

## PENNSYLVANIA LAW

Pennsylvania law provides that it is unlawful to present a false or fraudulent claim for payment to the Pennsylvania Medicaid Program. Violations of the laws against false and fraudulent claims are punishable by civil and criminal penalties.

Pennsylvania Statutes Title 62, Section 1407 provides, in pertinent part, that:

(a) It shall be unlawful for any person to:

(1) Knowingly or intentionally present for allowance or payment any false or fraudulent claim or cost report for furnishing services or merchandise under medical assistance, or to knowingly present for allowance or payment any claim or cost report for medically unnecessary services or merchandise under medical assistance, or to knowingly submit false information, for the purpose of obtaining greater compensation than that to which he is legally entitled for furnishing services or merchandise under medical assistance, or to knowingly submit false information for the purpose of obtaining authorization for furnishing services or merchandise under medical assistance.

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A person who violates this provision is guilty of a felony of the third degree with a maximum penalty of \$15,000 and seven years imprisonment. If the person was previously convicted in state or federal court of conduct that would constitute a violation of this provision, a subsequent offense is a felony of the second degree with a maximum penalty of \$25,000 and ten years imprisonment. In addition, the person committing the violation is liable to repay the amount of excess payments plus interest and to pay an amount not to exceed three times the excess payments. A person convicted of a violation is ineligible to participate in the Medicaid program for a period of five years.

If the state Medicaid agency determines that a provider has committed a prohibited act, it has the authority to terminate the provider's Medicaid provider agreement upon notice, and to institute a civil suit against the provider for twice the amount of excess payments plus interest. Notice of action taken by the agency will be forwarded to the Medicaid Fraud Control Unit of the Department of Justice and to the appropriate licensing board of the Department of State for appropriate action.

At the time VistaCare's False Claims Policy was adopted, Pennsylvania had not enacted its own legislation similar to the Federal False Claims Act allowing private citizens or employees to file civil lawsuits to recover monetary damages against individuals and entities that submit false or fraudulent claims to the state Medicaid program.

Pennsylvania has enacted a Whistleblower Law that provides certain protections to an employee of a “public body” who witnesses or has evidence of wrongdoing or waste while employed and who makes a good faith report of the wrongdoing or waste, verbally or in writing, to one of the person's superiors, to an agent of the employer or to an appropriate authority. Some Pennsylvania court decisions have held that the Whistleblower Law can apply to a private employer that receives reimbursement from the Medicaid program for services provided to Medicaid beneficiaries.

An employer may not discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee’s compensation, terms, conditions, location or privileges of employment because the employee engaged in conduct protected by the Whistleblower Law. A person who alleges a violation of the Whistleblower Law may bring a civil action in court for appropriate injunctive relief or damages, or both, within 180 days after the occurrence of the alleged violation.

In rendering a judgment in an action brought under the Whistleblower Law, a court may order reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees.

VistaCare’s False Claims Policy requires all employees, contractors and agents with knowledge of potential fraud and abuse situations to report them, and prohibits retaliation or retribution for good faith reporting.

#### References:

Medicaid False Claims: 62 P.S. § 1407

Whistleblower Law: 43 P.S. §§ 1421 to 1428