

FALSE CLAIMS ACT NOTICE



Vaya Health is obligated by law to share with its providers, vendors and other suppliers (“Contractors”) certain information related to the Federal False Claims Act (“FCA”). The information in this notice is designed to be a helpful understanding of the rights, responsibilities and obligations of Vaya Health and its Contractors under the FCA.

All Contractors are advised that this notice provides a general overview of the federal and state False Claims Act(s) and accompanying whistleblower protections. Vaya Health’s policies regarding compliance with the FCA, whistleblower protections under the FCA, and our procedures for detecting and preventing fraud, waste, and abuse are available in the Vaya Health Code of Ethics and Conduct, a copy of which can be requested from legalandcompliance@vayahealth.com. More detailed information about the FCA can also be obtained from the U.S. Dept. of Justice, which developed a short primer on the history of the law, available at https://www.justice.gov/sites/default/files/civil/legacy/2011/04/22/C-FRAUDS_FCA_Primer.pdf.

FEDERAL CIVIL FALSE CLAIMS ACT

The federal civil False Claims Act, 31 U.S.C. § 3729, et seq., (“FCA”) was originally enacted in 1863 to combat fraud perpetrated by defense contractors against the United States government during the Civil War. The current version of the FCA was enacted in 1982 but its purpose, to protect the U.S. government from fraud and abuse, remains unchanged. In brief, the FCA prohibits the submission of false claims to the federal government for payment. The State of North Carolina also has two state false claims acts with similar provisions.

The FCA prohibits any “person” from:

- Knowingly submitting a false or fraudulent claim for payment to the federal government or causing such a claim to be submitted;
- Knowingly making or using a false record or statement to secure payment from the federal government for a false or fraudulent claim or causing such a false record or statement to be made or used; or
- Conspiring to get a false or fraudulent claim paid by the federal government.

The FCA specifically states that a person acts “knowingly” when that person: (1) has actual knowledge of the information, (2) deliberately ignores the truth or falsity of the information, or (3) recklessly disregards the truth or falsity of the information. The FCA also defines the term “claim” as any request or demand for money or property where the U.S. government provides any portion of the money or property which is requested or demanded.

A person who has violated the FCA must repay all of the falsely-obtained reimbursement and is liable for a civil penalty of up to \$22,000 and three times the amount of actual damages the federal government sustained for each false claim that was submitted. In addition, a person who has violated the FCA may be terminated from participation in federal health care programs, including the Medicare and Medicaid programs.

Both the U.S. Attorney General and private citizens may bring lawsuits alleging a violation of the FCA. When brought by private citizens, these actions are known as *qui tam* lawsuits, and the citizens who file these suits are known as “relators” or “whistleblowers.” When a relator brings a *qui tam* action, the U.S. government may choose to intervene in the lawsuit and exercise primary responsibility for prosecuting, dismissing, or settling the claim. If the government declines to intervene, the relator can pursue the suit individually. As a reward for filing the action, a *qui tam* relator may receive between fifteen and thirty percent of the sum recovered for the government, in addition to attorneys’ fees and other expenses. The FCA offers “whistleblower protection” to employees who bring suit pursuant to the FCA. If these employees are retaliated against because of their involvement in an FCA claim, the employee may bring suit against his or her employer.

FEDERAL PROGRAM FRAUD CIVIL REMEDIES ACT

The Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801, et seq., (“PFCRA”) imposes administrative remedies against a person who presents or causes to be presented a claim or written statement that the person knows or has reason to know is false to certain federal agencies, including the U.S. Department of Health and Human Services. The PFCRA states that a person “knows or has reason to know” that a claim or statement is false if the person: (1) has actual

knowledge that the claim or statement is false, fictitious, or fraudulent, (2) deliberately ignores the truth or falsity of the claim or statement, or (3) acts in reckless disregard of the truth or falsity of the claim or statement. The PFCRA, like the FCA, defines a “claim” as any request or demand for money or property where the United States government provides any portion of the money or property which is requested or demanded. The PFCRA generally applies to claims valued at less than \$150,000. Alleged violations of the PFCRA are investigated by the agency to which the false claim was submitted, and enforcement actions may be brought only with the approval of the U.S. Attorney General.

NORTH CAROLINA FALSE CLAIMS ACT(S)

The North Carolina Medical Assistance Provider False Claims Act, N.C.G.S. § 108A-70.10, *et seq.* (“Medicaid FCA”) preceded the North Carolina False Claims Act, N.C.G.S. § 1-605, *et seq.* (“NC FCA”), but both are relevant to the operations of Vaya Health. The NC FCA closely parallels the Federal False Claims Act but provides for prosecution and recovery at the State level.

The NC FCA makes liable any person who knowingly does one of the following:

- submits a false or fraudulent claim;
- makes or uses a false record “material” to a false or fraudulent claim;
- delivers less than all State money or property he is obligated to deliver;
- purchases public property from a State official who cannot lawfully sell it;
- uses a false record “material” to an obligation to transmit money to the State;
- fails to return an overpayment or decreases an obligation to transmit money or property to the State; or
- creates or delivers a document certifying receipt for State property without knowing the information contained in it is true.

A “claim” includes any request for State money or property made to a State officer or employee. A “claim” also includes any request or demand to a private party for money that will be used to advance a State program or interest, if the State provides any portion of the money to the person receiving the request or demand or agrees to reimburse the recipient for any portion of the money or property requested or demanded. A claim for reimbursement under Medicaid, for example, would satisfy the definition of “claim” under the NC FCA, as would an invoice seeking payment under a government-funded contract.

A person can be liable even if s/he does not intend to defraud the State. The NC FCA’s definition of “knowingly” makes one liable if he actually knows he is submitting false information or acts “in deliberate ignorance” or “in reckless disregard” of the truth or falsity of the information provided. The NC FCA includes a *qui tam* provision that allows a private individual to file suit on behalf of the State and receive a portion of any damages recovered. Public employees who have a duty to investigate fraud as part of their employment may not be *qui tam* plaintiffs. The NC FCA also provides whistleblower protection for employees who are retaliated against in their employment because of their lawful efforts to stop violations of the NC FCA.

The Medicaid FCA is still in effect and is specific to Medicaid providers, prohibiting such providers from:

- Knowingly submitting a false or fraudulent claim for payment or approval to the Medical Assistance Program or causing such a claim to be submitted, or
- Knowingly making or using a false record or statement to secure payment from the Medical Assistance Program for a false or fraudulent claim or causing such a false record or statement to be made or used.

The Medicaid FCA specifically states that a provider acts “knowingly” when that provider: (1) has actual knowledge of the information, (2) deliberately ignores the truth or falsity of the information, or (3) recklessly disregards the truth or falsity of the information. The Medicaid FCA defines the term “claim” as an application for payment or approval that is submitted to the Medical Assistance Program and that identifies a service, good, or accommodation as reimbursable under the Medical Assistance Program.

Only the N.C. Attorney General can institute a lawsuit under the Medicaid FCA. Thus, private citizens may not file actions against providers under the Medicaid FCA, although it does provide “whistleblower protection” to employees who assist in the investigation or pursuit of a Medicaid FCA claim.