FACILITY: St. Camillus Health and Rehabilitation Center

SUBJECT: Deficit Reduction Act of 2005

POLICY: As a health care provider that receives more than $5 million annually from the Medicaid program, St. Camillus shall maintain policies and procedures for preventing and detecting fraud, waste and abuse in federal health care programs, and shall disseminate those policies to all employees, and to contractors and agents who 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 St. Camillus. The policies and procedures address the following:

- The federal False Claims Act (FCA);
- The New York State False Claims Act;
- The specific statutory and regulatory provisions named in the Deficit Reduction Act of 2005 (section 1902(a)(68)(A) of the Social Security Act);
- Any other applicable state civil or criminal laws and state and federal whistleblower protections; and
- Information regarding St. Camillus' policies and procedures for detecting and preventing waste, fraud, and abuse.

The employee handbook shall also contain a specific discussion of the laws referenced in this policy, the rights of employees to be protected as whistleblowers, and a specific discussion of St. Camillus' policies and procedures for detecting and preventing fraud, waste, and abuse.

PURPOSE: The federal Deficit Reduction Act of 2005 (DRA) instituted a requirement for health care entities which receive or make $5 million or more in Medicaid payments during a federal fiscal year to establish written policies and procedures for preventing and detecting fraud, waste and abuse in federal health care programs. The DRA also requires such entities to inform their employees and certain contractors and agents about federal and state false claims acts and whistleblower protections. A summary of the pertinent federal and state statutes, as published by the New York State Office of the Medicaid Inspector General, is attached following the "Procedure" section of this policy, and is specifically incorporated into the policy.

PROCEDURE:

Corporate Compliance Program

1. Responsible Party – Board of Trustees; Senior Management

Action – St. Camillus' Corporate Compliance Program implements policies and procedures for preventing and detecting fraud, waste and abuse in federal health care programs. Policy #10-3000-01 gives an overview of the Corporate Compliance Program while a number of other policies cover specific areas in greater detail.

2. Responsible Party – All employees; all vendors, contractors, subcontractors, and other agents who furnish, or otherwise authorize the furnishing of, Medicaid health care items or services, or perform billing or coding functions, or are involved in monitoring of health care provided by St. Camillus (collectively, "Employees and Covered Agents")

Action – In relation to all work performed for St. Camillus, employees and Covered Agents are required to comply with all applicable federal, state and local laws and regulations, both civil and criminal, including but not limited to: the Federal False Claims Act; all applicable regulations governing participation in the Medicare and Medicaid program; federal and state anti-kickback laws; and all federal and state laws that relate to detection and prevention of fraud, waste, and abuse in federal health care programs.

3. Responsible Party – Employees and Covered Agents; Corporate Compliance Officer (CCO); Corporate Compliance Committee

Action – Noncompliance Reporting Protocol (policy #10-3000-04) is maintained so that any person aware of, or who suspects, any violations of the law, Code of Conduct, or St. Camillus policies shall promptly report such knowledge or suspicion to an official of St. Camillus. All such reports are promptly forwarded to the Corporate Compliance Officer or a member of the Corporate Compliance Committee.

4. Responsible Party – Employees and Covered Agents; CCO; HIPAA Privacy Officer; senior managers

Action – An employee shall ordinarily report known or suspected noncompliance to his or her direct supervisor. If an employee feels that the direct supervisor is involved in a suspected violation, or if the employee prefers an alternative reporting route, he or she may use any of the other established options for reporting, including the anonymous hotline. Reports by Employees and Covered Agents may be made to the following:

a. Any senior manager
b. Corporate Compliance Officer (315) 703-0709
c. HIPAA Privacy Officer (315) 703-0709
d. Compliance Hotline (315) 703-0777

5. Responsible Party – CCO; Human Resources

Action – St. Camillus will not permit any reprisals or disciplinary action to be taken against anyone for good faith reporting of suspected noncompliance. An employee's self-reporting of his or her own suspected noncompliance will be taken into consideration as a mitigating factor when considering disciplinary action.

6. Responsible Party – Senior managers; Department managers

Action – Specific policies are maintained by the various departments that deal with training of staff, medical record documentation, and compliance.

Education for Employees and Covered Agents

7. Responsible Party – Human Resources; CCO

Action – The St. Camillus employee handbook contains a specific discussion of the laws referenced at the end of this policy, the rights of employees to be protected as whistleblowers, and a discussion of St. Camillus' policies and procedures for detecting and preventing fraud, waste, and abuse.

8. Responsible Party – Human Resources

Action – All employees are provided a copy of the employee handbook and this policy regarding the Deficit Reduction Act of 2005 (#10-3000-05) upon their initial employment by St. Camillus.

9. Responsible Party – All employees; Human Resources

Action – All employees must sign an acknowledgement of having received the employee handbook and of his/her agreement to be bound by the policies and procedures contained therein. Execution of this acknowledgement shall be a condition of employment or appointment to any position with St. Camillus, and the acknowledgement shall be re-executed upon request.

10. Responsible Party – CCO or designee

Action – During the initial Corporate Compliance training, new staff are informed of the DRA Policy (#10-3000-05) which is posted on the St. Camillus website (www.st-camillus.org) and included in the Compliance Program Policies. Employees are informed that they required to access and review the DRA Policy, and to seek out the Human Resource staff or Compliance Officer if they have any related questions and/or would like a printed copy of the organization's DRA Policy.

11. Responsible Party – All employees; Human Resources; Staff Education

Action – All employees are required to attend a facility-wide annual reorientation on a variety of topics. Included in this reorientation are the corporate compliance program and the Code of Conduct.

12. Responsible Party – CCO; Finance staff or their designees

Action – This policy is disseminated to all vendors, contractors, subcontractors, and other agents who furnish, or otherwise authorize the furnishing of, Medicaid health care items or services; perform billing or coding functions; or are involved in monitoring of health care provided by St. Camillus. This dissemination is completed via sending the DRA Cover Letter (10-3000-05-L1) to all such Covered Agents which notifies them of the existence and location of the DRA policy. As specified in the letter, all such Covered Agents are required to adopt and abide by this policy in relation to all work performed for St. Camillus; train their

employees who are involved in performing work for St. Camillus to comply with applicable laws; and make this policy available to those employees.

13. Responsible Party – CCO; President; VP Of Finance

Action – Will verify that the annual "Certification Statement for Provider Billing Medicaid" is completed to certify that the organization has adopted and maintains an effective Medicaid compliance program that includes all elements required by N.Y. Social Services Law (SSL) 363-d. This form should be received as part of the annual certification packet from the NYSDOH approximately 45-60 days prior to the organization's Medicaid enrollment anniversary date. The DRA compliance certification requirements are incorporated in the SSL 363-d compliance certification, and there is no current requirement for a separate DRA certification.

Summary of Federal and State Regulations
The statutory summary below, published by the New York State Office of the Medicaid Inspector General, is an integral part of this policy.

FEDERAL & NEW YORK STATUTES RELATING TO FILING FALSE CLAIMS

I. FEDERAL LAWS

1) Federal False Claims Act (31 USC §§3729-3733)

II. NEW YORK STATE LAWS

A. CIVIL AND ADMINISTRATIVE LAWS

1) New York False Claims Act (State Finance Law §§187-194)
2) Social Services Law, Section 145-b – False Statements
3) Social Services Law, Section 145-c – Sanctions

B.CRIMINAL LAWS

1) Social Services Law, Section 145 – Penalties
2) Social Services Law, Section 366-b – Penalties for Fraudulent Practices
3) Social Services Law, Section 145-c – Sanctions
4) Penal Law Article 175 – False Written Statements
5) Penal Law Article 176 – Insurance Fraud
6) Penal Law Article 177 – Health Care Fraud

III. WHISTLEBLOWER PROTECTION

1) Federal False Claims Act (31 U.S.C. §§3730(h))
2) New York State False Claim Act (State Finance Law §191)
3) New York State Labor Law, Section 740
4) New York State Labor Law, Section 741

I. FEDERAL LAWS

1) False Claims Act (31 USC §§3729-3733)

The False Claims Act ("FCA") provides, in pertinent part, as follows:

§3729. False claims

(a) Liability for Certain Acts—

2) In general. Subject to paragraph (2), any person who—

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

(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;

(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;

(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

(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, is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461) note; Public Law 104-410, plus 3 times the amount of damages which the Government sustains because of the act of that person.

(2) Reduced damages. If the court finds that—

(A) the person committing the violation of this subsection 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;

(B) such person fully cooperated with any Government investigation of such violation; and

(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, the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

(3) Costs of civil actions. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Definitions. For purposes of this section—

(1) the terms "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) require no proof of specific intent to defraud

(2) the term "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 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; and

(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;

(3) the term "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 the retention of any overpayment; and

(4) the term “material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(c) Exemption from disclosure. Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) Exclusion. This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

While the False Claims Act imposes liability only when the claimant acts “knowingly,” it does not require that the person submitting the claim have actual knowledge that the claim is false. A person who acts in reckless disregard or in deliberate ignorance of the truth or falsity of the information, also can be found liable under the Act. 31 U.S.C. 3729(b).

In sum, the False Claims Act imposes liability on any person who submits a claim to the federal government, or submits a claim to entities administering government funds, that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The False Claims Act also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. An example of this may include a government contractor who submits records that he knows (or should know) are false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to which he may not be entitled, and then uses false statements or records in order to retain the money. An example of this so-called “reverse false claim” may include a hospital which obtains interim payments from Medicare or Medicaid throughout the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare or Medicaid program.

In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States. 31 U.S.C. 3730 (b). These private parties, known as “qui tam relators,” may share in a percentage of the proceeds from an FCA action or settlement.

Section 3730(d)(1) of the FCA provides, with some exceptions, that a qui tam relator, when the Government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(d)(2) provides that the relator shall receive an amount that the court decides is reasonable and shall be not less than 25 percent and not more than 30 percent.

Administrative Remedies for False Claims (31 USC Chapter 38. §§ 3801 – 3812)

This statute allows for administrative recoveries by federal agencies. If a person submits a claim that the person knows is false or contains false information, or omits material information, then the agency receiving the claim may impose a penalty of up to $5,000 for each claim. The agency may also recover twice the amount of the claim.

Unlike the False Claims Act, a violation of this law occurs when a false claim is submitted, not when it is paid. Also unlike the False Claims Act, the determination of whether a claim is false, and the imposition of fines and penalties is made by the administrative agency, not by prosecution in the federal court system.

II. NEW YORK STATE LAWS

New York State False Claim Laws fall under the jurisdiction of both New York s civil and administrative laws as well as its criminal laws. Some apply to recipient false claims and some apply to provider false claims. The majority of these statutes are specific to healthcare or Medicaid. Yet some of the “common law” crimes apply to areas of interaction with the government and so are applicable to health care fraud and will be listed in this section.

A. CIVIL AND ADMINISTRATIVE LAWS

1) NY False Claims Act (State Finance Law §§187-194)

The New York False Claims Act is similar to the Federal False Claims Act. It imposes penalties and fines upon individuals and entities who knowingly file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. It also has a provision regarding reverse false claims similar to the federal FCA such that a person or entity will be liable in those instances in which the person obtains money from a state or local government to which he may not be entitled, and then uses false statements or records in order to retain the money.

The penalty for filing a false claim is six to twelve thousand dollars per claim plus three times the amount of the damages which the state or local government sustains because of the act of that person. In addition, a person who violates this act is liable for costs, including attorneys fees, of a civil action brought to recover any such penalty.

The Act allows private individuals to file lawsuits in state court, just as if they were state or local government parties, subject to various possible limitations imposed by the NYS Attorney General or a local government. If the suit eventually concludes with payments back to the government, the person who started the case can recover twenty-five to thirty percent of the proceeds if the government did not participate in the suit, or fifteen to twenty-five percent if the government did participate in the suit.

2) Social Services Law §145-b – False Statements

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 the local Social Services district may recover three times the amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of up to ten thousand dollars per violation. If repeat violations occur within five years, a penalty of up to thirty thousand dollars per violation may be imposed if the repeat violations involve more serious violations of Medicaid rules, billing for services not rendered, or providing excessive services.

3) Social Services Law §145-c – Sanctions

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the needs of the individual or that of his family shall not be taken into account for the purpose of determining his or her needs or that of his family for six months if a first offense, for twelve months if a second offense (or if benefits wrongfully received are at least one thousand dollars but not more than three thousand nine hundred dollars), for eighteen months if a third offense (or if benefits wrongfully received are in excess of three thousand nine hundred dollars), and five years for any subsequent occasion of any such offense.

B. CRIMINAL LAWS

1) Social Services Law §145 – Penalties

Any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor.

2) Social Services Law § 366-b – Penalties for Fraudulent Practices

a. Any person who obtains or attempts to obtain, for himself or others, medical assistance by means of a false statement, concealment of material facts, impersonation or other fraudulent means is guilty of a class A misdemeanor.

b. Any person who, with intent to defraud, presents for payment a false or fraudulent claim for furnishing services, knowingly submits false information 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.

3) Penal Law Article 155 – Larceny

The crime of larceny applies to a person who, with intent to deprive another of his property, obtains, takes or withholds the property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior. This statute has been applied to Medicaid fraud cases.

a. Fourth degree grand larceny involves property valued over $1,000. It is a class E felony.

b. Third degree grand larceny involves property valued over $3,000. It is a class D felony.

c. Second degree grand larceny involves property valued over $50,000. It is a class C felony.

d. First degree grand larceny involves property valued over $1 million. It is a class B felony.

4) Penal Law Article 175 – False Written Statements

Four crimes in this Article relate to filing false information or claims and have been applied in Medicaid fraud prosecutions:

a. §175.05 – Falsifying business records involves entering false information, omitting material information or altering an enterprise s business records with the intent to defraud. It is a class A misdemeanor.

b. §175.10 – Falsifying business records in the first degree includes the elements of the §175.05 offense and includes the intent to commit another crime or conceal its commission. It is a class E felony.

c. §175.30 – Offering a false instrument for filing in the second degree involves presenting a written instrument, including a claim for payment, to a public office knowing that it contains false information. It is a class A misdemeanor.

d. §175.35 – Offering a false instrument for filing in the first degree includes the elements of the second degree offense and must include an intent to defraud the state or a political subdivision. It is a class E felony.

5) Penal Law Article 176 – Insurance Fraud

This law applies to claims for insurance payments, including Medicaid or other health insurance, and contains six crimes:

a. Insurance Fraud in the 5th degree involves intentionally filing a health insurance claim knowing that it is false. It is a class A misdemeanor.

b. Insurance fraud in the 4th degree is filing a false insurance claim for over $1,000. It is a class E felony.

c. Insurance fraud in the 3rd degree is filing a false insurance claim for over $3,000. It is a class D felony.

d. Insurance fraud in the 2nd degree is filing a false insurance claim for over $50,000. It is a class C felony.

e. Insurance fraud in the 1st degree is filing a false insurance claim for over $1 million. It is a class B felony.

f. Aggravated insurance fraud is committing insurance fraud more than once. It is a class D felony.

6) Penal Law Article 177 – Health Care Fraud

Applies to claims for health insurance payment, including Medicaid, and contains five crimes:

a. Health care fraud in the 5th degree is knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions. It is a Class A misdemeanor.

b. Health cam fraud in the 4th degree is filing false claims and annually receiving over $3,000 in aggregate. It is a Class E felony.

c. Health care fraud in the 3rd degree is filing false claims and annually receiving over $10,000 in the aggregate. It is a Class D felony.

d. Health care fraud in the 2nd degree is filing false claims and annually receiving over $50,000 in the aggregate. It is a Class C felony.

e. Health care fraud in the 1st degree is filing false claims and annually receiving over $1 million in the aggregate. It is a Class B felony.

III. WHISTLEBLOWER PROTECTION

1) Federal False Claims Act (31 U.S.C. §3730(h))

The Federal False Claims Act provides protection to qui tam relators (individuals who commence a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. 31 U.S.C. 3730(h). Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys fees.

2) New York State False Claim Act (State Finance Law §191)

The New York State False Claim Act also provides protection to qui tam relators (individuals who commence a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the Act. Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any

special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys fees.

3) New York State Labor Law, Section 740

An employer may not take any retaliatory action against an employee if the employee discloses information about the employer s policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that the employer is in violation of a law that creates a substantial and specific danger to the public health and safety or which constitutes health care fraud under Penal Law §177 (knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions). The employee s disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys fees. If the employer is a health provider and the court finds that the employer s retaliatory action was in bad faith, it may impose a civil penalty of $10,000 on the employer.

4) New York State Labor Law, Section 741

A health care employer may not take any retaliatory action against an employee if the employee discloses certain information about the employers policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that, in good faith, the employee believes constitute improper quality of patient care. The employee s disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation, unless the danger is imminent to the public or patient and the employee believes in good faith that reporting to a supervisor would not result in corrective action. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys fees. If the employer is a health provider and the court finds that the employers retaliatory action was in bad faith, it may impose a civil penalty of $10,000 on the employer.

Cross References to Statutes: Deficit Reduction Act of 2005, § 6032 [42 U.S.C. 1396a(68)]
http://www.omig.ny.gov/images/stories/relevant_fca_statutes_122209.pdf
SSL 363-d revisions adopted as part of the 2021-21 NYS Budget