Seven Counties Services

NOTICE TO CONTRACTORS, AGENTS AND VENDORS OF SEVEN COUNTIES SERVICES, INC.

False Claims Laws and Whistleblower Protections

Seven Counties Services ("SCS") holds all contractors, subcontractors and agents who provide or furnish healthcare items or services for SCS, who provide billing or coding services or who are involved in the monitoring of healthcare provided by SCS, responsible for compliance with federal and state laws that prohibit the making of false claims and for otherwise conducting our affairs lawfully. Additionally, SCS is mandated by its provider agreement with the Commonwealth of Kentucky to specifically require that such contractors, subcontractors and agents comply with SCS' policies and procedures on the detection and prevention of fraud, waste and abuse. These policies set forth in SCS' Compliance Plan, which can be accessed at www.sevencounties.org, along with a copy of this Notice. We are providing you with this Notice as one of our contractors, subcontractors or agents in order to comply with our obligations under the law.

The information in this Notice is intended to highlight certain wrongful "false claims" activity that the federal and state governments have specifically targeted in the healthcare profession and the laws that govern such wrongful activity. This Notice is not intended to outline very law that concerns healthcare providers and you are encouraged to be aware of the laws, rules and regulations that may apply to your activities and to ensure compliance with such laws. Unlawful activity, such as false claims, could jeopardize SCS' ability to continue to service our clients, customers and the community.

The Unlawful Conduct

The Federal False Claims Act, 31 U.S.C. §§ 3729-3733, imposes liability on persons, companies, facilities, or institutions, that make or cause to be made false or fraudulent claims to the government for payment or who knowingly make, use or cause to be made or used, a false record or statement to get a false or fraudulent claim paid by the government. These laws apply to Medicare and Medicaid reimbursement. The *Kentucky Control of Fraud and Abuse Law*, KY. Rev. Stat. §§ 205.8451 to 205.8483, applies to Medicaid reimbursements and prohibits false, fictitious or fraudulent statements, representations or entries in any application, claim, report or document used to determine payment under the Medicaid program. Our contracts with managed care providers and other third-party payers also may contain similar prohibitions on false claims.

The following activities are examples of conduct prohibited by the false claims laws:

- Making inaccurate, false or improper entries in medical records, cost reports and any other records used to support reimbursement;
- Billing for services that are not documented or misrepresenting the services that were provided;
- Billing for services that were not medically necessary or for services that fail to meet professionally recognized standards for health care;
- Billing for a non-covered service or characterizing a non-covered service, item or cost in a way that leads to reimbursement from a government program;
- "Up-coding," which means to use a code to bill for a higher level of service or procedure, causing an increase in the reimbursement rate, when the medical record reflects that a lower level of service or procedure was actually provided to the patient;
- "Unbundling," which means to bill separately for each component of a group of procedures that are commonly used together and for which Medicare and/or Medicaid provide a special "bundled" reimbursement rate;
- Double billing, which means to bill more than once for the same service or item;
- Billing for services or items that were not actually provided;

- Charging rates in excess of established Medicare or Medicaid rates;
- Accepting a gift, money, donation or other compensation as a condition of admission or continued stay in the facility;
- Failing to seek payment from beneficiaries who may have other primary payment sources;
- Failing to refund overpayments made by a federal or state health care program;
- Participating in kickbacks, bribes or rebates in exchange for referring goods, facilities, services or items that are reimbursed by government programs;
- Altering, falsifying, destroying or concealing medical records, income and expenditure reports or any other records that support reimbursement;
- Making false statements to governmental agencies about SCS' compliance with any state or federal statutes or regulations;
- Making false statements concerning the condition or operation of SCS' services or departments for which certification is required;
- Repeatedly violating the terms of any applicable federal participation agreements;
- Knowingly concealing or covering up any of the above types of conduct or other conduct that would be considered a false claim in the Medicare or Medicaid programs.

Under the *Federal False Claims Act*, all that is required is that the person has actual knowledge or has acted with deliberate ignorance or reckless disregard of the truth or falsity of the claim. Basically, the defense of "I didn't know it was illegal" does not work.

Civil and Criminal Penalties

A violation of the *Federal False Claims Act* may result in civil penalties ranging from $5,500 to $22,000 for each false claim plus three times the amount of damages the government sustains and exclusion from the Medicare or Medicaid programs. There are also criminal consequences under federal law for intentional participation in the submission of a false claim.

A violation of the *Kentucky Fraud and Abuse Control Law* may result in civil penalties of up to $500 for each false claim, three times the amount unlawfully received plus interest, payment of the government's legal fees and costs to pursue reimbursement and exclusion from the Medicaid program for up to five years. Any licensed medical provider found guilty of the criminal false claims provisions must forfeit his or her license to practice his or her profession for at least five years. Anyone charged with Medicaid fraud also could face criminal misdemeanor or felony charges depending on the type of fraud involved and/or the amount of money unlawfully received.

Qui Tam Actions

A *qui tam* action is a lawsuit that an individual files on behalf of the government alleging misconduct involving false claims. A *qui tam* action is often referred to as a "whistleblower action." The government has a right to decide whether to join in or allow the plaintiff to continue the *qui tam* lawsuit without the government as a party.

The *Federal False Claims Act* permits individuals who know about false claims in the Medicare or Medicaid program to bring a *qui tam* or civil action for a violation of the *Federal False Claims Act*. Once the government decides whether or not to join in the action and the individual's case goes forward, no one else can bring a separate action later alleging the same misconduct. Depending on whether the government joined the lawsuit, the lawsuit's outcome and the extent of the whistleblower's involvement in the illegal acts associated with the false claims, the whistleblower may be entitled to between 15 and 30 percent of the total recovery from the defendant, whether through a favorable judgment or settlement.

The *Kentucky Fraud and Abuse Control Law* does not give individuals a right to file a *qui tam* or civil action on behalf of the government and share in recoveries. Only the Attorney General of the Commonwealth may file civil or criminal proceedings against an individual, company, facility or institution in order to enforce the *Kentucky Fraud and Abuse Law*.

Whistleblower Protections

The *Federal False Claims Act* prohibits employers from retaliating against any employee by discharging, demoting, harassing or otherwise discriminating against that employee because of reporting violations of the Federal False Claims Act. This prohibition is what is generally referred to as "whistleblower" or anti-retaliation protections. If an employee

experiences prohibited retaliation, he or she is entitled under the Federal False Claims Act to all relief necessary to make the employee whole such as reinstatement with the same seniority status, two times back pay, interest on the back pay, costs and attorney's fees.

The *Kentucky Fraud and Abuse Control Law* also provides protection for whistleblowers. Specifically, employers are prohibited from discharging or in any manner discriminating or retaliating against any person who in good faith reports a false Medicaid claim to a state governmental authority, or who testifies or is about to testify in any proceeding regarding any report or investigation of a false Medicaid claim. Any employee who is injured by an employer's retaliatory action in violation of the Kentucky Fraud and Abuse Control Law may bring a civil action in a state court to enjoin further violations and to recover actual damages sustained, together with the costs and reasonable attorney fees of the lawsuit.

The SCS Corporate Compliance Plan prohibits any SCS personnel or affiliate from taking adverse action or engaging in retribution of any kind against an employee because he or she reports in good faith a suspected violation of the Compliance Program or of these false claims laws. ***SCS expects its contractors, subcontractors and agents to adopt and enforce a similar anti-retaliation policy.***

Kentucky Law requires any person who knows or has reasonable cause to believe that a violation of the Kentucky false claims law has been or is being committed by any person, corporation or entity to report such information to the Kentucky Medicaid Fraud Control Unit or to the Medicaid Fraud and Abuse hotline, (800) 372-2970. SCS encourages its contractors, subcontractors and agents to first report such information to SCS so that SCS can undertake an investigation and any necessary corrective action under the SCS Corporate Compliance Plan.

SCS' Policy and Procedure for Detecting and Preventing Fraud, Waste and Abuse

SCS' policies and procedures for detecting and preventing fraud, waste and abuse are contained in the SCS Corporate Compliance Plan, separate Compliance Policies and Procedures and the SCS Code of Conduct. SCS contractors, subcontractors and agents should consult these documents for additional information, guidance and expectations regarding false claims, anti-kickback issues, physician self-referral issues, charging of costs/time reports, billing and reimbursement, contract negotiation, quality of service, marketing and advertising and other conduct that can result in fraud and abuse under laws applicable to healthcare providers.

The Program Administration section of SCS' Corporate Compliance Plan contains detailed guidance about investigating suspected violations, corrective action and auditing and monitoring for compliance with the SCS Code of Conduct and the law. SCS contractors, subcontractor and agents are responsible for reporting to SCS any suspected violations of the SCS Corporate Compliance Plan. Concerns can be reported anonymously by calling the SCS Compliance Hotline at (502) 589-8615, ext. 1380.

Copies of False Claims Laws

The laws summarized above include the *Federal False Claims Act*, 31 U.S.C. §§ 3729-3733, and the Kentucky Fraud and Abuse Control Law, Ky. Rev. Stat. §§ 205.8451 to 205.8483.