

## **Deficit Reduction Act of 2005 (DRA), False Claims Act (FCA) and Similar Laws Policy**

Life Care's policy requires compliance with all laws applicable to the company's business, and this includes insistence on compliance with all applicable federal and state laws dealing with false claims and false statements. Life Care strives to prevent, detect and eliminate fraud, waste and abuse in all government-funded programs from which the company receives payments, such as the Medicare and Medicaid programs. This policy and goal applies to all of Life Care's associates, management, contractors and agents.

- **Policies and Procedures for Detecting and Preventing Fraud, Waste and Abuse**

Life Care's existing policies and procedures for detecting and preventing fraud, waste and abuse are found more completely in the Integrity Services Code of Conduct, particularly in the provisions on conducting Life Care's business and business with the government. Associates should observe the guidelines and report any departure set forth herein.

As with the Code of Conduct, the Chief Integrity Services Officer is responsible for administration of Life Care's Integrity Services program, including this policy. As part of its commitment to ethical and legal conduct, Life Care expects its associates to bring information regarding violations of Life Care's Code of Conduct to the attention of the Chief Integrity Services Officer (or designee) and any manager or supervisor directly above the particular associate (unless such information concerns that manager or supervisor). An associate who has a question regarding the applicability or interpretation or desires to report a violation of the Code or this policy should direct their questions to Life Care's Chief Integrity Services Officer in person, in writing or by calling 1-877-423-8305. Written correspondence relating to the Code or this policy should be addressed to Life Care's Chief Integrity Services Officer and marked ***Confidential: to be opened by the Chief Integrity Services Officer.*** Reports, either in writing or by calling, shall remain confidential to the extent permitted by law, Life Care's policies and to the extent that it is possible and practical. If any report is made by an associate, he or she will be given the opportunity to receive information relative to the outcome of any investigation conducted by the Chief Integrity Services Officer.

- **Laws Relating to False Claims Recovery**

The purpose of this section is to provide information concerning tools available to federal and state agencies as well as Life Care and its associates to fight fraud, waste and abuse in the administration of federal and state health programs, and the role these tools play in preventing and detecting fraud, waste, and abuse in federal and state health-care programs.

Specifically, the information will be summaries of the following:

- a. The Federal False Claims Act
- b. The federal administrative remedies for false claims and statements
- c. The federal whistleblower laws
- d. State laws regarding false claims, false statements and whistleblower protection

- **The Federal False Claims Act, 31 U.S.C. § 3729-3733**

Initially passed during the Civil War to fight fraud in military purchasing, the Federal False Claims Act (FCA) is now a broad federal statute that prohibits fraud in any federally funded contract or program, including Medicare and Medicaid. The FCA established liability for any person who knowingly presents, or causes to be presented, a false or fraudulent claim to the U.S. government for payment.

The term “knowingly” means that the person either had actual knowledge the claim was false, deliberately acted in ignorance of the truth or falsity of the claim, or acted in reckless disregard of the claim’s truth or falsity. The term “claim” includes any request or demand for money that is submitted to the U.S. government or its contractors.

False claims for health-care providers can take a variety of forms. Examples include falsifying billing records, double-billing for items or services, overcharging for items or service, billing for services never performed or items never delivered, billing for delivering less than promised, and charging for one thing while providing another.

- **The Federal Administrative Remedies for False Claims and Statements**

The penalties for violating the FCA are severe. Violators may be subjected to a civil penalty ranging from \$5,000 to \$10,000 for each false claim submitted (as adjusted from time to time for inflation). In addition, the violator can be required to pay three times the amount of damages sustained by the government for each false claim, which is typically the amount the government paid for each false claim. In addition, the Office of Inspector General (“OIG”) – the agency within the Department of Health and Human Services charged with investigating fraud and abuse – may seek exclusion of a convicted health-care provider or supplier from further participation in any federal health-care program. A violator can also be held liable to the government for costs associated with any civil action that seeks to recover penalties or damages. There are also criminal consequences under federal law for intentional participation in the submission of a false claim.

- **Federal Whistleblower Provisions**

Any person may bring an action under this law on behalf of the government (called a “qui tam relator” or “whistleblower” suit) in federal court. The case is initiated by causing a copy of the complaint and all available relevant evidence to be served on the

federal government. The case will remain sealed for at least 60 days and will not be served on the defendant so the government can investigate the complaint. The government may obtain additional time for good cause. The government on its own initiative may also initiate a case under the FCA.

After the 60-day period (or any extensions) has expired, the government may pursue the matter in its own name or decline to proceed. If the government declines to proceed, the person bringing the action has the right to conduct the action on his or her own in federal court.

If the government proceeds with the case, the qui tam whistleblower bringing the action will receive between 15 and 25 percent of any proceeds, depending on the contributions of the individual to the success of the case. If the government declines to pursue the case, and the whistleblower chooses to pursue the matter legally, the whistleblower will be entitled to between 25 and 30 percent of the proceeds of the case, plus reasonable expenses, attorney's fees and costs awarded against the defendant.

Any case must be brought within six years of the filing of the false claim.

- **Antidiscrimination/Anti-retaliation**

According to Life Care's Code of Conduct and the provisions of this law, anyone initiating a complaint or reporting a violation may not be harassed, discriminated or retaliated against in any manner by his or her employer. The employee is authorized under the FCA to initiate court proceedings to be made whole for any job-related losses resulting from any such discrimination or retaliation, including reinstatement, back pay and other appropriate compensation.

- **Program Fraud Civil Remedies Act**

The Program Fraud Civil Remedies Act creates administrative remedies for making false claims separate from, and in addition to, the judicial or court remedy for false claims provided by the False Claims Act.

The Act is quite similar to the False Claims Act in many respects, but is somewhat broader and more detailed, with differing penalties. The Act deals with submission of improper "claims" or "written statements" to a federal agency.

Specifically, a person violates this act if he or she knows, or has reason to know, he or she is submitting a claim that is:

- a. False, fictitious or fraudulent; or,
- b. Includes, or is supported by, written statements that are false, fictitious or fraudulent; or,

- c. Includes, or is supported by, a written statement that omits a material fact; the statement is false, fictitious or fraudulent as a result of the omission; and the person submitting the statement has a duty to include the omitted facts; or,
- d. For payment for property or services not provided as claimed.

A violation of this prohibition carries a \$5,000 civil penalty for each such wrongfully filed claim. In addition, an assessment of two times the amount of the claim may be made, unless the claim has not actually been paid.

A person also violates this act if he or she submits a written statement that he or she knows or should know:

- a. Asserts a material fact which is false, fictitious or fraudulent; or,
- b. Omits a material fact and is false, fictitious or fraudulent as a result of the omission. In this situation, there must be a duty to include the fact and the statement submitted contains a certification of the accuracy or truthfulness of the statement.

A violation of the prohibition for submitting an improper statement carries a civil penalty of up to \$5,000.

- **State Laws Relating to False Claims Recovery and Whistleblowers**

Many states have enacted statutes directed at prosecuting Medicaid fraud. Life Care currently operates in 28 states, and any false claims and whistleblower laws in those states will govern the company's operations in those states. Many of them are based on the provisions of the federal laws outlined above, and a portion of the DRA has established a procedure to encourage states to adopt such laws if they do not currently have them, or to model their law's minimum requirements after the federal law. Recent guidance from the OIG outlines the elements these state laws must contain. See Federal Register, Vol. 71, No. 161.

Further information regarding the details of state laws in your state may be found both on the home page of the company's Village Square and at CMS's Web site on state Medicaid fraud, found at <http://www.cms.hhs.gov/apps/mfs/default.asp>, by clicking either your state's link or by clicking to the citation to specific topics, such as fraud issues and whistleblower protections, and then by citation to your State.

Reports of fraud, false claims, waste or abuse should be made to the Chief Integrity Services Officer by calling Integrity Services at 1-877-423-8305 or by writing to: Life Care Centers of America, 3001 Keith St. NW, Cleveland, TN. 37312 and marked Confidential: To be opened by the Chief Integrity Services Officer.