

RIVERSPRING HEALTH PLANS

Policy and Procedure

Appendix A

DEFICIT REDUCTION ACT OF 2005, § 6032

EDUCATION REQUIREMENTS

REGARDING FALSE CLAIMS AND WHISTLEBLOWER PROTECTIONS

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I. PURPOSE

As required by the Federal Deficit Reduction Act of 2005 and in conformity with the policy of RiverSpring Health Holding Corp., RiverSpring shall provide to its personnel, including employees, consultants and other workers, contractors and other agents, information about the Federal False Claims Act, administrative remedies under 31 U.S.C. § 3801 et seq., applicable New York State (NYS) laws pertaining to false claims and statements, and whistleblower protections under such laws (collectively, "False Claims Acts"). The False Claims Acts assist the Federal and State governments in preventing and detecting fraud, waste and abuse in federally and state funded health care programs. Attached to this policy is a summary of the False Claims Acts.

II. POLICY

Overview. RiverSpring shall comply with all applicable provisions of the False Claims Acts and regulations. RiverSpring has policies and programs to prevent and detect fraud, waste and abuse as set forth in our Code of Conduct, Compliance Manual, Fraud and Abuse Prevention Plan, and protocols. In furtherance of this policy and to comply with the Deficit Reduction Act, RiverSpring shall disseminate this policy and the attached summary to its personnel, contractors and other agents.

Reporting. Any personnel who reasonably suspects or is aware of the preparation or submission of a false claim or statement, or any other potential fraud, waste, or abuse related to a federally or state funded health care program, is required to report such information, either orally or in writing, to his/her supervisor and the RiverSpring Compliance Officer. RiverSpring is committed to thoroughly investigating any suspicions of fraud, waste or abuse in a timely manner, and requires its personnel to assist in such investigations. Any personnel who believes that RiverSpring is not responding to a report within a reasonable period of time has the right to bring these concerns to the RiverSpring Compliance Officer. Failure to report, disclose or assist in an investigation is a breach of personnel duties and may result in disciplinary action up to and including termination.

Confidentiality. Reports of a false claim, statement or any other fraud, waste or abuse may be made anonymously. Personnel may also use the confidential compliance "Helpline" to report concerns.

Non-Retaliation. Acts of retaliation, intimidation or other reprisals against personnel who in good faith reports possible unethical or illegal conduct or participated in an investigation is strictly prohibited and are in violation of the Code of Conduct. If any personnel feel that he or she is being retaliated against, that individual should contact the compliance officer immediately. RiverSpring retains the right to take appropriate disciplinary action against personnel who intentionally and maliciously make a false report or false accusation, or who has participated in a violation of Federal or State law or RiverSpring policy.

**RIVERSPRING HEALTH PLANS
FALSE CLAIMS ACTS SUMMARY**

FEDERAL

FEDERAL FALSE CLAIMS ACT (FCA), 31 U.S.C. §§ 3729-3733 (FCA)

FCA Imposes liability on persons and companies who defraud government programs. Includes a “qui tam” provision that allow individuals to file actions on behalf of the government (“whistleblower” provisions).

FRAUD ENFORCEMENT AND RECOVERY ACT OF 2009 (FERA)

FERA expands the scope of potential FCA liability, expands the statute of limitations, strengthens the government’s means to combat fraud, reduces procedural hurdles to litigate alleged FCA violations, and strengthens whistleblower protections.

PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010 (PPACA)

PPACA continues the expansion of FCA, gives the government new enforcement tools, defines reporting and repayment deadlines for overpayments, mandates compliance programs for certain health care providers, and enhances criminal and administrative penalties for noncompliance.

DEFINITIONS

“Knowing” and “Knowingly”:

- (A) mean that a person, with respect to information
 - (i) has actual knowledge of the information;
 - (ii) acts in deliberate ignorance of the truth or falsity of the information; or
 - (iii) acts in reckless disregard of the truth or falsity of the information; and
- (B) requires no proof of specific intent to defraud.

Note: The FCA does not require that the person has actual knowledge that the claim is false; a person who acts in reckless disregard or deliberate ignorance of the truth or falsity of the information may be found liable.

“Claim”:

- (A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that
 - (i) is presented to an officer, employee, or agent of the United States; or
 - (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government’s behalf or to advance a Government program or interest, and if the United States Government
 - (I) provides or has provided any portion of the money or property which is requested or demanded; or
 - (II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.
- (B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual’s use of the money or property.

“Obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from retention of any over-payment.

“Material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

**RIVERSPRING HEALTH PLANS
FALSE CLAIMS ACTS SUMMARY**

UNLAWFUL ACTS	<p>Any person who commits any of the following will be liable to the United States Government for a civil penalty:</p> <p>(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;</p> <p>(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;</p> <p>(C) conspires to commit a violation (herein described);</p> <p>(D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;</p> <p>(E) is 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;</p> <p>(F) 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 property; or</p> <p>(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government.</p>
EXAMPLES	<ul style="list-style-type: none"> ▪ A provider submits a bill to Medicare/Medicaid for services not provided. ▪ A physician creates backdated records to support a claim already submitted. ▪ An individual who submits records that s/he knows or should know is false to obtain payment from the government. ▪ "Reverse false claim" – a plan that obtains payments from Medicaid throughout the year and files a false cost report to avoid making a refund.
ENFORCEMENT & PENALTIES	<p>A person who commits an unlawful act will be liable to the United States government for civil penalties of not less than \$10,957 and not more than \$21,916, adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus three (3) times the amount of damages which the Government sustains because of the act of that person.</p> <p><u>Reduced damages:</u> The court may assess not less than 2 times the amount of said damages if the court finds that:</p> <p>(A) the person committing the violation...furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;</p> <p>(B) such person fully cooperated with any Government investigation of such violation; and</p> <p>(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.</p> <p><u>Qui Tam Actions by Private Persons:</u></p> <p>Private parties may bring an action on behalf of the United States. If the Government intervenes in the qui tam action, the private party shall receive at least 15% but not more than 25% of the proceeds of the action; if the Government does not intervene, the private party shall receive at least 25% and not more than 30%.</p>

**RIVERSPRING HEALTH PLANS
FALSE CLAIMS ACTS SUMMARY**

PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA), 31 U.S.C. §§ 3801-3812

PFCRA allows for administrative recoveries by federal authorities and agencies. Note: Unlike the FCA, a violation under the PFCRA occurs when a false claim or statement is submitted, not when the claim is paid. The determination of falsity and the imposition of penalties are made by the federal authority or agency, not the federal courts.

UNLAWFUL ACTS

False Claims: A civil penalty of not more than \$10,957 may be imposed upon any person who makes, presents, or submits, or causes to be submitted, a claim that the person knows or has reason to know:

- (A) Is false, fictitious, or fraudulent;
- (B) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;
- (C) Includes or is supported by any written statement that omits a material fact; is false, fictitious, or fraudulent as a result of such omission; and is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or
- (D) Is for payment for the provision of property or services which the person has not provided as claimed.

False Statements: A civil penalty of not more than \$10,957 may be imposed on any person who makes, presents, or submits, or causes to be made, presented or submitted, a written statement that the person knows or has reason to know:

- (A) Asserts a material fact which is false, fictitious, or fraudulent; or
- (B) Omits a material fact; and
- (C) Is false, fictitious, or fraudulent as a result of such omission.

**RIVERSPRING HEALTH PLANS
FALSE CLAIMS ACTS SUMMARY**

NEW YORK STATE

New York Civil Laws

NEW YORK FALSE CLAIMS ACT, State Finance Law §§ 187-194

The New York False Claims Act (NY FCA) is similar to the federal FCA. It imposes liability for treble damages and penalties on persons and entities that present false claims for payment to the state or local governments, and encourages private parties or whistleblowers to report false claims and file qui tam actions by incentivizing such actions with 15%-30% of any recovery plus attorneys' fees.

NEW YORK FRAUD ENFORCEMENT AND RECOVERY ACT 2010 (NY FERA)

NY FERA amends the NY FCA, expands liability, expands the statute of limitations and relaxes procedural hurdles. Many of the amendments follow the federal FERA.

NEW YORK SOCIAL SERVICES LAW § 145-b

It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any social services program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device. The State or local social services district may recover three (3) times the amount incorrectly paid, and the Department of Health may impose a civil penalty of up to \$10,000, per violation. If repeat violations occur within five years or violations involve more serious violations of Medicaid rules, a penalty of up to \$30,000 may be imposed..

NEW YORK SOCIAL SERVICES LAW § 145-c

Any person who applies for or receives public assistance by intentionally making a false or misleading statement, or intentionally concealing or withholding facts, then the person's needs or that of the person's family, will not be taken into account for six months for a first offense, twelve months for a second offense or wrongful receipt of benefits from \$1,000 to \$3,900, eighteen months for a third offense or wrongful receipt of benefits in excess of \$3,900, and five years for any subsequent offenses.

New York Criminal Laws

NEW YORK SOCIAL SERVICES LAW § 145 – Penalties

Any person, who by means of a false statement, deliberate concealment or other fraud obtains, attempts to obtain or aids any person to obtain public assistance, is guilty of a misdemeanor.

NEW YORK SOCIAL SERVICES LAW § 366-b – Penalties For Fraudulent Practices

Any person who knowingly makes a false statement, or by deliberate concealment or other fraud, obtains, attempts to obtain or aids any person to obtain public assistance, including Medicaid, to which that person is not entitled, is guilty of a Class A misdemeanor.

Any person who, with intent to defraud, presents for payment any false or fraudulent claim for furnishing services, knowingly submits false information in order to obtain greater Medicaid compensation, or knowingly submits false information in order to obtain authorization to provide items or services, is guilty of a Class A misdemeanor.

NEW YORK PENAL LAW ARTICLE 155 – Larceny

Any person who, with intent to deprive another of property, wrongfully takes, obtains, or withholds such property by trick, embezzlement, false pretense, false promise, including a scheme to defraud, is guilty of larceny. Larceny applies to Medicaid fraud. Larceny includes petit larceny (Class A misdemeanor) and grand larceny in varying degrees, ranging from Class B felony to Class E felony.

**RIVERSPRING HEALTH PLANS
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NEW YORK PENAL LAW ARTICLE 175 – False Written Statements

Falsifying business records or filing false information or claims have been applied to Medicaid fraud prosecutions. These offenses range from Class A misdemeanor to Class D or E felony.

NEW YORK PENAL LAW ARTICLE 176 – Insurance Fraud

This law applies to fraudulent claims for insurance payment, including Medicaid or other health insurance. Insurance fraud range may be a Class A misdemeanor or a felony ranging from a Class B felony to a Class E felony.

NEW YORK PENAL LAW ARTICLE 177 – Health Care Fraud

This law applies to fraudulent claims for payment from a health plan, including Medicaid. Health care fraud may be a class A misdemeanor or range from a Class E felony to a Class B felony.

**RIVERSPRING HEALTH PLANS
FALSE CLAIMS ACTS SUMMARY**

WHISTLEBLOWER PROTECTIONS	
FEDERAL	<p><i>FEDERAL FALSE CLAIMS ACT (FCA), 31 U.S.C. § 3730(h)</i> The FCA protects any employee, contractor, or agent who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of their lawful acts in furtherance of efforts to stop violations of the FCA. Remedies include reinstatement with the same seniority status, two (2) times the amount of back pay plus interest, compensation for any special damages sustained as a result of the discrimination, reasonable attorneys' fees and costs.</p> <p><i>FRAUD ENFORCEMENT AND RECOVERY ACT OF 2009 (FERA)</i> FERA expands FCA liability to indirect recipients of government funds and improper retention of overpayments, extends protection to contractors and agents, and expands the statute of limitations.</p>
NEW YORK STATE	<p><i>NEW YORK FALSE CLAIMS ACT, State Finance Law §§ 187-194</i> NY FCA offers protection similar to the federal FCA to any employee of any private or public employer who is discriminated against by an employer because of his or her lawful acts in furtherance of efforts to stop violations of the FCA.</p> <p><i>FRAUD ENFORCEMENT AND RECOVERY ACT 2010 (NY FERA)</i> NY FERA extends protection to any current or former employee, contractor or agent, including independent contractors and consultants, expands the statute of limitations, and eases procedural hurdles.</p> <p><i>NEW YORK LABOR LAW § 740</i> An employer may not retaliate against an employee for disclosing or threatening to disclose to a regulatory, law enforcement or other public official information about the employer's policies, practices or activities that is in violation of law, or presents a substantial and specific danger to public health or safety, or constitutes health care fraud. The protection shall only apply if the employee has first brought up the matter with a supervisor and afforded the employer a reasonable opportunity to correct the alleged violation.</p> <p><i>NEW YORK LABOR LAW § 741</i> A health care employer may not retaliate against an employee for disclosing or threatening to disclose to a supervisor or public body an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care. The protection shall only apply if the employee has first brought up the matter with a supervisor and afforded the employer a reasonable opportunity to correct the alleged violation, except where there is imminent threat to a patient or to public health or safety.</p> <p>Under both Sections, an employee may file suit against the employer for retaliatory action, and relief that may be granted include reinstatement to the same position with full benefits and seniority rights, lost wages, benefits, attorneys' fees and costs. The court may impose a civil penalty up to \$10,000 on an employer in a finding of bad faith.</p>