importance of complying with state and federal false claims acts and the penalties for non-compliance with such laws; and iii) to encourage the reporting of instances of non-compliance and/or violations of any law, rule, or regulation in good faith or based on reasonable belief without fear or concerns of retaliation.

**III. Scope**

This policy applies to all CMP employees and staff and to contractors, subcontractors and agents who, on behalf of CMP, furnish, or authorize the furnishing of, Medicaid health care items or services, perform billing or coding functions, or are involved in the monitoring of health care provided by CMP.

**IV. Procedure**

- A. The Compliance Officer ("CO") or his/her designee, shall ensure that employees and staff are provided detailed information concerning relevant fraud and abuse laws, including the state and federal false claims acts described above, in accordance with CMP *Compliance Education and Training Policy*.
- B. The CO, or his/her designee, shall ensure that CMP contractors, subcontractors and agents who are covered by this policy are provided access to detailed information concerning relevant fraud and abuse laws, including the state and federal false claims acts described above (such access may be via the Internet).

- C. The CO, or his/her designee, shall ensure that audits are conducted on a periodic, regular basis, to verify the accuracy of CMP claims submission processes and reimbursement practices.
  - 1. Such audits will be conducted in accordance with CMP Corporate Compliance Program. Refer to CMP Corporate Compliance policy: *Auditing, Detecting, Preventing Fraud, Waste, and Abuse*
  - 2. The results of such audits will be reported to the Corporate Compliance Committee.
- D. Employees, staff and other persons covered by this policy should report questions, concerns, and/or suspected violations of CMP policies and procedures and applicable laws to the CO or to the applicable department's supervisor or manager. For further information, refer to CMP Corporate Compliance policy #100-05 *Reporting Issues and Non-retaliation policy*.

V. **Definitions**

- **Description of Federal and State False Claims Acts 31 USC §§ 3729-3733; Penalties & Remedies**
  - A. A person (or entity) may be in violation of the Federal False Claims Act, if such person:
    - 1. Knowingly presents, or causes to be presented, to the United States Government, a false or fraudulent claim for payment or approval;
    - 2. Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
    - 3. Conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;
    - 4. Has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
    - 5. 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;
    - 6. 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 the property; or
    - 7. Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government.
  - B. **The NYS False Claims Act, NYS Finance Law §§ 187-194**, is very similar to the Federal False Claims Act. It prohibits the filing of a false claim which means that a person:
    - 1. Knowingly presents, or causes to be presented, to any employee, office or agent of the state or a local government, a false or fraudulent claim for payment or approval
    - 2. Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the state or a local government;
    - 3. Conspires to defraud the state or a local government by getting a false or fraudulent claim allowed or paid;
    - 4. Has possession, custody, or control of property or money used, or to be used, by the State or a local government and, intending to defraud the state or a local government or willfully to conceal the property or money, delivers, or causes to be delivered, less property or money than the amount for which the person receives a certificate or receipt;

5. Is authorized to make or deliver a document certifying receipt of property used or to be used by the state or a local government and, intending to defraud the state or a local government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
  6. Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state or a local government knowing that the officer or employee lawfully may not sell or pledge the property; or
  7. Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state or a local government.
- C. Any person who engages in any of the above conduct may have violated the Federal and/or New York State false claims acts and may be liable for monetary penalties and damages, and/or criminal penalties, depending on the circumstances surrounding the false claim(s).
- D. **Qui Tam Lawsuits.** The Federal False Claims Act and the New York State False Claims Act also provide for qui tam lawsuits through which any person (the “qui tam relator”) may bring a civil action for himself/herself and on behalf of the government for any violation of the False Claims Act. If the qui tam relator ultimately wins the lawsuit or if there is a settlement of the lawsuit, he or she may share in a portion of any money recovered with the government and receive reimbursement for reasonable expenses, reasonable attorneys’ fees and costs. Please note recovery by the qui tam relator is uncertain and dependent upon the facts and circumstances of the case.
- E. **Employment Protections/Non-Retaliation under the False Claims Acts 31 USC § 3730(h).**
1. State and Federal false claims acts forbid retaliation by an employer against an employee who cooperates with investigators regarding potential false claims act violations or who commences qui tam actions in good faith. In accordance with such laws and its Corporate Compliance Program, Crouse Medical Practice fully complies with all applicable “whistle-blower” protections.
  2. The Federal False Claims Act specifically provides that any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employer or others in furtherance of an action under the False Claims Act, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under the False Claims Act, shall be entitled to all relief necessary to make the employee whole. Such relief may include reinstatement with the same seniority status the employee would have enjoyed but for the discrimination; two times the amount of back pay; interest on back pay; and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees. The New York State False Claims Act has similar non-retaliation protections.
- F. **New York State Finance Law § 191.**
- Any current or former employee, contractor, or agent of any private or public employer who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment, or otherwise harmed or penalized by an employer, or a prospective employer, because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action brought under this article or other efforts to stop one or more violations of this article, shall be entitled to all relief necessary to make the employee, contractor or agent whole. Such relief shall include but not be limited to:

- (a) An injunction to restrain continued discrimination;
- (b) Hiring, contracting or reinstatement to the position such person would have had but for the discrimination or to an equivalent position;
- (c) Reinstatement of full fringe benefits and seniority rights;
- (d) Payment of two times back pay, plus interest; and
- (e) Compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

For purposes of this section, a "lawful act" shall include, but not be limited to, obtaining or transmitting to the state, a local government, a qui tam plaintiff, or private counsel solely employed to investigate, potentially file, or file a cause of action under this article, documents, data, correspondence, electronic mail, or any other information, even though such act may violate a contract, employment term, or duty owed to the employer or contractor, so long as the possession and transmission of such documents are for the sole purpose of furthering efforts to stop one or more violations of this article. Nothing in this subdivision shall be interpreted to prevent any law enforcement authority from bringing a civil or criminal action against any person for violating any provision of law.

- G. **Program Fraud Civil Remedies Act, 31 USC §§ 3801-3812 (PFCRA).** PFCRA provides for administrative remedies against any person who knowingly makes a claim or statement that the person knows or has reason to know is false, fictitious or fraudulent. The presence of a false claim is not required: a false statement is enough to trigger remedies under PFCRA.
- **New York Labor Laws Prohibiting Retaliatory Actions. Two Laws prohibiting employer retaliation against employees are addressed below. The first is Labor Law § 740 and applies to employers in general. The second is Labor Law § 741, and is specific to health care providers.**

**Labor Law § 740.** This law prohibits retaliatory action by an employer against an employee who discloses or who threatens to disclose, to a supervisor or to a public body, an activity, policy or practice of the employer that the employee reasonably believes to be in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety.

"Employee" means an individual who performs services for and under the control and direction of an employer for wages or other remuneration, including former employees, or natural persons employed as independent contractors to carry out work in furtherance of an employer's business enterprise who are not themselves employers.

1. The protection against retaliatory personnel action provided above pertaining to disclosure to a public body only applies where the employee has first made a good faith effort to notify his or her employer by bringing the activity, policy or practice believed to be in violation of law, rule or regulation to the attention of a supervisor of the employer and has afforded such employer a reasonable opportunity to correct such activity, policy or practice.

Such employer notification shall not be required where: (a) there is an imminent and serious danger to the public health or safety; (b) the employee reasonably believes that reporting to the



supervisor would result in a destruction of evidence or other concealment of the activity, policy or practice; (c) such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor; (d) the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or (e) the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct such activity, policy or practice.

2. Labor Law § 740 also prohibits an employer from taking retaliatory action against an employee who provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such activity, policy, or practices by such employer. In addition, an employer may not take retaliatory action against an employee who objects to, or refuses to participate in any such activity, policy or practice.

3. For purposes of Labor Law §740, "retaliatory action" means an adverse action taken by an employer or his or her agent to discharge, threaten, penalize, or in any other manner discriminate against any employee or former employee exercising his or her rights under this section, including (i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms of conditions of employment including but not limited to discharge, suspension, or demotion; (ii) actions or threats to take such actions that would adversely impact a former employee's current or future employment; or (iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, to a federal, state, or local agency.

4. An employee who has been the subject of a retaliatory action in violation of Labor Law § 740 may commence a civil court action within two years after the alleged retaliatory action was taken. The court may order relief as follows:

- a. an injunction to restrain the employer's continued violation;
- b. the reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position, or front pay in lieu thereof;
- c. the reinstatement of full fringe benefits and seniority rights;
- d. compensation for lost wages, benefits, and other remuneration;
- e. payment by the employer of reasonable costs, disbursements, and attorney's fees;
- f. a civil penalty of an amount not to exceed ten thousand dollars; and/or
- g. the payment by the employer of punitive damages, if the violation was willful, malicious or wanton.

5. Labor Law § 740 does not diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective bargaining agreement or employment contract.

Employer relief. A court, in its discretion, may also order that reasonable attorneys' fees and court costs and disbursements be awarded to an employer if the court determines that an action brought by an employee under this section was without basis in law or in fact.

**B. Labor Law § 741.** This law prohibits retaliatory action by *certain health care* employers against health care employee who discloses or who threatens to disclose, to a supervisor or to a public body, an activity, policy or practice of the employer or employer's agent that the employee, in good faith reasonably believes constitutes improper quality of patient care. Labor Law § 741 also prohibits retaliatory action by such employer if the employee objects to, or refuses to participate in any activity, policy or practice of the employer that the employee, in good faith, reasonably believe constitutes improper quality of patient care.

1. Protection against retaliatory action does not apply unless the employee has first notified the employer of the improper quality of patient care and has afforded the employer a reasonable opportunity to correct such activity, policy or practice. However, such notice is not required if there is an imminent threat to public health or safety or to the health of a specific patient and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

2. For purposes of Labor Law § 741, "retaliatory action" means the discharge, suspension, demotion, penalization or discrimination against an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

3. Under Labor Law § 741, an employee has two years from the date of the alleged retaliatory action to commence a lawsuit. In addition to the remedies that may be available to the employee a court may assess a fine up to \$10,000 against the employer if the court finds that the employer acted in bad faith. These fines are not paid to the employee, but will be deposited into a state-wide fund to improve patient care.

#### **Description of Detecting and Preventing Fraud Waste and Abuse**

A. CMP ensures that employees, staff and other persons covered by this policy are familiar with CMP's efforts to detect and prevent health care fraud, waste and abuse as required by CMP's Code of Conduct, Corporate Compliance Program and the Deficit Reduction Act of 2005; ii) assist employees, staff and other persons covered by this Policy in recognizing instances of potential fraud, abuse and waste; and iii) encourage the reporting of potential fraud, waste and abuse involving CMP in good faith or whenever the individual reasonably believes CMP is in violation of a law, rule, or regulation.

B. Please refer to CMP policy: *Auditing, Detecting, Preventing Fraud, Waste, and Abuse*.