

Upper Peninsula Health Plan
Policy & Procedure

Index #:	104-028	Effective:	01/01/07
Subject:	State and Federal False Claims Act, Whistleblower Protections	Revised:	05/18/11; 12/30/15
Authorized By:	_____	Date:	_____ Title: CEO

Purpose

The purpose of this policy is to comply with certain requirements set forth in the Deficit Reduction Act of 2005 with regard to federal and state false claims laws, satisfy contractual requirements found in the Michigan Department of Health and Human Services (MDHHS) contract and comply with 42 C.F.R. §§ 422.503(b)(4)(vi)(A), 423.504(b)(4)(vi)(A).

Definitions

“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.

Policy

It is the policy of Upper Peninsula Health Plan (UPHP) to comply with applicable federal and state laws and to meet high standards of business and professional ethics. To further this policy, UPHP provides the following information about its policies and procedures and the role of certain federal and state laws in preventing and detecting fraud, waste, and abuse in federal health care programs.

I. Summary of Federal and State Laws

The following is a summary of the Federal False Claims Act, the Program Fraud Civil Remedies Act, and Michigan’s Medicaid Fraud Statute, and their role in preventing and detecting fraud waste, and abuse in federal health care programs.

A. Federal False Claims Laws:

1. False Claims Act; 31 U.S.C. §§ 3729 – 3733

The federal False Claims Act imposes liability on any 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.

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.

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

2. Program Fraud Civil Remedies Act; 31 U.S.C. §§ 3801 – 3812

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 \$5,000 in addition to any other remedy allowed under other laws.

B. State False Claims Laws:

1. Medicaid Fraud Statute, Mich. Comp. Laws Ann. §§ 400.601 et seq.

The state Medicaid fraud statute prohibits any person from:

- Knowingly and willfully making or causing to be made a false statement or misrepresentation of a material fact in a claim for Medicaid benefits or payments.
- Knowingly and willfully making or causing to be made a false statement or misrepresentation of a material fact for use in determining rights to Medicaid benefits or payments.
- Having knowledge of an act affecting the initial or continued right to Medicaid benefits or payments or the initial, or continued right to Medicaid benefits or payments of any other individual on whose behalf someone has applied for or is receiving the benefits or payments, concealing or failing to disclose such event with an intent to fraudulently secure Medicaid benefits or payments whether in a greater amount or quantity than is due or when no benefit or payment is authorized.
- Making a claim for Medicaid benefits or payments for the use or benefit of another, and after receiving the benefit or payment, knowingly and willfully converting it or any part of it to a use other than for the use and benefit of the intended person.

Anyone found guilty of the above may be imprisoned for up to six years, and fined not more than \$25,000, plus civil damages up to 3 times the amount of excess payments.

II. UPHP's Policies and Procedures for Detecting and Preventing Fraud

UPHP is committed to conducting business activities in an ethical and forthright manner and within the letter and spirit of all applicable laws and regulations. The Corporate Compliance Program encompasses a Code of Business Conduct and certain policies and procedures related to UPHP's business. Collectively, the Code, and the Corporate Compliance Policies and Procedures are designed to promote ethical behavior and compliance with all applicable laws and regulations.

III. Non-Retaliation Protections

A. UPHP Protections.

UPHP requires that all employees who believe someone may be violating the law, the Code, or any of the Compliance Policies or Procedures must report it immediately to the Chief Compliance Officer or to another UPHP Management person (e.g., Human Resources Manager,

Chief Executive Officer, or the individual's Department Chair or Supervisor).

- Compliance Officer: (906)- 225-7749
- UPHP Toll-free Line: (888) 904-7526

The UPHP Intranet site includes information on Compliance policies. Reasonable precautions will be taken to maintain the confidentiality of anyone who reports violations even if it turns out that no violation has occurred. No one may punish or seek reprisal against another individual who has conscientiously made a report in good faith. Good faith simply means that the individual honestly had a reasonable belief that there may have been a compliance violation or the individual was not sure but was honestly questioning whether a compliance violation did or would occur.

B. Federal Law Protections.

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 litigation costs and reasonable attorneys' fees.

C. State Law Protections.

Under Michigan Public Act 465, Whistleblower Protection Act, Michigan law also protects workers who disclose any of the following to an appropriate individual or agency:

- Information that a health care facility or provider has violated any state law or rule or federal law or regulation;
- A situation in which the quality of care provided by, or by an employee of, the health care facility or provider violates established standards and poses a potential risk to public health or safety.

References

False Claims Act; 31 U.S.C. §§ 3729 – 3733

Section 6032 of the Deficit Reduction Act of 2005

Program Fraud Civil Remedies Act; 31 U.S.C. §§ 3801 – 3812

Medicaid Fraud Statute, Mich. Comp. Laws Ann. §§ 400.601 et seq.

Michigan Public Act 465, Whistleblower Protection Act

Reporting Concerns Regarding Fraud, Abuse and False Claims

UPHP takes issues regarding false claims and fraud and abuse seriously. UPHP encourages all

employees, contractors, and agents 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. UPHP, therefore, encourages its employees, contractors, and agents 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 Compliance Officer, human resources manager, or another member of management. Employees, including management, and any contractors should be aware of related UPHP policies regarding detection and prevention of health care fraud and abuse. These policies and procedures can be accessed on the UPHP's Intranet site. Policy 104-001 provides additional detail on the detection and reporting of fraud, waste and abuse.

Procedure

UPHP responsibilities include, but are not limited to:

- a. Ensuring that all employees, including management, and any contractors or agents of the organization are provided with this policy, effective January 1, 2007.
- b. Conducting training for all employees, management, contractors, or agents regarding this policy to ensure that all such persons are familiar with and understand the policy.
- c. Making revisions to this policy as necessary to comply with changes in the law. Changes must be documented and implemented.

Effective January 1, 2007, UPHP will provide UPHP employees with this policy that includes information on federal and state False Claims Act laws and whistleblower protections under such laws, including the role of such laws in preventing and detecting fraud, waste and abuse in federal healthcare programs.

Attachments

UPHP Reporting FWA and Compliance Electronically Procedure

Exception to this policy may be made with the approval of the
Chief Executive Officer or an authorized designee.

/// END OF POLICY & PROCEDURE ///

It is the obligation of everyone to detect, prevent and correct fraud, waste and abuse (FWA) and noncompliance. The Upper Peninsula Health Plan supports multiple reporting options to ensure employees have no barriers to reporting any suspected FWA or issues of noncompliance. Please remember any provider or member compliance issues must be logged in the compliance reporting database.

1. Go to <http://report/compliance>
2. Scroll down to the “Or submit a suspected instance of fraud, waste, and/or abuse electronically” section
3. Enter Date of Discovery:
[Date the incident was discovered; date you became aware of the incident]
4. Enter Date of Incident
[Date the incident occurred]
5. Select Reporting Method:
Preference to report anonymously or if you would like to include your name*
6. Provide a detailed account of the incident. In the event you prefer to report anonymously, please provide as much information as possible, as there will be no opportunity for the Compliance Officer to follow up.
7. Upload any supporting documentation
8. Identify any supporting documentation links if applicable
9. Send
10. An email notification is sent to the UPHP Compliance Officer. He/She will review, investigate and remediate suspected offense(s) as appropriate.

The screenshot shows a web browser window displaying the UPHP compliance reporting form. The form is titled "Or submit a suspected instance of fraud, waste, and/or abuse electronically:". It contains several fields: "Date of Discovery" and "Date of Incident" (both with red asterisks indicating required fields), "Reporting Method" (with radio buttons for "I choose to report anonymously" and "I would like to include my name"), "Incident Description" (a large text area), "Upload Supporting Documentation" (with a "Browse..." button), "Additional Uploads" (with an "Upload Additional Files..." button), and "Supporting Documentation Links" (a text area). A "Send" button is at the bottom. A red asterisk indicates a required field. At the bottom, there is a disclaimer: "If you choose to make a report by telephone or mail, your identity will be kept confidential to the extent possible. Reports may be made anonymously, but this may take clarification." The browser's address bar shows "http://report/compliance".

*Sponsors may not retaliate against you for making a good faith effort in reporting.