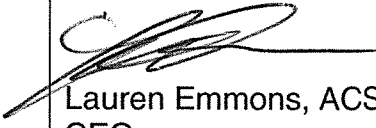


<b>CHAPTER</b> Administrative	<b>CHAPTER</b> 01	<b>SECTION</b> 002	<b>SUBJECT</b> 25
<b>SECTION</b> Operations		<b>DESCRIPTION</b> Fraud	
<b>WRITTEN BY</b> Michael K. Vizena, M.B.A. Executive Director	<b>REVISED BY</b> Michelle Gould-Rice, LMSW Quality Improvement Supervisor	<b>AUTHORIZED BY</b>  Lauren Emmons, ACSW CEO	

**APPLICATION:**

<input checked="" type="checkbox"/> CMH Staff	<input type="checkbox"/> Board Members	<input type="checkbox"/> Provider Network	<input checked="" type="checkbox"/> Employment Services Providers
<input type="checkbox"/> Employment Services Provider Agencies	<input type="checkbox"/> Independent Contractors	<input type="checkbox"/> Students	<input type="checkbox"/> Interns
<input type="checkbox"/> Volunteers	<input type="checkbox"/> Persons Served		

**POLICY:**

Lapeer County Community Mental Health (LCCMH) reserves its inherent right and responsibility to discharge an employee, contract provider, or agent who has violated the federal False Claims Act and/or the Michigan Health Care False Claims Act against or on behalf of the Agency. It is the goal to prevent waste, fraud, and abuse. It is the right of all personnel to be protected as whistleblowers and LCCMH enforces a strict policy to prohibit retaliation in any form against individuals reporting suspected violations

**STANDARDS:**

- A. The Federal False Claims Act and Michigan Medicaid False Claims Act are statutes covering fraud, waste, or abuses involving any federally funded contract or program, and establish criminal and civil liability when any covered person or entity knowingly presents or causes to be presented a false or fraudulent claim, improperly receives reimbursement from or avoids payments to the Federal Government. The False Claims provisions include the following:

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1. Prohibit fraud in the obtaining of benefits or payments in connection with the program;
  2. Prohibit conspiracies in obtaining benefits or payments;
  3. Authorize the attorney general to investigate alleged violations of this act;
  4. Provide for civil actions to recover money received by reason of fraudulent conduct;
  5. Prohibit retaliation;
  6. Provide for certain civil fines;
  7. Prescribe remedies and penalties.
- B. "Whistle Blower" Provisions allow any person with actual knowledge of allegedly false claims to the government to file a lawsuit on behalf of the U.S. Government. Such persons are referred to as relators. Whistle Blower Provisions include the following:
1. Provide protection to employees who report a violation or suspected violation of state, local, or federal law;
  2. It provides protection to employees who participate in hearings, investigations, legislative inquiries, or court actions;
  3. Prescribes awards, remedies and penalties. The procedure and liabilities for the provision may be found in Exhibit A and Exhibit B.
- C. To prevent waste, fraud or abuse, it will be the responsibility of all personnel to report a suspected fraudulent act as indicated by the provisions of the Corporate Compliance Program Policy and as prescribed by Federal or State Law as referenced in Exhibit A and Exhibit B.

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- D. Routine annual program audits and claims verifications are prescribed in the QAPIP and provide a tool for the detection of fraud, waste, and abuse. These issues are evaluated and/or investigated by the Corporate Compliance Liaison.
- E. All personnel who commit a fraudulent act shall be disciplined and /or terminated in accordance to agency personnel policies and procedures.

**PROCEDURES:**

- A. Staff will report suspected fraud to the agency Corporate Compliance Liaison.
- B. The Corporate Compliance Liaison will document the circumstances and facts related to the suspected fraudulent act and initiate and investigation.
  - 1. The Corporate Compliance Liaison will notify the Chief Executive Officer (CEO) a complaint has been filed and an investigation will be initiated.
  - 2. When the investigation is completed, a report will be forwarded to the CEO.
  - 3. A copy of all information obtained regarding the act shall be maintained by the Corporate Compliance Liaison in accordance with record retention guidelines.
  - 4. Employees who commit a fraudulent act will be disciplined in accordance with LCCMH policies and procedures as revised. Fraudulent acts committed by contract staff will result in contract termination.

**DEFINITION:**

A fraudulent act may be defined as the intentional perversion of truth, or the act of intentional deception or misrepresentation. Examples of fraud in the workplace may include but are not limited to:

- 1. falsification of personnel records, records of persons served, or other records or reports;
- 2. misrepresentation of information for the benefit of the employee or contract provider;

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3. falsification of billing information.

**EXHIBITS**

Deficit Reduction Act Requirements, False Claims Act, Whistle Blowers Provisions and Summary

Michigan Medicaid False Claims Act, Whistle Blowers, Provisions, and Summary

**REFERENCES**

Region 10 PIHP Fraud Policy #01.02.02

mgr

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This Policy supersedes #03/11017  
#05/03013 dated 05/08/2003.  
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## Deficit Reduction Act Requirements, Federal False Claims Act, Whistleblowers Provisions, and Summary

Implementing DRA Section 6032: False Claims Acts Information, which is effective **January 1, 2007**.

Section 6032 of the Federal Deficit Reduction Act of 2005 ("DRA") requires entities that make or receive annual Medicaid payments of \$5 million or more to provide in written policies applicable to employees, contracts and agents **detailed information about the False Claims Act and any state laws that pertain to civil or criminal penalties for making false claims and statements, and the whistleblower protection under such laws, including the role of such laws in preventing and detecting fraud, waste and abuse in federal health care programs.** The policies must also include detailed information about the entity's policies and procedures for detecting and preventing fraud, waste and abuse. Finally, the employee handbook for the entity must include a specific discussion of the laws, the rights of employees to be protected as whistleblowers and the entity's compliance policies.

### THE FEDERAL FALSE CLAIMS ACT - Executive Summary

The Federal False Claims Act ("FCA") helps the federal government combat fraud and to recover losses resulting from fraud in federal programs, purchases, or contracts. 31 U.S.C. §§ 3729-3733.

#### Liability and Damages/Statute of Limitations

- Actions that violate the FCA include: (1) submitting a false claim for payment, (2) making or using a false record or statement to obtain payment for a false claim, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the U.S. Government (the "Government").
- The FCA imposes penalties of \$5,500 to \$11,000 per claim plus three times the amount of damages to the Government for FCA violations.
- Lawsuits must be filed by the later of either: (1) three years after the violation was discovered by the federal official responsible for investigating violations (but no more than ten years after the violation was committed), or (2) six years after the violation was committed.

#### Private or Qui Tam Actions/Whistleblower Provisions

- An individual (or qui tam plaintiff) can sue for violations of the FCA. Individuals who report fraud generally receive between 15 and 25 percent of the total amount recovered (plus reasonable costs and attorney fees) if the Government prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the qui tam plaintiff litigates the case on his or her own.
- An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The FCA contains important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination are entitled to all relief necessary to be made whole, including two times their back pay plus interest, reinstatement at the seniority level they would have had except for the discrimination, and compensation for any costs or damages they have incurred.

**Federal False Claims Act § 3729 Summary of Key Provisions:****Liability § 3729(a)**

The following actions constitute FCA violations:

- Knowingly submitting (or causing to be submitted) a false claim to the Government or the Armed Forces of the United States (the "Armed Forces") for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved by the Government;
- Conspiring to get a false claim allowed or paid by the Government;
- Delivering (or causing to be delivered) less property than the amount of the receipt, where the person with possession or control of the Government money or property intends to deceive the agency or conceal the property;
- Making or delivering a receipt without completely knowing that the receipt is true, where the person authorized to make or deliver the receipt intends to defraud the Government;
- Knowingly buying or receiving (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 has no legal right to sell or pledge the property; or
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to the Government.

A person may be liable for:

- A civil penalty \$5,500 to \$11,000 for each false claim;
- Three times the amount of damages that the Government sustains because of the violations; and
- The costs of a civil suit for recovery penalties or damages.

The court may reduce the treble damages if:

- The person committing the violation voluntarily disclosed all information known to him or her to the U.S. officials responsible for investigating false claims violations within thirty days of obtaining the information;
- The person fully cooperated with any Government investigation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person's disclosure, and the person had no actual knowledge of an investigation into such violation.

**Exclusion § 3729(e)**

The FCA does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

**Definitions § 3729, § 3733****Knowing and Knowingly § 3729(b)**

"Knowing" and "Knowingly" means a person:

- 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, and no proof of specific intent to defraud is required.

Claim § 3729(c)

“Claim” includes any request or demand for money or property (including those made under contract) to the Government or to a contractor, grantee, or other recipient, if any portion of the requested money or property is funded by or will be reimbursed by the Government.

**Civil Actions for False Claims § 3730**

Responsibilities of the Attorney General § 3730(a)

The Attorney General is required to investigate false claim violations and is authorized to file civil suits for false claims violations.

Actions by Private Persons or Qui Tam Plaintiffs § 3730(b)

An individual also has the right to file a civil suit for him or herself and for the Government. The suit must be filed in the name of the Government. The suit is filed and served on the Government. The suit and all information are filed under seal, and most remain under seal for at least sixty days. The suit may be dismissed only if the court and the Attorney General consent to the dismissal in writing.

If a qui tam plaintiff alleges a false claims violation, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the Government. Once the action is filed, no person other than the Government is allowed to intervene or file a lawsuit based on the same facts.

Rights of the Parties to Qui tam Actions § 3730(c)

If the Government decides to file a civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the qui tam plaintiff. However, the qui tam plaintiff has the right to continue as a party to the action, subject to certain limitations.

If the Government decides not to file a civil suit, the qui tam plaintiff still has the right to proceed with a lawsuit. The Government can intervene later upon a showing of good cause.

Award to Qui tam Plaintiff § 3730(d)

If the Government prosecutes a case initiated by a qui tam plaintiff and obtains an award or settlement, the qui tam plaintiff will receive between 15 and 25 percent of the recovery, depending on his or her contribution to the case. If the case is based primarily on information other than the disclosures of the qui tam plaintiff, the award cannot be more than 10 percent of the recovery.

If the Government decides not to intervene and the qui tam plaintiff successfully litigates the action, he or she will receive between 25 and 30 percent of the award or settlement. In either case, the court will award the qui tam plaintiff reasonable expenses and attorney’s fees and costs.

If the court finds that the qui tam plaintiff planned and initiated the violation upon which the civil suit was based, it may reduce the share of the recovery that the person would otherwise

receive. If the qui tam plaintiff is convicted of criminal conduct, he or she will be dismissed from the lawsuit and will not receive any monetary award.

If the court finds the defendant not guilty and the claim frivolous in a suit conducted by a qui tam plaintiff, the court may award the defendant reasonable costs and attorney fees.

#### Certain Actions Barred § 3730(e)

An individual cannot bring a qui tam action against a member of Congress, a member of the judiciary, or a senior executive branch official based on evidence already known to the Government.

An individual cannot bring a qui tam suit based on allegations in a civil suit or an administrative proceeding in which the Government is already a party.

An individual cannot bring a qui tam action based on the public disclosure of allegations unless he or she is the original source (e.g., an individual with direct and independent knowledge of the information on which the allegations are based who has voluntarily provided the information to the Government before filing a civil action). Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in a congressional, administrative, or GAO report, hearing, audit, or investigation; or from the news media.

#### Government Not Liable for Certain Expenses § 3730(f)

The Government is not liable for expenses incurred by a qui tam plaintiff in conducting a civil action for false claims violations.

#### Whistleblower Protection § 3730(h)

An employee who has been discharged, demoted, suspended, threatened, harassed, or in any way discriminated against by his or her employer because of involvement in a false claims disclosure is entitled to all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had but for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained because of the discrimination (including litigation costs and reasonable attorney's fees).

The protected false claims activities include investigation for, initiation of, testimony for, or assistance in a false claims action that has been or will be filed. An employee is entitled to bring an action in the district court for such relief.

#### Federal False Claims Procedure § 3731

##### Statute of Limitations § 3731(b)

A civil suit must be brought within the later of either: (1) three years of the date that the violation is known or should have been known by the federal official responsible for investigating the action but no more than ten years after the violation occurred; or (2) six years after the violation was committed.



**Burden of Proof § 3731(c)**

The Government or qui tam plaintiff must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

## Michigan Medicaid False Claims Act, Whistleblowers, Provisions, and Summary

### The Michigan Medicaid False Claims Act - Executive Summary

**The Michigan Medicaid False Claims Act (“MMFCA”)** is a state law that is designed to prevent fraud, kickbacks, and conspiracies in connection with the Medical Assistance Program. Mich. Comp. Laws Ann. §§ 400.601-400.613.

#### Liability and Damages/Statute of Limitations

- Actions that violate the MMFCA include: (1) knowingly making (or causing to be made) a false statement in an application for benefits or for use in determining Medicaid eligibility; (2) concealing or failing to disclose an event in order to obtain a benefit greater than that to which the person is otherwise entitled; and (3) conspiring to defraud the state by obtaining (or seeking to obtain) payment of a false claim. Violations are punishable by civil and criminal penalties.
- Violation of the MMFCA constitutes a felony punishable by four years or less in prison, or a fine of \$50,000 or less, or both. A person who receives a benefit to which he or she is not entitled, by reason of fraud; makes a fraudulent statement; or knowingly conceals a material fact is liable to the state for a civil penalty equal to the full amount received plus triple damages.

#### Qui Tam Actions/Whistleblower Protections

- An individual (or qui tam plaintiff) can sue for violations of the MMFCA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the government prosecutes the case and between 25 and 30 percent if the qui tam plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The MMFCA contains important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement in their position without loss of seniority, and (3) compensation for any costs or damages they have incurred.

### Michigan Medicaid False Claims §§ 400.603-400.607    **\*\*Summary of Key Provisions**

#### Liability

Under § 400.603, it is a violation to:

- Knowingly make (or cause to be made) a false statement in an application for benefits or for use in determining Medicaid eligibility; or
- Conceal or fail to disclose an event in order to obtain a benefit greater than that to which the person is otherwise entitled

Violation constitutes a felony punishable by four years or less in prison, or a fine of \$50,000 or less, or both.

Under § 400.604, it is a violation to solicit, offer, or receive a kickback in connection with furnishing goods or services for Medicaid. Violation constitutes a felony punishable by four years or less in prison, or a fine of \$30,000 or less, or both.

Under § 400.605, it is a violation to knowingly make or induce false statements with respect to the conditions of operation in order to obtain certification as a hospital, skilled nursing facility, intermediate care facility, or home health agency. Violation constitutes a felony punishable by four years or less in prison, or a fine of \$30,000 or less, or both.

Under § 400.606, it is a violation to conspire to defraud the state by obtaining (or seeking to obtain) payment of a false claim. Violation constitutes a felony punishable by four years or less in prison, or a fine of \$50,000 or less, or both.

Under § 400.607, it is a violation to:

- Knowingly make or present (or cause to be made or presented) to the state a false claim; or
- Knowingly make or present (or cause to be made or presented) to the state a claim that falsely represents the medical necessity of the goods or services.

Violation constitutes a felony punishable by four years or less in prison, or a fine of \$50,000 or less, or both.

If a person is convicted three or more times for an offense under this Act and subsequently convicted of another offense under this Act, he or she may be sentenced to imprisonment for not more than ten years.

#### Civil Penalties § 400.612

A person who receives a benefit to which he or she is not entitled, by reason of fraud; makes a fraudulent statement; or knowingly conceals a material fact shall be liable to the state for a civil penalty equal to the full amount received plus triple damages.

#### Definitions § 400.602

Knowing and Knowingly "Knowing" and "Knowingly" means a person is aware or should be aware that his or her conduct is substantially certain to cause the payment of a Medicaid benefit. Knowing or knowingly does not include errors or mistakes, unless the person's course of conduct indicates a persistent tendency to cause inaccuracies.

#### *Claim*

"Claim" means an attempt to cause the department of social services to pay out money under the social welfare act, §§ 400.1-400.121.

#### *False*

"False" means wholly or partially deceptive or untrue.

#### *Benefit*

"Benefit" means the receipt of money, goods, or anything of monetary value.

## Person

"Person" means an individual, corporation, association, partnership, or other legal entity.

## Responsibilities of the Attorney General § 400.610

The Attorney General may investigate alleged violations of this Act.

### Civil Actions §400.610(a)

#### Actions by Private Persons

An individual (or qui tam plaintiff) also has the right to file a civil suit to recover losses to the state. A suit filed under the MMFCA will be dismissed unless the Attorney General is notified and has an opportunity to oppose the dismissal.

If the Attorney General decides to intervene in the suit, he or she assumes responsibility for prosecuting the action and is not bound by the acts of the qui tam plaintiff. However, the qui tam plaintiff has the right to continue as a party to the action, subject to certain limitations. If the Attorney General decides not to intervene, the qui tam plaintiff still has the right to proceed with a lawsuit. The Attorney General can intervene later upon a showing of good cause and without affecting the rights or status of the qui tam plaintiff. Once the action is filed, no one other than the Attorney General is allowed to intervene or file a lawsuit based on the same facts.

#### Award to Qui Tam Plaintiff

If the Attorney General prosecutes a case initiated by a qui tam plaintiff and obtains an award or settlement, the qui tam plaintiff will receive between 15 and 25 percent of the recovery. If the case is based primarily on public information other than the disclosures of the qui tam plaintiff, the courts cannot award him or her more than 10 percent of the recovery. Public disclosures include information in a civil, criminal, or administrative hearing in a state or federal department or agency; a legislative report, hearing, audit, or investigation; or the news media.

If the Attorney General decides not to intervene and the qui tam plaintiff successfully litigates the action, he or she will receive between 25 and 30 percent of the award or settlement. If the court finds that the qui tam plaintiff actively participated in the fraudulent activity upon which the civil suit was based, it may reduce his or her share of the recovery to any amount it considers appropriate. A person convicted of criminal conduct under this Act is not entitled to any share of the proceeds.

If the court finds that the action brought by the qui tam plaintiff was frivolous, the court must award the defendant reasonable attorney fees and expenses and impose a civil fine of not more than \$10,000.

#### Certain Actions Barred

A qui tam plaintiff cannot file a suit based on allegations in a civil suit, criminal investigation or proceeding, or an administrative investigation or proceeding in which the state or federal government is already a party.

A qui tam plaintiff cannot bring an action based on the public disclosure of allegations unless he or she is the original source, e.g. an individual with direct and independent knowledge of the information on which the allegations are based who has voluntarily provided the information to the

Attorney General before filing a civil action. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in a state or federal legislative, investigative, or administrative report, hearing, audit, or investigation; or from the news media.

The state and attorney general are not liable for any expenses, costs, or attorney fees that a person incurs in bringing an action under this section.

#### Whistleblower Protection § 400.610(c)

**Employer Interference with Employee Disclosures** Employers are prohibited from discharging, demoting, suspending, threatening, harassing, denying promotion to, or in any other manner discriminating against an employee because of his or her involvement in a false claims action. This prohibition does not apply to an employee who: (1) the court finds brought a frivolous claim, (2) planned, initiated, or participated in the conduct upon which the action is based, or (3) is convicted of criminal conduct arising from a violation of this Act.

#### **Liability of Employer**

An employer who interferes with an employee's disclosure of false claims will be liable to the employee for all relief necessary to make the employee whole, including:

- Reinstatement to the employee's position without loss of seniority;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained as a result of the discrimination.

The protected false claims activities include initiating, participating in, or assisting in a court action, or cooperating in or assisting with an investigation.