Chapter: Leadership/Governance
Initiating Department: Risk Management / Compliance
Effective Date: May 1, 2009
Review Date:
Revision Date:
Policy Title: Deficit Reduction Act (DRA) of 2005

POLICY STATEMENT: Northfield Hospital and Clinics (NHC), to comply with Section 6032 of the Deficit Reduction Act of 2005, provides the information detailed in the ‘Background/General Information’ section of this policy to all employees (including management), medical staff and contractors.

PROCEDURE:

1. Training/Education

   NHC provides:
   • Training for all new employees, and annual training to all employees regarding:
     o its compliance program, including the obligation of all employees to promptly report any suspected compliance issues; and
     o the contents of this policy;
   • Training for members of the Board of Directors;
   • A copy of this policy to contractors at the time the hospital enters into the contract; and
   • A copy of this policy to medical staff during the credentialing process.

2. Penalties / Discipline

   Employees who have violated the Compliance Plan or its associated policies shall be disciplined according to the Human Resources policies Rules Regarding Employee Conduct and Discipline, and Disciplinary Action. Contractors and agents who violate NHC’s Compliance Plan may be subject to revocation of their contract.

BACKGROUND / GENERAL INFORMATION:


   The purpose of the FCA is to discourage and prevent fraud, waste, and abuse.

   Under the Federal FCA, a person or entity who:
   • knowingly files a false or fraudulent claim for payments to Medicare, Medicaid or other federally funded health care program;
   • knowingly uses a false record or statement to obtain payment on a false or fraudulent claim from Medicare, Medicaid or other federally funded health care program; or
• conspires to defraud Medicare, Medicaid or other federally funded health care program by attempting to have a false or fraudulent claim paid.

“Knowingly” means:

• having actual knowledge that the information on the claim is false;
• acting in deliberate ignorance of whether the claim is true or false; or
• acting in reckless disregard of whether the claim is true or false.

A person or entity found liable under the False Claims Act is, generally, subject to civil money penalties of between $5,500 and $11,000 per claim plus three times the amount of damages that the government sustained because of the illegal act. In health care cases, the amount of damages sustained is the amount paid for each claim that is filed that is determined to be false.

Anyone may bring a *qui tam* action under the False Claims Act in the name of the United States. The case is initiated by filing the complaint and all available material evidence under seal with a federal court. The complaint remains under seal for at least 60 days and will not be served on the defendant. During this time, the government investigates the complaint. The government may, and often does, obtain additional investigation time by showing good cause. After expiration of the review and investigation period, the government may elect to pursue the case in its own name or decide not to pursue the case. If the government decides not to pursue the case, the person who filed the action has the right to continue with the case on his or her own.

If the government proceeds with the case, the person who filed the action will receive between 15% and 25% of any recovery, depending upon the contribution of that person to the prosecution of the case. If the government does not proceed with the case, the person who filed the action will be entitled to between 25% and 30% of any recovery, plus reasonable expenses and attorneys’ fees and costs.


The Program Fraud and Civil Remedies Act (PFCRA) creates administrative remedies for making false claims and false statements. These penalties are separate from and in addition to any liability that may be imposed under the False Claims Act.

The PFCRA imposes liability on people or entities that file a claim that they know or have reason to know:

• is false, fictitious, or fraudulent;
• includes or is supported by any written statement that contains false, fictitious, or fraudulent information;
• includes or is supported by a written statement that omits a material fact, which causes the statement to be false, fictitious, or fraudulent, and the person or entity submitting the statement has a duty to include the omitted fact; or
• is for payment for property or services not provided as claimed.
A violation of this section of the PFCRA is punishable by a $5,000 civil penalty for each wrongfully filed claim, plus an assessment of twice the amount of any unlawful claim that has been paid.

In addition, a person or entity violates the PFCRA if they submit a written statement that they know or should know:

- asserts a material fact that is false, fictitious or fraudulent, or;
- omits a material fact that they had a duty to include, the omission caused the statement to be false, fictitious, or fraudulent, and the statement contained a certification of accuracy.

A violation of this section of the PFCRA carries a civil penalty of up to $4,000 in addition to any other remedy allowed under other laws.

3. **State False Claims Law (Minnesota Statutes Sections 256B.064 and 609.466)**

The Minnesota Commissioner of Human Services may sanction any provider participating in the Medicaid program in Minnesota for:

- fraud, abuse, or theft in connection with the Medicaid program;
- a pattern of false or duplicate claims or claims for services not medically necessary; or
- a pattern of making false statements for purposes of obtaining higher reimbursement.

Anyone who presents a claim for reimbursement relating to the payment of medical assistance funds with the intent to defraud the Department of Human Services is guilty of an attempt to commit theft of public funds.

A violation of these laws carries penalties including recovery of money improperly paid, including interest and investigative costs, and suspension of participation in the Medicaid program.

4. **Anti-Retaliation**

The False Claims Act includes protections for people who file *qui tam* lawsuits, as described above. The False Claims Act states that any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful actions taken in furtherance of a *qui tam* action is entitled to recover damages. He or she is entitled to “all relief necessary to make the employee whole,” including reinstatement with the same seniority status, twice the amount of back pay (plus interest), and compensation for any other damages the employee suffered as a result of the discrimination. The employee also can be awarded litigations costs and reasonable attorneys’ fees.

Under Minnesota statute 181.932, Minnesota law prohibits an employer from discharging, disciplining, threatening, otherwise discriminating against, or penalizing an employee
regarding the employee’s compensation, terms, conditions, location, or privileges of employment because the employee:

- reports a violation or suspected violation of any federal or state law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official; and
- refuses an employer’s order to perform an action that the employee has an objective basis in fact to believe violates any state or federal law or rule or regulation adopted pursuant to law, and the employee informs the employer that the order is being refused for that reason.

In addition, NHC’s Compliance Plan contains an anti-retaliation provision that prohibits any reprisals or punishment for good faith reporting of suspected violations of laws or NHC policies.

5. NHC’s Policies and Procedures for Detecting and Preventing Fraud

NHC’s Compliance Plan and associated policies contain detailed information about NHC’s plans for detecting and preventing fraud. The Compliance Plan and associated policies can be found in the organization-wide online policy bank. If questions or concerns arise about the Compliance Plan, efforts to detect or prevent fraud, or NHC practices, the question or concern should be addressed to any member of the Compliance Committee.

REFERENCES / SUPPORTING DOCUMENTS:
- Deficit Reduction Act of 2005
- Minnesota False Claims Act – Minnesota Statutes Section 256B.064
- Minnesota Whistleblower Protection Law – Minnesota Statutes Section 181.932
- NHC Compliance Plan and associated policies
- NHC policy Rules Regarding Employee Conduct and Discipline
- NHC policy Disciplinary Action

REVIEW FREQUENCY: Annually.