



## **False Claims Act**

On February 8, 2006, President George W. Bush signed the Deficit Reduction Act of 2005 into law. The Deficit Reduction Act contains many provisions reforming Medicare and Medicaid that are designed to reduce program spending. As an entity that offers Medicaid and Medicare coverage, Humana – CareSource® is required to provide you with information about the Federal False Claims Act, state False Claims Acts, and other state laws regarding Medicare and Medicaid Fraud. In addition, the law requires you and your contractors and agents to abide by our policy on fraud, waste, and abuse when handling Humana – CareSource business.

### **The Federal False Claims Act**

Using the False Claims Act (the Act), you can help reduce fraud against the federal government. The Act allows everyday people to bring "whistleblower" lawsuits on behalf of the government – known as "qui tam" suits – against groups or other individuals that are defrauding the government through programs, agencies, or contracts.

- As amended in 2009, the False Claims Act applies when a company or person:
- Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;
- Conspires to commit a violation of any other section of the False Claims Act;
- 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;
- 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;
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer of the Armed Forces, who lawfully may not sell or pledge property; or
- 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.

A violation of the Federal Anti-Kickback Statute constitutes a false and fraudulent claim under the Federal False Claims Act.

"Knowingly" means acting with actual knowledge or with reckless disregard or deliberate indifference to the truth or falsity of information.

An example would be if a health care partner, such as a hospital or a physician, knowingly "upcodes" or overbills, resulting in overpayment of the claim using Medicaid or Medicare dollars.

### **The Deficit Reduction Act of 2005**

The Deficit Reduction Act of 2005 (DRA) contains many provisions reforming Medicare and Medicaid that are designed to reduce program spending. As an entity that offers Medicaid and Medicare coverage, Humana – CareSource is required to comply with certain provisions of the DRA. One such provision prompted this communication, as it requires us to provide you with information about the Federal False Claims Act, state False Claims Acts, and other state laws regarding Medicare and Medicaid fraud. In addition, the DRA requires you and your contractors and agents to adopt our policy on fraud, waste, and abuse when handling Humana – CareSource business.

The time period for a claim to be brought under the False Claims Act is the later of:

- Within six years from the date of the illegal conduct, or
- Within three years after the date the Government knows or should have known about the illegal conduct, but in no event later than ten years after the illegal activity.

### **Incentives for Whistleblowers**

Individuals bringing the suit may receive from 15% to 30% of the proceeds of the action or settlement.

Kentucky has not enacted a false claims statute with a qui tam provision comparable to the federal False Claims Act. However, Kentucky law does permit the Kentucky Attorney General to prosecute any individual or entity that:

- Knowingly or wantonly devises a scheme or plan, or enters into an agreement, combination, or conspiracy to obtain or aid another in obtaining payments from any medical assistance program by means of any fictitious, false or fraudulent application, claim, report, or document submitted to the Cabinet for Health and Family Services, or intentionally engages in conduct which advances the scheme or artifice;
- Intentionally, knowingly, or wantonly makes, presents or causes to be made or presented to an employee or officer of the Cabinet for Health and Family Services any false, fictitious, or fraudulent statement, representation, or entry in any application, claim, report, or document used in determining rights to any benefit or payment;
- With intent to defraud, knowingly makes, or induces, or seeks to induce the making of a false statement or false representation of a material fact with respect to the conditions or operations of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, as a hospital, skilled-nursing facility, intermediate-care facility, home-health agency, or other health partner or services to the Medical Assistance Program; or

- Knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry.

The complete set of Kentucky laws governing Medicaid fraud and abuse may be found at Kentucky Revised Statutes §§205.8451-205.8483.

### **Humana – CareSource Policy**

It is the policy of Humana – CareSource to detect and prevent any activity that may violate the federal False Claims Act or the state Medicaid fraud laws cited in this policy. If any employee, health partner, delegated entity, subcontractor or agent has knowledge or information that any such activity may have taken place, they should contact the Special Investigations Unit. Information may be reported anonymously.

In addition, federal and state law and Humana – CareSource policy prohibits any retaliation or retribution against persons who report suspected violations of these laws to law enforcement officials or who file "whistleblower" lawsuits on behalf of the government. Anyone who believes that he or she has been subject to any such retribution or retaliation should also report this to the Special Investigations Unit.

### **Other Fraud, Waste and Abuse Laws**

Under the Federal Anti-Kickback Statute, and subject to certain exceptions, it is a crime for anyone to knowingly and willfully solicit or receive, or pay anything of value, including a kickback, bribe or rebate in return for referring an individual to a person for any item or service for which payment may be made in whole or in part under a federal health care program. (42 U.S.C. §1320a-7b)

Under the Federal Stark Law, and subject to certain exceptions, physicians are prohibited from referring federal health care program patients for certain designated health services to an entity with which the physician or an immediate family member has a financial relationship. The Stark Law imposes specific reporting requirements on entities that receive payment for services covered by federal health care programs. (42 U.S.C. §1395(a) and §1903(s))

As part of the Health Insurance Portability and Accountability Act (HIPAA), the U.S. Criminal Code was amended, and it is a crime to knowingly and willfully execute, or attempt to execute a scheme or artifice to defraud any federal health care program or obtain by means of false or fraudulent pretenses, representations or promises, any money or property owned by or under the custody or control of any federal health care program. (18 U.S.C. §1347)