

False Claims and Whistleblower Protection

The following provides an overview of the Federal Civil False Claims and Program Fraud Civil Remedies Acts and applicable state laws; and whistleblower protections, as required by the Deficit Reduction Act of 2005. Questions regarding this information should be directed to New Directions' Corporate Compliance Officer.

New Directions employees are expected to be familiar with the following Federal and New York State laws:

A. FEDERAL LAWS

1. Federal False Claims Act. The Federal False Claims Act ("FCA") imposes liability on any person who submits a claim to the federal government that he/she knows (or should know) is false. The FCA also imposes liability on an individual who: i) knowingly submits a false record obtain payment from the government; or ii) obtains money from the federal government to which he/she may not be entitled, and then uses false statements or records in order to retain the money.

In addition to having 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 can also be found liable under the FCA. Proof of specific intent to defraud is not required. However, honest mistakes or mere negligence are not the basis of false claims. The FCA provides for civil penalties of \$10,781 to \$21,562 per claim and Administrative Remedies civil penalties of \$10,781 per claim.

2. Federal Program Fraud Civil Remedies Act of 1986. The Federal Program Fraud Civil Remedies Act of 1986 is a statute that establishes an administrative remedy against any person who presents or causes to be presented a claim or written statement that the person knows or has reason to know is false, fictitious, or fraudulent due to an assertion or omission to certain federal agencies (including the Centers for Medicare and Medicaid Services). The word "claim" in the statute includes any request or demand for property or money, e.g., grants, loans, insurance or benefits, when the United States Government provides or will reimburse any portion of the money.

The Federal government may investigate and, with the Attorney General's approval, commence proceedings if the claim is less than one hundred and fifty thousand dollars. The Act provides for civil monetary sanctions to be imposed in administrative hearings, including penalties of five thousand five hundred dollars per claim and an assessment, in lieu of damages, of two times the amount of the original claim.

B. STATE LAWS

1. New York False Claims Act. A person may not knowingly present a false claim to a state or local government or make a false record or statement to ensure payment of a false claim by a state or local government, or use a false statement to decrease an obligation to pay money to a state or local government. Honest mistakes or mere negligence are not the basis of false claims. The New York False Claims Act provides for civil penalties of between six thousand dollars and twelve thousand dollars plus three times the amount of damages which the state and/or local government sustains.

2. ***False Statements Law.*** It is illegal for a person or corporation to use false statements to obtain (or try to obtain) public funds for Medicaid services or supplies, and such conduct may result in damages and monetary penalties.
3. ***Martin Act for Health Care Fraud.*** The Martin Act adds provisions to the New York Public Health Law with a broad definition of fraudulent practices that allows the Attorney General to investigate and criminally prosecute health care fraud. This law also permits the Attorney General to investigate health care fraud by compelling witnesses to be examined under oath, issuing subpoenas for documents, impounding records and requiring the cooperation of other public officers.
4. ***Mandatory Compliance Programs.*** The New York Social Services Law requires certain Medicaid providers to establish and implement a compliance plan. The affected Medicaid providers include Article 28 providers (hospitals, skilled nursing facilities, diagnostic and treatment centers), Article 36 providers (licensed and certified agencies, long term care and AIDS home health care programs), and Articles 16 and 31 Mental Hygiene providers. In addition, all health care providers “*for which Medicaid is a substantial portion of their business operations*” must adopt and implement compliance programs.
5. ***New York Anti-Kickback Law.*** Medicaid providers shall not accept or give (or agree to accept or give) anything in exchange for the referral of Medicaid services or to purchase, lease or order any Medicaid good, facility, service or item.
6. ***New York Self Referral Prohibition.*** Certain practitioners are not allowed to refer patients to health care providers when the practitioner, or the practitioner’s immediate family member, has a financial relationship with such health care provider. This law applies to practitioners who order clinical laboratory, pharmacy, radiation therapy, physical therapy or x-ray or imaging services. There are a number of exceptions to this prohibition which may make such referrals acceptable.
7. ***Misconduct for New York Licensed Professionals.*** It is misconduct for licensed professionals to engage in the following activities. Violation of the following laws may also constitute a violation of the federal or state False Claims Acts.
 - i. Willfully or grossly negligently failing to comply with substantial provisions of Federal, state or local laws rules or regulations governing the practice of the profession;
 - ii. Willfully making or filing a false report, or failing to file a report required by law or by the Education Department, or willfully impeding or obstructing such filing, or inducing another person to do so.
 - iii. Medical professionals may not : a) directly or indirectly give or receive (or agree to give or receive) anything for the referral of a patient or in connection with performing medical services; b) permit anyone to share in the fees for professional services, other than a partner, employee, associate in a professional firm or corporation, professional subcontractor or consultant, or legally authorized trainee. c) directly or indirectly split a fee for goods, services or supplies prescribed for medical diagnosis, care or treatment or receive a credit, commission, discount or gratuity in connection with the furnishing of professional care or service; d) permit anyone to share in their fees for medical services, except for a partner, employee, associate in a professional firm or corporation, professional subcontractor or consultant authorized to practice medicine, or a legally authorized trainee.

8. *New York Penal Law Health Care Fraud Provisions.* Health Care Fraud in the first through fifth degrees is included in the New York State Penal Law for filing false claims.

9. *New York Penal Law Insurance Fraud Provisions.* Insurance Fraud in the first through sixth degrees is included in the New York State Penal Law for filing false claims for insurance payments.

Whistleblower Protection

New Directions will not retaliate against any employee for informing New Directions or the federal or state government of a possible violation of law.

A. FEDERAL LAW

Employees may bring a civil action in the name of the government for a violation of the federal False Claims Act. These individuals, known as “*qui tam* relators,” may share in a percentage of the proceeds from a False Claims Act action or settlement. The FCA provides for protection for employees from retaliation. An employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in terms and conditions of employment because of lawful acts conducted in furtherance of an action under the False Claims Act may bring an action seeking reinstatement, two times the amount of back pay plus interest, and other enumerated costs, damages, and fees. However, if the employee brings an action against an employer that has no basis in law or fact, or is primarily for harassment, the employee bringing the lawsuit may have to pay the employer its fees and costs.

B. STATE LAW

New York State Law also provides that employers are not able to retaliate against employees who disclose to a supervisor or to a public body (only after disclosing to a supervisor and allowing time for the company to correct such issue) an instance of health care fraud by the employer, who provide information before a public body investigating potential health care fraud by the employer, or who refuse to participate in a practice in violation of a law. This law also provides protections for employers against employees who bring an action under the law without basis in law or in fact.

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IF YOU HAVE A CONCERN ABOUT FRAUD, IMPROPER PAYMENT, THEFT, BREACHES OF CONFIDENTIALITY, OR VIOLATION OF THE CORPORATE COMPLIANCE POLICY, PLEASE CALL THE CORPORATE COMPLIANCE HELPLINE AT 716-433-4487, EXT. 316.