

Washington County Community Services Medical Assistance Fraud, Waste and Abuse Compliance Manual

Approved by:



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Date

This Compliance Manual:

- Documents a division-wide standard for detecting and preventing fraud, waste and abuse in the Minnesota Medical Assistance system
- Establishes policies and procedures to be implemented to detect and prevent fraud, waste and abuse in the Minnesota Medical Assistance system

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1. Introduction

1.1. Objectives

1.1.1. This Deficit Reduction Compliance Manual has been drafted and adopted to:

- Meet the legal requirements of the Federal Deficit Reduction Act of 2005.
- Provide a reference document to educate employees working with the Federal Medicaid Benefit Program known as the Medical Assistance Program (hereafter MA) on the potential for abuse, waste and fraud in the Medical Assistance Program.
- Create policies and procedures to assist Washington County Employees and our contractors to prevent, recognize and stop abuse, waste and fraud in the Medical Assistance Program and other benefit programs.

1.2. Scope

- This policy manual covers every Washington County employee whose job duties include the establishment of, authorization of, or administration of services that result in payment under the Medical Assistance program.
- Each Contractor that furnishes or otherwise authorizes the furnishing of Medical Assistance health care items or services, performs billing or coding functions or is involved in monitoring of health care provided by that entity is responsible for establishing its own compliance policies with the Federal Deficit Reduction Act of 2005.

1.3. Authority and Compliance

All employees establishing, authorizing, administering or furnishing MA health care items or services as defined in the scope above, are responsible for complying with this Manual and any related guideline, procedure or process. Any Washington County Employee aware of violations of this policy must immediately report the violation to supervisor, department head or the Washington County Deficit Reduction Act Chief Compliance Officer. Also, any Contractor that becomes aware of violations must immediately report the violation to his/her supervisor. The Contractor must also notify Washington County.

2.0 Deficit Reduction Act of 2005

2.1. Statutory Requirements

The 2005 Federal Deficit Reduction Act (DRA) requires Washington County as a qualifying entity to educate our employees and providers of MA services with whom we contract as to how false claims are reported and handled. Washington County is required to annually submit an Assurance Statement to the State of Minnesota as proof that we have complied with the requirements of the DRA.

Section §6032 of the DRA requires that the county establish written standards of conduct, policies, procedures and protocols to comply with the DRA. The standards must be distributed to all employees who fall under the DRA §6032 and our contractors and agents working with MA services. The education must include the Federal False Claims Act, civil and criminal state statutes related to MA fraud and Whistleblower Protections. Washington County must also establish and educate our employees, contractors and agents working with MA services on Policies and Procedures for detecting and preventing waste, fraud and abuse. This act applies to Health Care Entities receiving or making \$5 million more in MA payments during a federal fiscal financial year. A health care entity includes a government agency providing MA health care services or items for which MA payments are made. Washington County is such a health care entity.

A contractor or agent who is a contractor, subcontractor, agent or other person that on behalf of the County provides or otherwise authorizes the furnishing of MA health care services or items, performs billing or coding functions or is involved in monitoring health care provided by the County may also be a separately covered entity needing to establish compliance policies.

2.2. Definitions

- 2.2.1. Abuse - the illegal, improper, or harmful use of something.
- 2.2.2. Contractor or Agent –any contractor, subcontractor, agent or other person that holds a formal agreement with Washington County to act on behalf of the county to furnish or otherwise authorize the furnishing of Medical Assistance/Medicaid health care items or services, performs billing or coding functions, or is involved in the monitoring of health care provided by the entity.
- 2.2.3. Deficit Reduction Act - The Deficit Reduction Act of 2005 (DRA) was signed into law on February 8, 2006. It affects both Medicare and Medical Assistance. The DRA created the Medicaid Integrity Program (MIP) under section 1936 of the Social Security Act. Section 1936 of the Act increased resources available to the Secretary of Health and Human Services (HHS) create national strategy to combat Medicaid provider fraud, waste, and abuse. The DRA requires entities that receive or make annual MA payments of \$5 million or more educate their employees about how false claims are reported and handled and requires those entities to create policies and procedures to detect and prevent waste, fraud and abuse as it relates to MA payments.
- 2.2.4. Employee – any officer, manager, or employee of the entity required to comply with the DRA.
- 2.2.5. Entity – a governmental agency, organization, unit, corporation, partnership or other business arrangement, whether for-profit or not-for-profit, that receives or makes payments under a State plan approved under Title XIX or under any waiver of such plan annually, totaling at least \$5,000,000. Section 1902(A)(68) of

the Act under 4.42 (a) (1) (A) states “a governmental component providing Medicaid health care items or services for which Medicaid payments are made would qualify as an entity, i.e. a state mental health facility. A government agency that merely administers the Medicaid program in whole or in part i.e. managing the claims processing system or determining beneficiary eligibility is not for these purposes considered to be an entity.

- 2.2.6. False Claims Act –federal legislation at 31 USC §§3729 – 3733 that defines the elements of false claims made against the government and sets penalties associated with that behavior.
- 2.2.7. Fraud - any intentional act or omission designed to deceive others resulting in the victim suffering a loss and/or the perpetrator achieving a gain.
- 2.2.8. Probable fraud - Minnesota Rules 9500.1207 subd. 26b: Subp. 26b. Probable fraud. "Probable fraud" means the level of evidence that if proven as fact will establish that assistance has been wrongfully obtained.
- 2.2.9. Qui Tam Actions - a provision of the Federal Civil False Claims Act that allows a private citizen, referred to as a relator, to file a suit in the name of the U.S. Government charging fraud by government contractors and other entities that receive or use government funds and allows the private citizen to share in any money recovered.
- 2.2.10. Relator – a private person at whose prompting or complaint a public action is begun to bring in question the exercise of an office, franchise, etc.
- 2.2.11. Waste - useless or not needed
- 2.2.12. Whistleblower – a whistleblower is somebody who exposes wrongdoing, especially within an organization. The whistleblower protection clause is one of the strongest protection clauses in federal law. It protects the employee and anyone who investigates, initiates, testifies in furtherance of or assists in a case. In Section 3730(h) of the False Claims Act whistleblowers that have proven harassment are entitled to "all necessary relief necessary to make the employee whole" including "reinstatement with the same seniority status, two times the amount of back pay, interest on any back pay, and compensation for any special damages." This clause helps employees keep their job if they are still employed while the case is proceeding, and makes it unlawful for an employer to retaliate against any employees who cooperate with exposing the fraud. The full text of the whistleblower protections found in the False Claims Act and Minnesota Statutes are attached.

3.0 Washington County Policies and Procedures to Detect and Prevent Waste, Fraud and Abuse

Washington County is committed to fighting fraud and abuse that divert many that could otherwise be used to safeguard the health and welfare of Medicaid clients. To fight fraud and abuse in the MA system Washington County has adopted the following policies.

- A. Education of every Washington County employee assigned whose job duties include the establishment of, authorization of, or administration of services that result in payment under the MA system. Periodic updated materials will be submitted to employees as information becomes available. Each new employee assigned to a unit that falls under this requirement will be presented with this Manual at the start of employment.

Targeted Units include those individuals working with:

- 1) Case Management Services,
- 2) Community Based Waivers
- 3) Adult Mental Health
- 4) Children's Mental Health
- 5) Fiscal Services
- 6) Economic Assistance Fraud Prevention Investigation
- 7) Economic Assistance Cost Effective Insurance and Medicare Part B
- 8) All Human Services Management

B. Specific Actions to Prevent Fraud, Abuse and Waste

- 1) Each recipient will participate in an assessment to determine needed services and those services available to the recipient;
- 2) Each recipient will have a written case plan that includes a written description of the services authorized;
- 3) Each written case plan will be reviewed periodically by the case worker to confirm that the authorized services are necessary and are being provided according to MA requirements;
- 4) Each recipient will receive notice of the Federal False Claims Act and applicable state laws relating to fraud, waste and abuse.
- 5) All MA activities will be recorded in SSIS, MMIS or other designated electronic systems.
- 6) Contract managers will verify that contracted providers are authorized to receive MA payments on behalf of a recipient and is not on the excluded provider list prior to authorizing a contract with a provider and at each renewal.
- 7) The units of Washington County Community Services shall discontinue any contract arrangements with providers who are determined to have violated the laws relating to services provided or submission for payment for MA.
- 8) The units of Washington County Community Services working with MA programs will work collaboratively with the State of Minnesota, Fraud Prevention Investigations, Law Enforcement and Prosecutors to identify individuals who may be unauthorized or ineligible to receive benefits;

- 9) The units of Washington County Community Services will cooperate fully with law enforcement investigators in identifying, reporting, investigating and stopping misuse of the MA benefits.
 - 10) The applicable employees will use best practices to identify third parties legally responsible for payment of a claim for a health care item or service pursuant to §1902(a)(25) of the Social Security Act (42 U.S.C. 1396a(a)(25)).
 - 11) The units of Washington County Community Services will monitor their files and perform periodic reviews as designated by the Unit Manager to assess fraud, waste and abuse. A record of the review will be maintained in the case file as well as a master file.
 - 12) The units of Washington County Community Services shall cooperate with any audit performed by the State of Minnesota or Center for Medicare and Medicaid Services or other authorized agency.
 - 13) The units of Washington County Community Services shall take all necessary measures to protect the privacy of client data to avoid receipt and use of the data by another unauthorized individual.
 - 14) The units of Washington County Community Services shall post signs to promote the reporting of fraud in various areas of Community to include common areas open to the public.
 - 15) The units of Washington County Community Services shall receive annual training relating to the requirements of this Manual that may be presented in conjunction with HIPAA Privacy & Security Training.
 - 16) Washington County will designate a chief compliance officer. The Chief Compliance Officer shall:
 - a. be the initial point person for reports of fraud, abuse and waste
 - b. formulate a process to receive complaints and process the complaints while protecting the privacy of the complainants and to protect complainants from all retaliation
 - c. notify the Fraud Prevention Investigator, Washington County Attorney or local law enforcement upon receipt of a substantiated complaint of fraud.
 - d. provide an annual report to the Community Services Director on the application of and contacts made as a result of this manual.
 - 17) Washington County Community Services will investigate and correct any identified systemic problems responsible for the improper use or authorization of the MA benefits.
- C. Each Contractor who furnishes or otherwise authorizes the furnishing of MA health care items or services, performs billing or coding functions or is involved in monitoring of health care provided by that entity as a result of a Contract with Washington County must comply with the Federal Deficit Reduction Act of 2005. Contractors are required to provide proof to the County upon request of employee and agent education of the policies, law and requirements contained in the DRA and/or the Contractor's written compliance policies.
- D. Washington County encourages its staff and agents working with Federal health care programs as defined in §1128B(f) of the Social Security Act to promptly report any observations or suspicions of violations of law relating to the administration of the

MA program. Washington County acknowledges that no actions can or will be taken against an employee or agent that reports suspicions or observations of MA fraud. Washington County will publicize ways an employee can report fraud, waste and abuse. Employees are encouraged to report fraud, waste and abuse to the Chief Compliance Officer for the DRA in Washington County or their immediate supervisor.

Complaints may also be made to:

1. **The Minnesota Department of Human Services**

651-431-2650 or 800-657-3787

www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_000253#

2. **Minnesota Office of the Attorney General**

651-296-3353 or 800-657-3787

www.ag.state.mn.us/Office/ContactUs.asp

E. Washington County encourages members of the public to report any observations or suspicions of violations of law relating to the administration of or benefit received from the MA program. Washington County will prominently post documents to inform members of the public on the method to report suspicions of fraud, abuse or waste in the MA system.

4.0 Federal and State Laws Pertaining to Civil and Criminal Penalties

4.1 The Federal False Claims Act ("FCA"), Title 31 USC §§3729 – 3733

- (a) Any person who (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; (3) conspires to defraud the Government by getting a false or fraudulent claim paid or approved by the Government...or (7) 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, is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person...
- (b) For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information (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 of specific intent to defraud is required.

4.2 31 U.S.C. § 3729. 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, can be found liable under the Act.

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. The False Claims Act also imposes liability on an individual who knowingly submits a false record in order to obtain payment from the government. 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.

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 relators,” 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 employees 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 employee 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.

4.3 Administrative Remedies for False Claims and Statements - Title 31 Chapter 38 USC §3802. False claims and statements; liability

(a) (1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know—

- (A) is false, fictitious, or fraudulent;
- (B) includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;
- (C) includes or is supported by any written statement that—
 - (i) omits a material fact;
 - (ii) is false, fictitious, or fraudulent as a result of such omission; and
 - (iii) is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or

- (D) is for payment for the provision of property or services which the person has not provided as claimed, shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$5,000 for each such claim. Except as provided in paragraph (3) of this subsection, such person shall also be subject to an assessment, in lieu of damages sustained by the United States because of such claim, of not more than twice the amount of such claim, or the portion of such claim, which is determined under this chapter to be in violation of the preceding sentence.
- (2) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that—
- (A) the person knows or has reason to know—
- (i) asserts a material fact which is false, fictitious, or fraudulent; or
 - (ii) (I) omits a material fact; and
(II) is false, fictitious, or fraudulent as a result of such omission;
- (B) in the case of a statement described in clause (ii) of subparagraph (A), is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and
- (C) contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$5,000 for each such statement.
- (3) An assessment shall not be made under the second sentence of paragraph (1) with respect to a claim if payment by the Government has not been made on such claim.
- (b) (1) Except as provided in paragraphs (2) and (3) of this subsection—
- (A) a determination under section 3803 (a)(2) of this title that there is adequate evidence to believe that a person is liable under subsection (a) of this section; or
- (B) a determination under section 3803 of this title that a person is liable under subsection (a) of this § may provide the authority with grounds for commencing any administrative or contractual action against such person which is authorized by law and which is in addition to any action against such person under this chapter.
- (2) A determination referred to in paragraph (1) of this subsection may be used by the authority, but shall not require such authority, to commence any administrative or contractual action which is authorized by law.
- (3) In the case of an administrative or contractual action to suspend or debar any person who is eligible to enter into contracts with the Federal Government, a determination referred to in paragraph (1) of this subsection shall not be considered as a conclusive determination of such person's responsibility pursuant to Federal procurement laws and regulations.

4.4 Criminal Penalties for Acts Involving Federal Health Care Programs §1128B of the Social Security Act, 42 U.S.C. 1320a-7b

- (a) Whoever—
- (1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a Federal health care program (as defined in subsection (f)),
 - (2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment,
 - (3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized,
 - (4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person,
 - (5) presents or causes to be presented a claim for a physician's service for which payment may be made under a Federal health care program and knows that the individual who furnished the service was not licensed as a physician, or
 - (6) for a fee knowingly and willfully counsels or assists an individual to dispose of assets (including by any transfer in trust) in order for the individual to become eligible for medical assistance under a State plan under title XIX, if disposing of the assets results in the imposition of a period of ineligibility for such assistance under section 1917(c), shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by that person) of items or services for which payment is or may be made under the program, be guilty of a felony and upon conviction thereof fined not more than \$25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure, conversion, or provision of counsel or assistance by any other person be guilty of a misdemeanor and upon conviction thereof fined not more than \$10,000 or imprisoned for not more than one year, or both. In addition, in any case where an individual who is otherwise eligible for assistance under a Federal health care program is convicted of an offense under the preceding provisions of this subsection, the administrator of such program may at its option (notwithstanding any other provision of such program) limit, restrict, or suspend the eligibility of that individual for such period (not exceeding one year) as it deems appropriate; but the imposition of a limitation, restriction, or suspension with respect to the eligibility of any individual under this sentence shall not affect the eligibility of any other person for assistance under the plan, regardless of the relationship between that individual and such other person.
- (b)(1) Whoever knowingly and willfully solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind—
- (A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or

- (B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under Federal health care program, shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.
- (2) Whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—
- (A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or
 - (B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program, shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.
- (3) Paragraphs (1) and (2) shall not apply to—
- (A) a discount or other reduction in price obtained by a provider of services or other entity under title XVIII or a State health care program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under title XVIII or a State health care program;
 - (B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services;
 - (C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under title XVIII or a State health care program if—
 - (i) the person has a written contract, with each such individual or entity, which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each such individual or entity under the contract, and
 - (ii) in the case of an entity that is a provider of services (as defined in section 1861(u)), the person discloses (in such form and manner as the Secretary requires) to the entity and, upon request, to the Secretary the amount received from each such vendor with respect to purchases made by or on behalf of the entity;
 - (D) a waiver of any coinsurance under part B of title XVIII by a Federally qualified health care center with respect to an individual who qualifies for subsidized services under a provision of the Public Health Service Act[74];
 - (E) any payment practice specified by the Secretary in regulations promulgated pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987[75] or in regulations under section 1860D-3(a)(6)
 - (F) any remuneration between an organization and an individual or entity providing items or services, or a combination thereof, pursuant to a written agreement between the organization and the individual or entity if the organization is an

- eligible organization under section 1876 or if the written agreement, through a risk-sharing arrangement, places the individual or entity at substantial financial risk for the cost or utilization of the items or services, or a combination thereof, which the individual or entity is obligated to provide;
- (G) the waiver or reduction by pharmacies (including pharmacies of the Indian Health Service, Indian tribes, tribal organizations, and urban Indian organizations) of any cost-sharing imposed under part D of title XVIII, if the conditions described in clauses (i) through (iii) of section 1128A(i)(6)(A) are met with respect to the waiver or reduction (except that, in the case of such a waiver or reduction on behalf of a subsidy eligible individual (as defined in section 1860D-14(a)(3)), section 1128A(i)(6)(A) shall be applied without regard to clauses (ii) and (iii) of that section);[76]
 - (H) any remuneration between a federally qualified health center (or an entity controlled by such a health center) and an MA organization pursuant to a written agreement described in section 1853(a)(4)[77] (I)[78] any remuneration between a health center entity described under clause (i) or (ii) of section 1905(l)(2)(B) and any individual or entity providing goods, items, services, donations, loans, or a combination thereof, to such health center entity pursuant to a contract, lease, grant, loan, or other agreement, if such agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center entity; and[79] (J)[80] a discount in the price of an applicable drug (as defined in paragraph (2) of section 1860D-14A(g)) of a manufacturer that is furnished to an applicable beneficiary (as defined in paragraph (1) of such section) under the Medicare coverage gap discount program under section 1860D-14A.
- (c) Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution, facility, or entity in order that such institution, facility, or entity may qualify (either upon initial certification or upon recertification) as a hospital, critical access hospital, skilled nursing facility, nursing facility, intermediate care facility for the mentally retarded, or other entity (including an eligible organization under section 1876(b)) for which certification is required under title XVIII or a State health care program (as defined in section 1128(h)), or with respect to information required to be provided under section 1124A, shall be guilty of a felony and upon conviction thereof shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.
- (d) Whoever knowingly and willfully—(1) charges, for any service provided to a patient under a State plan approved under title XIX, money or other consideration at a rate in excess of the rates established by the State, (or, in the case of services provided to an individual enrolled with a Medicaid managed care organization under title XIX under a contract under section 1903(m) or under a contractual, referral, or other arrangement under such contract, at a rate in excess of the rate permitted under such contract), or (2) charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under a State plan approved under title XIX, any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient)—

- (A) as a precondition of admitting a patient to a hospital, nursing facility, or intermediate care facility for the mentally retarded, or
 - (B) as a requirement for the patient's continued stay in such a facility, when the cost of the services provided therein to the patient is paid for (in whole or in part) under the State plan, shall be guilty of a felony and upon conviction thereof shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.
- (e) Whoever accepts assignments described in section 1842(b)(3)(B)(ii) or agrees to be a participating physician or supplier under section 1842(h)(1) and knowingly, willfully, and repeatedly violates the term of such assignments or agreement, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$2,000 or imprisoned for not more than six months, or both.
- (f) For purposes of this section, the term "Federal health care program" means—(1) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the health insurance program under chapter 89 of title 5, United States Code[81]); or (2) any State health care program, as defined in section 1128(h).
- (g) [82] In addition to the penalties provided for in this section or section 1128A, a claim that includes items or services resulting from a violation of this section constitutes a false or fraudulent claim for purposes of subchapter III of chapter 37 of title 31, United States Code.
- (h) [83] With respect to violations of this section, a person need not have actual knowledge of this section or specific intent to commit a violation of this section.

4.5 Minnesota False Claims Act – Minnesota Statutes §15C

15C.01 DEFINITIONS.

Subdivision 1. Scope. For purposes of this chapter, the terms in this section have the meanings given them.

Subd. 2. Claim. "Claim" includes a request or demand, whether under a contract or otherwise, for money or property that is made by a contractor, grantee, or other recipient to the state or a political subdivision if the state or the political subdivision has provided or will provide a portion of the money or property that is requested or demanded, or if the state or the political subdivision has reimbursed or will reimburse the contractor, grantee, or other recipient for a portion of the money or property that is requested or demanded.

Subd. 3. Knowing and knowingly. "Knowing" and "knowingly" mean that a person, with respect to information:

- (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.

No proof of specific intent to defraud is required, but in no case is a person who acts merely negligently, inadvertently, or mistakenly with respect to information deemed to have acted knowingly.

Subd. 4. Original source. "Original source" means a person who has direct and independent knowledge of information that is probative of an essential element of the allegations in an action brought under this chapter that was not obtained from a public source and who either voluntarily provided the information to the state or the political subdivision before bringing an action based on the information or whose information provided the basis for or caused an investigation, hearing, audit, or report that led to the public disclosure of the allegations or transactions upon which an action brought under this chapter is based.

Subd. 5. Person. "Person" means a natural person, partnership, corporation, association or other legal entity but does not include the state or a political subdivision.

Subd. 6. Political subdivision. "Political subdivision" means a political subdivision of the state and includes a department or agency of a political subdivision.

Subd. 7. Prosecuting attorney. "Prosecuting attorney" means:

- (1) the attorney general, if the false or fraudulent claim involves money, property, or services provided by the state; or
- (2) the county attorney, city attorney, or other attorney representing a political subdivision, if the false or fraudulent claim involves money, property, or services provided by the political subdivision.

Subd. 8. State. "State" means the state of Minnesota and includes a department or agency of the state.

4.6 15C.02 LIABILITY FOR CERTAIN ACTS.

(a) A person who commits any act described in clauses (1) to (7) is liable to the state or the political subdivision for a civil penalty of not less than \$5,500 and not more than \$11,000 per false or fraudulent claim, plus three times the amount of damages that the state or the political subdivision sustains because of the act of that person, except as otherwise provided in paragraph (b):

- (1) knowingly presents, or causes to be presented, to an officer or employee of the state or a political subdivision a false or fraudulent claim for payment or approval;
- (2) knowingly makes or uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the state or a political subdivision;
- (3) knowingly conspires to either present a false or fraudulent claim to the state or a political subdivision for payment or approval or makes, uses, or causes to be made or used a false record or statement to obtain payment or approval of a false or fraudulent claim;
- (4) has possession, custody, or control of public property or money used, or to be used, by the state or a political subdivision and knowingly delivers or causes to be delivered to

- the state or a political subdivision less money or property than the amount for which the person receives a receipt;
- (5) is authorized to prepare or deliver a receipt for money or property used, or to be used, by the state or a political subdivision and knowingly prepares or delivers a receipt that falsely represents the money or property;
 - (6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state or a political subdivision who lawfully may not sell or pledge the property; or
 - (7) knowingly makes or 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 state or a political subdivision.
- (b) The court may assess not less than two times the amount of damages that the state or the political subdivision sustains because of the act of the person if:
- (1) the person committing a violation under paragraph (a) furnished an officer or employee of the state or the political subdivision responsible for investigating the false or fraudulent claim violation with all information known to the person about the violation within 30 days after the date on which the person first obtained the information;
 - (2) the person fully cooperated with any investigation by the state or the political subdivision of the violation; and
 - (3) at the time the person furnished the state or the political subdivision with information about the violation, no criminal prosecution, civil action, or administrative action had been commenced under this chapter with respect to the violation and the person did not have actual knowledge of the existence of an investigation into the violation.
- (c) A person violating this section is also liable to the state or the political subdivision for the costs of a civil action brought to recover any penalty or damages.
- (d) A person is not liable under this section for mere negligence, inadvertence, or mistake with respect to activities involving a false or fraudulent claim.
- (e) An employer is not liable for an act committed by a nonmanagerial employee that violates this section, unless the employer had knowledge of the act, ratified the act, or was reckless in the hiring or supervision of the employee.
- (f) Except in cases where proof of specific intent to defraud the state or a political subdivision is found, a person is not liable under this section if:
- (1) the person has been informed by the original source that single or multiple false or fraudulent claims have been made against the state or a political subdivision; and
 - (2) the person repays the amount of actual damages to the state or the political subdivision within 45 days after being so informed. If the person has a compliance office, an original source is not considered to have informed the person of a false or fraudulent claim unless the original source reported it to the person's compliance office.

4.7 Minnesota Statutes §609.466 MEDICAL ASSISTANCE FRAUD.

Any person who, with the intent to defraud, presents a claim for reimbursement, a cost report or a rate application, relating to the payment of medical assistance funds pursuant to chapter 256B, to the state agency, which is false in whole or in part, is guilty of an attempt to commit theft of public funds and may be sentenced accordingly.

4.8 Minnesota Statutes §609.52 THEFT

Subd. 2. Acts constituting theft. Whoever does any of the following commits theft and may be sentenced as provided in subdivision 3:

(3) obtains for the actor or another the possession, custody, or title to property of or performance of services by a third person by intentionally deceiving the third person with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes without limitation:

(iii) the preparation or filing of a claim for reimbursement, a rate application, or a cost report used to establish a rate or claim for payment for medical care provided to a recipient of medical assistance under chapter 256B, which intentionally and falsely states the costs of or actual services provided by a vendor of medical care.

Subd. 3.Sentence. Whoever commits theft may be sentenced as follows:

(1) to imprisonment for not more than 20 years or to payment of a fine of not more than \$100,000, or both, if the property is a firearm, or the value of the property or services stolen is more than \$35,000 and the conviction is for a violation of subdivision 2, clause (3); or

(2) to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if the value of the property or services stolen exceeds \$5,000; or

(3) to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if any of the following circumstances exist:

(a) the value of the property or services stolen is more than \$1,000 but not more than \$5,000; or

(c) the value of the property or services stolen is more than \$500 but not more than \$1,000 and the person has been convicted within the preceding five years for an offense under this section, section 256.98; 268.182; 609.24; 609.245; 609.53; 609.582, subdivision 1, 2, or 3; 609.625; 609.63; 609.631; or 609.821, or a statute from another state, the United States, or a foreign jurisdiction, in conformity with any of those sections, and the person received a felony or gross misdemeanor sentence for the offense, or a sentence that was stayed under section 609.135 if the offense to which a plea was entered would allow imposition of a felony or gross misdemeanor sentence; or

- (d) the value of the property or services stolen is not more than \$1,000, and any of the following circumstances exist: (iv) the property consists of public funds belonging to the state or to any political subdivision or agency thereof.

4.9 256B.121 Treble Damages

Any vendor of medical care who willfully submits a cost report, rate application or claim for reimbursement for medical care which the vendor knows is a false representation and which results in the payment of public funds for which the vendor is ineligible shall, in addition to other provisions of Minnesota law, be subject to an action by the state of Minnesota or any of its subdivisions or agencies for civil damages. The damages awarded shall include three times the payments which result from the false representation, together with costs and disbursements, including reasonable attorneys' fees or their equivalent.

4.10 Whistleblower Protections

Minnesota Statutes §181.932 DISCLOSURE OF INFORMATION BY EMPLOYEES.

Subdivision 1. Prohibited action. An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:

- (1) the employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of any federal or state law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official;
- (2) the employee is requested by a public body or office to participate in an investigation, hearing, inquiry;
- (3) the employee refuses an employer's order to perform an action that the employee has an objective basis in fact to believe violates any state or federal law or rule or regulation adopted pursuant to law, and the employee informs the employer that the order is being refused for that reason;
- (4) the employee, in good faith, reports a situation in which the quality of health care services provided by a health care facility, organization, or health care provider violates a standard established by federal or state law or a professionally recognized national clinical or ethical standard and potentially places the public at risk of harm; or
- (5) a public employee communicates the findings of a scientific or technical study that the employee, in good faith, believes to be truthful and accurate, including reports to a governmental body or law enforcement official.

The disclosures protected pursuant to this section do not authorize the disclosure of data otherwise protected by law.

Subd. 2. Disclosure of identity. The identity of any employee making a report to a governmental body or law enforcement official under subdivision 1, clause (1) or (4), is private data on individuals as defined in section 13.02. The identity of an employee providing information under subdivision 1, clause (2), is private data on individuals if:

- (1) the employee would not have provided the information without an assurance that the employee's identity would remain private, because of a concern that the employer would commit an action prohibited under subdivision 1 or that the employee would be subject to some other form of retaliation; or
- (2) the state agency, statewide system, or political subdivision reasonably believes that the employee would not have provided the data because of that concern.

If the disclosure is necessary for prosecution, the identity of the employee may be disclosed but the employee shall be informed prior to the disclosure.

Subd. 3. False disclosures. This section does not permit an employee to make statements or disclosures knowing that they are false or that they are in reckless disregard of the truth.

Subd. 4. Collective bargaining rights. This section does not diminish or impair the rights of a person under any collective bargaining agreement.

Subd. 5. Confidential information. This section does not permit disclosures that would violate federal or state law or diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by common law.