

COMPLIANCE PROCEDURE MANUAL

Section: Standards and Procedures

Number: 2100-02

Subject: Deficit Reduction Act (False Claims Act)

Effective Date: July 19, 2007

Original Issue Date: July 19, 2007

Last Revision Date: August 19, 2009

Last Review Date: August 19, 2009

Page 1 of 6

Purpose

Parkland developed and implemented a Compliance Program in an effort to establish, in part, effective internal controls that promote adherence to applicable federal and state laws and the program requirements of federal and state health plans. The Deficit Reduction Act of 2005 (DRA) requires that any entity receiving or making annual Medicaid payments exceeding \$5 million establish and disseminate to all of its employees and contractors written policies that set forth the entity's policies and procedures for preventing and detecting fraud, waste, and abuse in federal health care programs and that describe the federal and state false claims laws.

This procedure summarizes Parkland's existing policies and associated procedures for detecting and preventing fraud, waste, and abuse, including how to report concerns internally. This procedure also provides an overview of applicable federal and state laws used by the government to enforce compliance with federal and state health care program requirements, including the Federal Civil and Criminal False Claims Act and Program Fraud Civil Remedies Act, and the Texas Medicaid Fraud Prevention Law.

Policy

1. Parkland is committed to complying with all applicable laws and regulations. Parkland supports the efforts of federal and state authorities in identifying incidents of fraud, waste, and abuse and has the necessary procedures in place to prevent and detect fraud, waste, and abuse.
2. All employees, contractors, and agents must conduct themselves in an ethical and legal manner as defined in the Parkland Code of Conduct & Ethics.
3. All employees, contractors, and agents are responsible for reporting potential or suspected incidents of fraud and abuse and other wrongdoing.
4. The Compliance Officer (CO), in consultation with Legal Counsel, has responsibility for receiving and acting upon all information suggesting the existence of possible fraud, waste, abuse or other wrongdoing and for directing all investigations arising from this information.

Procedures

Parkland has implemented a number of policies and procedures that are used to assist Parkland in its efforts to prevent and detect violations of federal and state health care program requirements and Parkland's own policies and procedures, including the following:

Open Door policy. Parkland has an Open Door policy that encourages employees, contractors, and agents to report problems and concerns. All employees, contractors and agents are responsible for reporting potential or suspected incidents of fraud and abuse or other wrongdoing by discussing the question or concern with the direct supervisor, contacting a member of the Parkland management team, calling the Compliance Officer directly, or calling the Parkland Integrity Line.

Parkland Integrity Line. Parkland has established a reporting line. The Parkland Integrity Line's toll-free number is **1-800-351-0093**. Employees are encouraged to utilize the Integrity Line. Callers to the Integrity Line may remain anonymous or may seek confidentiality.

Non-Retaliation policy. It is Parkland's policy that there shall be no retaliation against any person who reports a problem or concern, initiates a complaint, or participates in an investigation of a complaint in good faith.

Responding to Reports and Complaints of Noncompliance. Upon receipt of a report or notice of suspected noncompliance with any criminal, civil, or administrative law, the CO will conduct an "initial inquiry" into the alleged noncompliance. No supervisor or manager should directly confront an employee with the allegation of fraud or otherwise discuss the issue with anyone suspected of engaging in fraudulent or abusive practices without prior approval from Legal Counsel. If the initial inquiry indicates that there is sufficient evidence of possible noncompliance, an investigation will be conducted in accordance with Parkland policy. Upon completion of an investigation, appropriate action shall be taken for corrective action measures to prevent similar problems from occurring in the future.

Cooperation with Investigations. It is Parkland's policy to cooperate with federal and state agencies that conduct healthcare fraud and abuse investigations.

Enforcement and Discipline. Parkland will take appropriate and consistent disciplinary and enforcement action (i.e., corrective action plans, employment termination or contract termination) against employees, providers, subcontractors, consultants, and agents whose conduct is not in compliance with Parkland's compliance policies, the Parkland Code of Conduct & Ethics, or any federal or state law or regulation.

Training and Education. The development and implementation of regular, effective education and training programs for employees is an integral part of the Parkland Compliance Program. All Parkland employees receive an introduction to the compliance program during New Employee Orientation and annually thereafter. In addition, some employees receive specialized compliance education pertaining their job function and responsibilities. Additional information about the Parkland compliance and training program is included in the Compliance Education and Training Policy.

In addition to Parkland's own compliance policies and procedures to prevent and detect violations of federal and state health care program requirements, the federal government and the State of Texas have also enacted criminal, civil, and administrative laws that prohibit the submission of false or fraudulent claims and the making of false statements to the federal and state governments. These laws contain various criminal, civil, and administrative penalties and provide governmental authorities with broad authority to investigate allegations of fraud, waste, and abuse and to enforce compliance with federal and state health care program requirements. Attachment A to this Policy provides an overview of the applicable federal and state laws.

Prior Procedure Reference(s):

Internal Reference(s):

Parkland Code of Conduct & Ethics
Integrity Line (Policy #5000-02)
Problem Reporting and Non-Retaliation (Policy #5000-03)
Internal Investigation (Procedure #6100-02)
Voluntary Disclosure to Third Parties
Disclosure of Overpayments and Deficiencies (Policy #5000-04)
Disciplinary Action Process for Compliance Violations
Compliance Training and Education (Policy #3000-01)
Compliance Office and Legal Counsel Protocol and Procedures (Procedure #5100-07)

External Reference(s):

Section 6032, Deficit Reduction Act of 2005 (DRA)

Compliance Officer

ATTACHMENT A

Federal Laws

The federal False Claims Act and the Program Fraud Civil Remedies Act of 1986 are the primary federal laws used by the federal government to enforce compliance with federal health care program requirements.

The False Claims Act. The False Claims Act ("FCA") provides, in pertinent part, that:

(a) Any person who (A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim ; (C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G); (D) 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; (E) 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; (F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or (G) 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 and obligation to pay or transmit money or property to the Government.

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410, plus 3 times the amount of damages which the Government sustains because of the act of that person

Definitions. For purposes of this section, (1) the terms "knowing" and "knowingly" (A) mean that a person, with respect to information- (i) has actual knowledge of the information(ii) acts in deliberate ignorance of the truth or falsity of the information; or (iii) acts in reckless disregard of the truth or falsity of the information; (B) require no proof of specific intent to defraud .

While the False Claims Act imposes liability only when the claimant acts “knowingly,” it does not require that the person submitting the claim have 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, also can be found liable under the Act. 31 U.S.C. 3729(b).

In sum, the False Claims Act imposes liability on any person who submits a claim to the federal government that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The False Claims Act also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. An example of this may include a government contractor who submits records that he knows (or should know) are false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to

which he may not be entitled, and then uses false statements or records in order to retain the money. An example of this so-called “reverse false claim” may include a hospital that obtains interim payments from Medicare throughout the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare program.

In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States. 31 U.S.C. 3730 (b). These private parties, known as “*qui tam* relaters,” may share in a percentage of the proceeds from an FCA action or settlement.

Section 3730(d)(1) of the FCA provides, with some exceptions, that a *qui tam* relator, when the Government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(d)(2) provides that the relator shall receive an amount that the court decides is reasonable and shall be not less than 25 percent and not more than 30 percent.

The FCA provides protection to *qui tam* relaters who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. 31 U.S.C. 3730(h). Remedies include reinstatement with comparable seniority as the *qui tam* relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees.

The Program Fraud Civil Remedies Act of 1986 - The 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 U.S. Department of Health and Human Services). The Program Fraud Civil Remedies Act allows for penalties of \$5,000 per claim and an assessment of up to twice the amount of the original claim.

State Laws

The Texas Medicaid Fraud Prevention Law - The Texas Medicaid Fraud Prevention Law (FPL) is substantially similar to the federal False Claims Act. The actions that trigger civil and criminal penalties under the Texas FPL generally mirror those of the federal FCA, and include making a false statement of concealing information that affects the right to a Medicaid benefit or payment and conspiring to defraud the state by obtaining an unauthorized payment from the Medicaid program or its fiscal agent. In addition, under the FPL, a person may also be liable if he presents a claim for payment under the Medicaid program for a product or service that was rendered by an unlicensed provider or that has not been approved by the patient’s treating healthcare practitioner.

Like the federal FCA, the FPL has a provision that permits private individuals (“whistleblowers”) to bring an action on behalf of the state and receive a portion of the recovery if the case is successful. The private individual’s share could be reduced or eliminated altogether, however, if the individual planned and initiated the activity upon which the lawsuit was based or if the individual is convicted of criminal conduct arising from his role in the illegal activity. Like the FCA, the FPL includes provisions to prevent employers from retaliating against employees for their involvement in FPL actions.

State Law Prohibiting Payment for Referrals - Under the Texas law, it is a state jail felony to intentionally or knowingly solicit, receive, offer, or pay any remuneration, including any kickback, bribe, or rebate, in return for: (i) referring an individual for, or arranging for the furnishing of any item or service for which payment may be made under the Medicaid program; or (ii) purchasing, leasing, ordering, or arranging for or recommending the purchasing, leasing, or ordering of any good, facility, service, or item for which payment may be made under the Medicaid program.

Securing Execution of a Document by Deception - Texas law imposes criminal penalties against a person who, with intent to defraud or harm any person, causes another person, by deception, to sign or execute any document affecting property or service or the pecuniary interest of any person. Under the terms of the statute, this law may be used by the state to pursue suspected fraud in the Texas Medicaid program.