



CRP-0067, **Anti-Fraud Program and the Deficit Reduction Act of 2005**

Purpose

To establish a written policy for all employees of SCAN Health Plan, affiliates, and subsidiaries, contractors, subcontractors, or agents of the organization, which describe the Federal False Claims Act and pertinent State False Claims Acts in accordance with the Deficit Reduction Act of 2005.

Definitions

Abuse - Generally, practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicare, Medicaid or SCAN programs, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. (42 C.F.R. 455.2)

Fraud - Generally, intentional deception or misrepresentation made by a person or persons with the knowledge that the deception could result in some unauthorized benefit to him or some other person. It includes any act that constitutes fraud under applicable Federal or State law. (42 C.F.R. 455.2)

Knowing and knowingly (as it relates to the Federal False Claims Act) - means that a person, (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof or specific intent to defraud is required.

Medicare Drug Integrity Contractor (MEDIC) - An organization that the Centers for Medicare and Medicaid Services (CMS) contracted with to perform referral and investigative functions for Part D and oversight of anti-fraud efforts.

Medicare Advantage Prescription Drug Plan (MA-PD) - A Medicare Advantage plan that provides qualified prescription drug coverage. (42 CFR 423.4)

Part D Plan/Prescription Drug Plan - A prescription drug plan (PDP), refers to the standalone Part D benefit without the Medicare Advantage component of coverage. (42 CFR 423.4; 42 CFR 423.272).

Part D Plan Sponsor - Refers to a PDP sponsor, MA organization offering a MA-PD plan. (42 CFR 423.4)

Qui Tam - a legal provision in the United States under the Federal False Claims Act which allows for a private individual, or whistleblower with knowledge of

past or present fraud committed against the U.S. federal government to bring suit on its behalf.

Special Investigative Unit (SIU) - The unit of SCAN that is designated to implement, oversee, and administer the Anti-Fraud Program including investigation of fraud, waste, and abuse. This unit reports directly to the Vice President of Internal Audit Services.

Waste - The careless or needless expenditure of funds, or consumption of property and/or resources as a result of deficient controls and/or judgments.

Policy

SCAN has established the Anti-Fraud Program, administered by the Special Investigative Unit (SIU). SCAN provides information to all employees, contractors, and agents about the federal and State False Claims Acts; remedies available under these acts; and how employees and others can use them; and about whistleblower protections available to anyone who claims a violation of the federal or State False Claims Acts through distribution and availability of SCAN Policies and Procedures. All employees of SCAN Health Plan, affiliates, and subsidiaries, contractors, subcontractors, or agents of the organization, are advised of the steps SCAN has in place to detect health care fraud, waste, and abuse, to including any fraud, waste and abuse related to Medicare Part D through distribution and availability of SCAN Policies and Procedures, training, and communications.

Supporting Documents (letters/reports/forms)

N/A

Procedure

1. Federal False Claims Act allows civil action to be brought against any person or entity who:
 - a. Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval to any federal employee;
 - b. Knowingly makes, uses or causes to be made or used a false record or statement to get a false or fraudulent claim paid;
 - c. Conspires to defraud the government by getting a false or fraudulent claim allowed or paid;
 - d. Has possession, custody, or control of property or money used, or to be used, by the government and, intending to defraud the government or willfully to conceal the property, delivers, or causes to

be delivered, less property than the amount for which the person receives a certificate or receipt;

- e. Authorizes 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 a federal employee, who lawfully may not sell or pledge the property; or
- g. Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the government (31 USC sec. 3729).

2. Examples of a False Claim:

- a. Billing for procedures not performed;
- b. Violation of another law, for example, a claim was submitted appropriately but the service was the result of an illegal relationship between a physician and the hospital (physician received kick-backs for referrals);
- c. Falsifying information in the medical record or in a claim;
- d. Improper bundling or coding of charges; and
- e. Misrepresentation by a member or provider to seek benefits provided by the health plan.

3. Remedies:

- a. Violation of the Federal False Claims Act is punishable by a civil penalty of not less than \$5,500 and not more than \$11,000, plus three (3) times the amount of damages that the government sustains because of the violation.
- b. A Federal False Claims action may be brought by the U.S Attorney General.

- c. An individual also may bring a qui tam action for violation of the Federal False Claims Act. This means the individual files a civil action on behalf of the government.
- d. An individual who files a qui tam action receives an award only if, and after, the government recovers money from the defendant as a result of the lawsuit. Generally, the court may award the individual between 15 and 30 percent of the total recovery from the defendant, whether through a favorable judgment or settlement. The amount of the award depends, in part, upon the government's participation in the suit and the extent to which the individual substantially contributed to the prosecution of the action.
- e. A statute of limitations says how much time may pass before an action may no longer be brought for violation of the law. Under the Federal False Claims Act, the statute of limitations is six years after the date of violation or three years after the date when material facts are known or should have been known by the government, but no later than ten years after the date on which the violation was committed.

4. Federal Whistleblower Protections:

- a. Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employer or others in furtherance of an action under the Federal False Claims Act, including investigation for, initiation of, testimony for, or assistance in an action filed, or to be filed under the Federal False Claims Act, shall be entitled to all relief necessary to make the employee whole.
- b. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, two (2) times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate District Court of the United States for such relief (31 USC 3730(h)).

5. California False Claims Act:

- a. California also has a State False Claims Act similar to the Federal False Claims Act. The California False Claims Act makes it illegal, among other things, for any individual to knowingly present or cause to be presented to a state employee a false claim for payment or

approval, knowingly make, use, or cause to be made or used a false record or statement to get a false claim paid or approved by the State or by any political subdivision, or to conspire to defraud the State or any political subdivision by getting a false claim allowed or paid by the State or by any political subdivision (California Government Code Section 12650-12656).

- b. Violation of the California False Claims Act is punishable by a civil penalty of up to \$10,000 for each false claim, plus three (3) times the amount of damages that the State sustains because of the violation.
 - c. The California False Claims Act also allows individuals to file *qui tam* actions.
 - d. The California False Claims Act also provides whistleblower protection (California Government Code Section 12653).
6. Medicare Part D Considerations:
- a. The Company is a Plan Sponsor of the prescription drug benefit Medicare Part D (MA-PD/PDP).
 - b. Regulations relative to anti-fraud, waste, and abuse are contained in the Centers for Medicare and Medicaid Services (CMS), Chapter 9 – Prescription Drug Benefit Manual.
 - c. CMS contracts with Medicare Drug Integrity Contractors (MEDICs) to accept referrals and investigate suspected incidences of fraud against the Medicare drug benefit and/or beneficiaries.
 - d. The SCAN SIU refers cases of fraud, waste, and abuse within the Part D benefit to the MEDIC.
7. What you should do if you think SCAN Health Plan, affiliates and subsidiaries, contractors, subcontractors, or agents of the organization may have made a false claim:
- a. If you see something that is not right, or looks like one of the examples of a false claim above, we encourage you to:
 - Report it to the Vice President of Internal Audit Services, Senior Vice President and Compliance Officer, or General Counsel for further investigation.
 - If you are not comfortable doing this or do not see action in response to your report; you may also call the SCAN

Compliance Hotline at 877-863-3362. See policy and procedure CO-0018, Processing Potential Compliance Issues.

- b. You are not required to report a possible False Claims Act violation to SCAN Health Plan first. You may report directly to the Federal Department of Health and Human Services. The Office of the Inspector General also maintains a hotline, which offers a confidential means for reporting vital information. The Hotline can be contacted:

By Phone: 1-800-HHS-TIPS (1-800-447-8477)
By Fax: 1-800-223-2164
(no more than 10 pages please)
By E-Mail: HHSTips@oig.hhs.gov
By Mail: Office of the Inspector General
HHS TIPS Hotline
P.O. Box 23489
Washington, DC 20026

- c. SCAN will not retaliate against you if you inform SCAN or the federal government of a possible False Claims Act violation or otherwise lawfully exercise your right under the False Claims Act.
- If you feel you have experienced unlawful retaliation, you should contact the Vice President of Internal Audit Services, Senior Vice President and Compliance Officer, or General Counsel for further investigation. You may also call the SCAN Compliance Hotline at 877-863-3362.

8. Procedures for Detecting Fraud and Abuse

- a. SCAN will have in place internal controls that are capable of preventing, detecting, and reporting fraud and abuse activities.
- For example, operational policies and controls such as claims edits, prior authorization, utilization and quality review, provider profiling, provider education, post-processing review of claims, adequate staffing and resources to investigate unusual incidents, and corrective action plans will assist SCAN in preventing and detecting potential fraud and abuse activities.

b. In addition to creation and maintenance of internal controls within our operational processes that are the responsibility of management, other fraud detection measures include the following:

- Periodic independent audits of vendor payments conducted by Finance Department
- Regular internal audits of operations, systems, financial reporting, compliance, and security that are conducted by the Internal Audit Department, and
- Investigations conducted by our Special Investigative Unit that reports to the Internal Audit Services Department.

9. Procedures for Training on the False Claims Acts

a. All new members of our workforce are trained by SIU regarding federal and State False Claims Acts by in-person, instructor led training and online courses in SCAN University and in the Employee Handbook . Existing members of the SCAN workforce are also provided with periodic updates on the Federal False Claims Act.

b. Information is provided to SCAN Health Plan, affiliates, and subsidiaries, contractors, subcontractors, or agents of the organization regarding federal and State False Claims Acts.

- Network Management Department provides copies of this policy to in-network providers.
- Review of new contracts to add language where applicable. SIU will work in coordination with Legal Department, contracting department and/or originator of the contract.
- Subsidiaries are covered in SCAN University and through direct communication and employee handbook.