

Oregon

Company must ensure that all employees and any contractors or agents, are educated regarding the federal and state false claims statutes and the role of such laws in preventing and detecting fraud, waste and abuse in federal health care programs.

FALSE CLAIMS LAWS

One of the primary purposes of false claims laws is to combat fraud and abuse in government health care programs. False claims laws do this by making it possible for the government to bring civil actions to recover damages and penalties when healthcare providers submit false claims. These laws often permit qui tam suits as well, which are lawsuits brought by lay people, typically employees or former employees of healthcare facilities that submit false claims. There is a federal False Claims Act. The State of Oregon has similarly adopted a False Claims Act and generally applicable Medicaid antifraud regulations, both of which are intended to prevent the submission of false and fraudulent claims to the Oregon Medicaid program.

FEDERAL FALSE CLAIMS LAWS

Under the federal False Claims Act, any person or entity that knowingly submits a false or fraudulent claim for payment of United States Government funds is liable for significant penalties and fines. The fines include a penalty of up to three times the Government's damages, civil penalties ranging from \$5,500 to \$11,000 per false claim, and the costs of the civil action against the entity that submitted the false claims. Generally, the federal False Claims Act applies to any federally funded program. The federal False Claims Act applies, for example, to claims submitted by healthcare providers to Medicare or Medicaid.

One of the unique aspects of the federal False Claims Act is the "qui tam" provision, commonly referred to as the "whistleblower" provision. This provision allows a private person with knowledge of a false claim to bring a civil action on behalf of the United States Government to recover the funds paid by the Government as a result of the false claims. If the suit is ultimately successful, the whistleblower who initially brought the suit may be awarded a percentage of the funds recovered. In addition, the United States Government may elect to join the qui tam suit. In this case, if the suit is successful, the percentage of the funds awarded to the whistleblower is lower because the Government will take over the expenses of the suit. However, regardless of whether the Government participates in the lawsuit, the court may reduce the whistleblower's share of the proceeds if the court finds that the whistleblower planned and initiated the false claims violation. Further, if the whistleblower is convicted of criminal conduct related to his role in the false claims, the whistleblower will be dismissed from the civil action without receiving any portion of the proceeds.

The federal False Claims Act also contains a provision that protects a whistleblower from retaliation by his employer. This applies to any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in his employment as a result of the employee's lawful acts in furtherance of a false claims action. The whistleblower may bring an action in the appropriate federal district court and 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 as a result of the discrimination, such as litigation costs and reasonable attorney's fees.

A similar federal law is the Program Fraud Civil Remedies Act of 1986 (the "PFCRA"). It provides administrative remedies for knowingly submitting false claims and statements. A false claim or statement includes submitting a claim or making a written statement that is for services that were not provided, or that asserts a material fact that is false, or that omits a material fact. A violation of the PFCRA results in a maximum civil penalty of \$5,000 per claim plus an assessment of up to twice the amount of each claim.

OREGON FALSE CLAIMS STATUTE

Oregon's False Claims Act (the "OFCA") is similar to the federal False Claims Act and prohibits any person

Oregon

or entity from submitting a false or fraudulent claim to any public agency, including Oregon's Medicaid program. The OFCA makes it unlawful for any person or entity to commit any of the following acts: (1) knowingly present or cause to be presented a fraudulent claim for payment or approval; (2) knowingly use a false record or make a false statement in connection with presenting a claim; and (3) fail to disclose a false claim that benefits the claimant within a reasonable time after discovering the false claim. Violations of the OFCA shall result in liability to the State for the costs of a civil action brought to recover any penalties or damages under the OFCA and a civil penalty of not less than \$10,000 or twice the amount of damages incurred for each violation. This liability may be reduced if the person committing the violation substantially cooperates with the Attorney General's investigation and produces all information known about the violation within thirty (30) days after discovering the falsity of the violator's claim. See Or. Rev. Stat. §§ 180.755, 760.

Unlike the federal False Claims Act, the OFCA does not permit qui tam or whistleblower suits. Only the Attorney General or a district attorney may bring a civil action under the OFCA. The Attorney General may file a civil action up three (3) years after discovering the violation, but in no event more than ten (10) years after the date on which the violation is committed. See Or. Rev. Stat. § 180.765.

ADDITIONAL OREGON ANTIFRAUD LAWS

Medicaid Antifraud Statutes

Oregon's Medicaid program statutes prohibit any person submitting a fraudulent claim for payment with respect to the Medicaid program. A person found to have violated this prohibition is liable to the State for three times the amount of damages incurred by the State. The Department of Human Services and the Oregon Health Authority each may prosecute civil actions to recover these damages. See Or. Rev. Stat. §§ 411.675, 690.

Additionally, in Oregon it is a crime to knowingly make a false claim with respect to a health care payment or to knowingly conceal or fail to disclose a material fact with the intent to obtain a health care payment. The Attorney General or appropriate district attorney may commence criminal prosecution against a person that violates this statute. See Or. Rev. Stat. §§ 165.690 - 698

Whistleblower Protections

Oregon prohibits an employer from retaliating against an employee or agent of the employer that lawfully discloses information regarding a violation of any state or federal law. Retaliation includes discharging, demoting, suspending, or in any way discriminating against an employee because the employee has reported information regarding potential violations. An employee that has been retaliated against may file a civil action for equitable relief, including reinstatement, back pay, compensatory damages, punitive damages, litigation costs and reasonable attorney's fees. See Or. Rev. Stat. §§ 695A.199, 885.

REPORTING CONCERNS REGARDING FRAUD, ABUSE AND FALSE CLAIMS

The Company takes issues regarding false claims and fraud and abuse seriously. The Company encourages all employees, management, and contractors or agents of the Company's affiliated facilities to be aware of the laws regarding fraud and abuse and false claims and to identify and resolve any issues immediately. Issues are resolved fastest and most effectively when given prompt attention at the local level. The Company, therefore, encourages its affiliated facilities' employees, managers, and contractors to report concerns to their immediate supervisor when appropriate. If the supervisor is not deemed to be the appropriate contact or if the supervisor fails to respond quickly and appropriately to the concern, then the individual with the concern should be encouraged to discuss the situation with the facility's human resources manager, the facility's ECO, another member of management, or with the Company's Ethics Hotline (1-866-384-4276).

Oregon

Employees, including management, and any contractors or agents of Company-affiliated facilities should be aware of related facility policies regarding detection and prevention of health care fraud and abuse. Information about our policies regarding the detection and prevention of fraud and abuse can be accessed on the Company website at www.capellahealthcare.com and by employees using our internal policy management tool and shared network drives. In particular, all such employees and contractors should be aware of the contents of the Capella “Code of Conduct” and related policies and procedures.

PROCEDURE:

Facility responsibilities include, but are not limited to:

- Ensuring that all employees, including management, and any contractors or agents of the facility, are provided with this policy.
- Ensuring that the facility’s employee handbook, if one exists, incorporates this policy.
- Making revisions to this policy as necessary to comply with changes in the law.

REFERENCES:

- Or. Rev. Stat. §§ 180.755, 760, 765
- Or. Rev. Stat. §§ 695A.199, 885
- Or. Rev. Stat. §§ 165.690 - 698
- Or. Rev. Stat. §§ 411.675, 690
- 31 U.S.C. §§ 3801-3812
- 31 U.S.C. §§ 3729-3733
- Deficit Reduction Act of 2005, Sections 6031, 6032