

## **Anti-Fraud Policies and Procedures**

AXIS has a long-standing practice of fair and truthful dealing with its clients, families, health professionals, payors and other business associates; these policies and procedures are adopted to comply with the Employee Education about False Claims Recovery provisions of the Deficit Reduction Act of 2005.

Management, employees, contractors and other agents of AXIS shall not engage in any acts of fraud, abuse or waste in any matter concerning AXIS business or mission. In the course of dealing with our clients, families, payors and other health care professionals, AXIS management, employees, contractors and agents shall not knowingly make a false statement of material fact in preparation or submission of any claim for Medicaid or other reimbursement and shall not engage in any other activity prohibited by these policies.

Management, employees, contractors and other agents who have reason to believe that any person has violated these policies shall report their observations and concerns to the Compliance Officer Doug Boeckmann immediately. No person shall retaliate against another who submitted a timely report in accordance with these policies and procedures.

This policy is incorporated into Easy AXIS and is available and may be referenced at all times to all employees. Violation of this policy is grounds for immediate termination from employment.

A copy of the policy will be mailed to all contractors and other agents and available for viewing at <http://www.axis-mn.com/>

### **Prevention and Detection of Fraud, Abuse and Waste:**

Fraud is an intentional misrepresentation that, when relied on by a payor, or other person, deceives them to their detriment. Abusive tactics are broader than fraud, and may include submitting deceptive or misleading claims to a government program like Medicaid, or using false statement to support a claim. Waste may include other deceptive tactics, such as over utilization of otherwise necessary services requiring 'pay to play' kickback arrangements where contracts are awarded or goods purchased only if the vendor promises to kick back an incentive to either the Medicaid provider or its employee.

Types of fraud, abuse or waste that may lead to the submission of false claims to the Medicaid program include, but are not limited to the following;

- Billing for services not actually provided;
- Documenting clinical care not actually provided;
- Making payments to a phantom vendor or phantom employee;
- Paying a vendor or employee for services not actually provided;
- Paying an invoice known to be false;
- Accepting or soliciting kickbacks or illegal inducements from vendors of services, or offering or paying kickbacks or illegal inducements to vendors or services;
- Paying or offering gifts, money, remuneration or free services to entice a Medicaid recipient to use a particular vendor;

- Using Medicaid reimbursement to pay personal expenses;
- Embezzling;
- Ordering and charging for over-utilizing medical services are not necessary for the client.

### **Mandatory reporting requirement**

Employees of AXIS, who have reason to believe that any employee, including managerial staff, or any contractor or agent hired by AXIS has violated this requirement by committing fraud, abuse or waste, have a duty to report their observation and concern immediately to the Compliance Officer. No employee, contractor or agent of AXIS shall retaliate against another for submitting a timely report pursuant to this policy.

All reports should be investigated under the supervision of the Compliance Officer. All employees have a duty to cooperate with any investigation conducted by AXIS under this requirement, including but not limited to providing information upon request and meeting with the AXIS legal or accounting representatives, if directed to do so by the Compliance Officer.

If substantiated, AXIS will take any action which may be necessary to respond appropriately to any offense and to prevent any further similar offenses, including but not limited to terminating employees or terminating a contractor or agent's contract. Offenses will be evaluated for voluntary self-disclosure under applicable federal laws, and when warranted, offenses will be referred for prosecution. AXIS will cooperate with government officials prosecuting any individual referred by AXIS for prosecution.

### **Notification of Federal and State Laws**

**Sanctions:** Federal Law also requires Medicaid providers like AXIS to provide you with detailed information about the federal False Claims Act, 31 U.S.C. 3729-3733, and the administrative remedies for false claims and statements established by 31 U.S.C. 3801-3812. These laws are important to you and AXIS because they not only provide severe civil and criminal sanctions for submitting false claims to the federal Medicaid program, they also provide individuals who alert federal and state officials to offenses with whistleblower protections.

Under the False Claims Act, individuals or organizations that are found to have submitted false claims to the federal government, including the Medicaid program, are subject to civil liability in the amount of \$5,000 to \$11,000 per claim, plus treble damages, and can also face exclusion for the Medicaid and Medicare program. Administrative civil money penalties may be imposed against any person who makes or presents a claim the person knows or has reason to know is false, fictitious, or fraudulent. In addition to other remedies authorized by law, these civil money penalties may be levied up to \$5,000 for each false claim and double damages. Knowingly submitting a false claim with actual knowledge, reckless disregard or deliberate ignorance may lead to criminal prosecution and incarceration.

In addition to the criminal and civil sanctions levied by federal law, MN law contains criminal and civil penalties for Medical Assistance fraud. Under MN Sate 609.466, any person who, with the intent to defraud, presents a claim for reimbursement which is false in whole or in part is guilty of an attempt to commit theft of public funds and may be sentenced accordingly. Under MN Stat. 256N.121 any vendor of medical care who willfully submits a claim for reimbursement that is known to be a false claim is also subject to a civil action by the State of MN for treble damages, costs and attorney's fees. Subjecting a vulnerable adult to unnecessary and over-utilized

services for the purpose of advantage of another may also constitute financial exploitation under the MN Vulnerable Adults Acts under MN Stat. 626.5572, subd.9 and 609.2335.

### **Rights of Employees Under Whistle blowing Protections and Qui Tam Actions**

The False Claims procedures at 31 U.S.C. 3730 (h) provides anti-retaliation protections for whistle blowing employees. If an employee participates in the investigation for, initiation of, testimony for, or assistance in an action filed under the False Claims Act, the employer may not discharge, demote, suspend, threaten, harass or in any other manner discriminate against the employee in the terms and conditions of employment, in retaliation for the employee's protected action.

An employee who is retaliated against in violation of 31 U.S.C. 3730 (h) may file an action to be made whole, and relief includes reinstatement, double back pay with interest on the back pay, and compensation for any special damages including litigation costs and reasonable attorneys fees.

Under MN Stat. 181.932, MN law prohibits employers from discharging, disciplining, threatening or otherwise discriminating against or penalizing an employee for good faith reporting of suspected violations of any state or federal law or rule, or for participating in a government investigation. The law allows employees to refuse an employer's order to perform an act that violates federal or state law. The MN law expressly authorizes an employee to report in good faith violations of federal or state health care standards that put the public at risk.

The Federal False Claims Act also enables private individuals to initiate lawsuits on behalf of the federal government against any party who submitted false claims for payment from the Medicaid program. Known as "qui tam" actions, the suing private plaintiff, if successful, may be rewarded part of any penalty recovered and the remainder goes to the government. Depending on the circumstances of each case, the government may intervene. In cases where the government declines to intervene and the private plaintiff pursues the action on his or her own, the plaintiff's recovery share may be as great as 25 to 30% of the penalty. In cases where the government elects to intervene, the court may award between 15 and 25% recovery.

An employee who is retaliated against in violation of 31 U.S.C. § 3730 (h) may file an action to be made whole, and relief includes reinstatement, double back pay with interest on the back pay, and compensation for any special damages including litigation costs and reasonable attorneys fees.

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The Minnesota False Claims Act Minn. Stat. § 151C.01 – 15.16 generally prohibits people who do business with state and local governments from getting or keeping money to which they are not entitled. The law applies only to "knowing" (not negligent) misconduct, and allows recovery of up to three times the amount of proven damages plus attorney's fees and litigation costs. Government entities may investigate and bring actions on their own initiatives, through their "prosecuting attorneys"; but a key feature of the Act is the potential involvement and participation of private whistleblowers, often employees of contractors. A whistleblower who is the "original source" of information about a false claim may begin a lawsuit on behalf of the government entity by filing a complaint in court under seal, and serving a copy of the lawsuit and supporting

evidence on the prosecuting attorney. The prosecuting attorney may choose to intervene and assume primary responsibility for the suit. If the prosecuting attorney does not intervene at the outset, the whistleblower plaintiff may prosecute the action on behalf of the government. The incentive for whistleblowers is a potential recovery of 15 to 30% of the proceeds of a successful suit, plus attorneys' fees and costs.

The consequences of submitting a false claim may be severe. Violators may be liable for civil penalties of \$5,500 to \$11,000 per claim plus three times the amount of damages (usually the amount of the overcharge), attorneys' fees and costs. Violators may mitigate their liability by cooperating with government investigations.

This notification of AXIS's anti-fraud policies and procedures is intended to notify you of AXIS's policies and procedures to detect and prevent fraud, abuse and waste, and to meet AXIS obligations under the federal DEFRA law. In communicating our anti-fraud policies and procedures to you, we do not suggest that you or your organization has engaged in any violations of our policies or any violation of state or federal law. This information does not constitute legal advice, and if you believe that you or your employees have witnessed any actions that may constitute fraudulent, abusive or wasteful actions, in addition to complying with our reporting requirements, you may want to obtain knowledgeable legal advice.

Thank you for reviewing this notification AXIS's anti-fraud policies and procedures. Again, if you have any questions regarding whom to contact at AXIS if you witness fraud, abuse or waste, please do not hesitate to call me to discuss these responsibilities.

#### **Citations and Additional Resources:**

- Section 6032 of the Deficit Reduction Act of 2005 (Public Law 109.171) establishes section 1902(a)(68) of the Social Security Act and relates to "Employee Education about False Claims Recovery"
- The False Claims Act, 31 U.S.C. § 3729
- The Civil Money Penalties Law, 42 USC § 1320a-7a
- The Minnesota False Claims Act, Minn. Stat. § 15.01-15.16 (2009)
- Minn. Stat. § 256.121 (treble damages for Medicaid fraud)
- VAA Financial Exploitation: 626.5572
- VAA crime: 609.2335
- Medical Assistance Fraud: 609.466
- No retaliation for reporting crime: 181.932
- Minn. Stat. § 256B.121
- CMS' State Medicaid Director Letter (SMDL #06-025)