

Federal and State Laws Relating to False Statements and False Claims

The federal False Claims Act and the federal Program Fraud Civil Remedies Act can subject individuals and organizations to significant fines and penalties if they commit fraud against the federal government. Under the federal False Claims Act and the Program Fraud Civil Remedies Act, a health care provider can be liable if it knowingly submits false claims to Medicare, Medicaid or other federal programs, or if it knowingly makes or uses a false record or statement to get a false claim paid.

In addition to willful and intentional acts of fraud, individuals and organizations can be liable under these laws for submitting false claims while acting with reckless disregard or deliberate ignorance as to the truth or falsity of the claim. A provider that violates the federal False Claims Act can be liable for up to three times the amount of damages caused the government plus penalties of \$5,500 to \$11,000 per false claim. Providers who knowingly submit false claims may also be subject to exclusion from Medicare and Medicaid.

Like the federal False Claims Act, the Program Fraud Civil Remedies Act imposes penalties on persons or organizations who deliberately submit false statements or claims to certain federal agencies or who submit such claims in deliberate ignorance or reckless disregard of their truth or falsity. Violations of the Program Fraud Civil Remedies Act are subject to civil monetary penalties of up to \$5,000 per false claim or statement and assessments of up to twice the amount of such claim in lieu of damages.

Certain New Jersey statutes similarly impose penalties on persons or entities that make false statements in connection with a claim for payment to a government health care program. N.J.S.A. 2C:21-4.2 *et seq.* makes it a crime for a provider to submit a false bill for payment or reimbursement for health care services, the penalties for which include monetary penalties, imprisonment and suspension or loss of license. The New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 *et seq.* similarly prohibits the submission of false or improper claims to the Medicaid program, the penalties for which include imprisonment, penalties of up to three times the amount of excess payment received, possible exclusion from participation in the Medicaid program, and, as amended by the New Jersey False Claims Act, a civil penalty equal to that under the federal False Claims Act (currently between \$5,500 and \$11,000 per false claim).

The New Jersey False Claims Act, N.J.S.A. 2A:32C-1 *et seq.*, effective March 13, 2008, is a much broader statute that subjects a person to a civil penalty of not less than and not more than the civil penalty allowed under the federal False Claims Act for each fraudulent claim, plus three times the amount of damages which the State sustains. Under this Act, a person is considered to have submitted a false claim if he or she knowingly presents or causes to be presented to any employee, officer or agent of the State, or any recipient of State funds a false or fraudulent claim for payment or approval, creates a false record to obtain such payment, conspires to get a false or fraudulent claim allowed or paid by the State, has public property or money used or to be used by the State and delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt, is authorized to make or deliver a document certifying the receipt of property used or to be used by the State and makes or delivers a receipt without completely knowing that the information on the receipt is true, knowingly buys, or receives as a

pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge this property, or 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 State. A violation of this Act may also give rise to liability under the New Jersey Medical Assistance and Health Services Act.

Raritan Bay Medical Center requires its employees to report any concerns about false claims or regulatory violations to a supervisor or to the compliance officer. It is Raritan Bay Medical Center's policy that an employee who makes such a report in good faith is protected from retaliation. An employee who fails to report regulatory violations or false claims of which they are aware is subject to discipline.

Under the federal False Claims Act, any person may file a lawsuit under seal on behalf of the United States government (called a *qui tam* lawsuit) alleging a violation of the statute. The federal government will then investigate and decide whether to intervene and take over the litigation. Even if the government does not intervene, the person who filed the lawsuit may still litigate the case for the government. A person bringing the action on behalf of the government can receive an award of 15-30% of any recovery, depending on the circumstances. Any potential award may, however, be reduced or barred if the person who brought the lawsuit either planned or initiated the violation.

The federal False Claims Act protects persons who report potential violations to the government from retaliation or discrimination. In addition, Raritan Bay Medical Center's compliance program and policies protect employees who in good-faith report potential problems or concerns from retaliation, retribution or harassment. In New Jersey, the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 *et seq.* also prohibits employers from taking retaliatory employment action against employees who "blow the whistle" by reporting to supervisors or public authorities corporate conduct that the employee reasonably believes violates the law. The New Jersey False Claims Act also permits an individual to bring a *qui tam* action for violation of this Act. If successful, the individual may be entitled to between 15%-30% of the proceeds of such action. An employer is also prohibited from retaliating in any way against any employee who discloses information pursuant to this Act.

Raritan Bay Medical Center ("RBMC") has a compliance program, structured around the criteria for an effective program as outlined in the U.S. Federal Sentencing Guidelines, and described in detail in the Raritan Bay Medical Center Corporate Compliance Program Handbook. This handbook is distributed to all new employees at new hire orientation, and is re-distributed at RBMC's annual compliance refresher training. The handbook provides a summary of RBMC's compliance policies and procedures for detecting and preventing fraud, waste and abuse, and also contains information on how to report any suspected improper conduct. Additional copies are available by contacting RBMC's compliance officer at (732) 324-6062 or complianceofficer@rbmc.org.

Raritan Bay Medical Center's policy regarding these laws is available on its website, www.rbmc.org.

September 4, 2008