

<b>Subject:</b>	<b>Compliance with Applicable Federal and State Laws</b>
<b>Policy/Procedure:</b>	<b>False Claims Act</b>
<b>Number:</b>	<b>LAW- 001</b>
<b>Version/Date:</b>	<b>Version 1 (January 2007)</b>

- I. **Purpose.** The purpose of this policy is to provide (1) information regarding the federal False Claims Act (“FCA”) and applicable state False Claims Acts (collectively, the “Acts”), whistleblower protections under such laws, related administrative remedies, and Odyssey’s commitment to detecting and preventing fraud, waste and abuse in federal and state health care programs, and (2) procedures to ensure that Odyssey’s practices are consistent with its stated policies. The requirements set forth in this policy take effect on January 1, 2007.
- II. **Scope.** This policy is intended to apply to all Odyssey employees, as well as applicable contractors and agents, as defined below, in those states for which Section 6032 of the Deficit Reduction Act of 2005 applies. Odyssey may adopt this policy in certain states in which Section 6032 does not apply because Odyssey’s Medicaid payments in those states do not meet or exceed \$5 million annually. Adoption of this policy for those states is not intended to, nor will it, impose any legal obligation on Odyssey. This policy may be amended from time-to-time to account for changes in the interpretation of Section 6032 requirements by the Centers for Medicare and Medicaid Services (“CMS”) or individual states.
- III. **Definitions.** “Contractor” and “agent” are defined to include any contractor, subcontractor, agent, or other person whom himself/herself, or on behalf of Odyssey, furnishes or otherwise authorizes the furnishing of Medicaid health care items or services, performs billing or coding functions for Odyssey, or is involved in monitoring health care provided by Odyssey.
- IV. **Procedures.** Odyssey is committed to complying with all applicable federal and state laws, including laws addressing false claims such as the FCA and state FCAs. Pursuant to Odyssey’s commitment to comply with the Acts, Odyssey makes education and information available to its employees, contractors and agents regarding the Acts, whistleblower protections under such laws, related administrative remedies, and Odyssey’s commitment to detecting and preventing fraud, waste and abuse in federal and state health care programs. Odyssey expects that its relevant contractors and agents will adhere to the principles noted in this Policy.

Accordingly, through this Policy, Odyssey provides the following information to its employees, contractors and agents:

A. Federal False Claims Act

1. Prohibited Conduct

The FCA is a federal law aimed at preventing fraud against the federal government, including fraudulent billing and fraudulent submission of claims to any Federal health care program (e.g., Medicare and Medicaid). A FCA action may be investigated and brought by the United States Department of Justice (“DOJ”). DOJ is often assisted in its investigation of FCA allegations in the health care industry by the Office of Inspector General (“OIG”) for the U.S. Department of Health and Human Services.

Specifically, the FCA prohibits any person or entity (including hospices, nursing homes and physicians) from:

- Knowingly presenting, or causing to be presented, to the government a false or fraudulent claim for payment or approval;
- Knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the government;
- Conspiring to defraud the government by getting a false or fraudulent claim allowed or paid;
- Falsely certifying the type or amount of property to be used by the Government;
- Certifying receipt of property used (or to be used) by the government on a document without completely knowing that the information is true;
- Knowingly buying or receiving government property from an unauthorized agent; and
- Knowingly making, using or causing 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.

For health care providers, the FCA most directly applies when a false claim for reimbursement is submitted to a government program, such as Medicare, and the provider knew or should have known the claim was false.

#### B. Essential Elements of the FCA

To successfully establish a cause of action under the FCA, the government must prove, by a preponderance of the evidence, the following elements:

1. **Intent or Knowledge:** The entity or individual submitting the false claims or statements must do so “knowingly”. Knowingly is defined by the FCA to mean the person:
  - a) has actual knowledge of the information;
  - b) acts in deliberate ignorance of the truth or falsity of the information; or

- c) acts in reckless disregard of the truth or falsity of the information.
2. **Claim:** There must be a false “claim”. A claim includes any request or demand for money or property that is made to a contractor, grantee, or other recipient if the government provides any portion of the money or property that is requested or demanded, or if the government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.
3. **Damages:** The government must suffer identifiable damages. Usually, damages to the government are measured by the amount it paid based upon the false claim.
4. **Materiality:** Although not expressly noted in the FCA statute, most courts interpreting the FCA have found that the false information in the claim must be material to the government’s determination to make payment.

#### C. Timing of a FCA Cause of Action

A FCA cause of action can be brought up to 6 years after the date on which the violation was committed or 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last. Generally, the government can prosecute false claims going back six years from when a complaint is filed.

#### D. FCA Damages and Penalties

If litigated, the FCA authorizes a court to award three times the amount of damages (often referred to as “treble damages”) plus penalties of \$5,500 to \$11,000 for each false claim. Under certain circumstances involving a voluntary disclosure to the government, the defendant may qualify for double damages.

#### E. Administrative Remedies

The government may pursue false claims violations using the FCA or alternative remedies, laws and enforcement tools, including certain administrative remedies that are very similar to the FCA.

1. Other Federal administrative laws include the Program Fraud Civil Remedies Act (“PFCRA”), which allows for penalties of up to \$5,000 per false claim or statement and potentially up to twice the amount of the claim or portion of the claim determined to be in violation of law.

2. The U.S. Department of Health and Human Services, OIG has an administrative authority called the Civil Monetary Penalties Law (“CMPL”), which authorizes the OIG to seek three times the amount claimed plus up to \$10,000 per false claim. OIG may only use the CMPL authority to pursue false claims if DOJ authorizes them to do so following a decision not to pursue the matter under the FCA.
3. The OIG may also seek to exclude an entity or person from participating in federal health care programs for conduct that violates the FCA.

#### F. Other Items

In determining whether a violation of the FCA exists, the government is authorized to issue demands for documents, usually through subpoenas, requests for answers to interrogatories, and in limited circumstances, may require oral testimony. Any response to a government request for information related to the Company in connection with a FCA investigation or litigation matter should be coordinated through its legal counsel.

- V. State False Claims Acts.** A number of states have enacted false claims acts that mirror or are very similar to the federal FCA and include provisions addressing whistleblower protections, as well as penalties and sanctions. The number of states that are expected to enact their own false claims act similar to the federal FCA is expected to increase significantly because of certain federal financial incentives offered to the states. Even in those states that have not yet enacted a specific false claims act, other criminal and civil laws are often available, including health care fraud laws, and other anti-fraud laws that relate to state Medicaid programs, that may be used to prosecute health care fraud involving the intentional submission of false claims and/or false statements used to improperly obtain state health care program funds.

For information about the particular state false claims act in the state in which you work, click on the applicable state link.

- VI. Whistleblower Protections.** In accordance with federal law, an employee whistleblower may not be discharged, demoted, suspended, threatened, harassed or discriminated against by his or her employer based on lawful acts done by the employee in furtherance of an action under the FCA. For additional information see the state false claims act summaries, as well as Odyssey’s policies and procedures regarding non-retaliation, Odyssey Policy RCI-003, *Reports of Suspected Violations: Non-Retaliation*.
- VII. Detecting and Preventing Fraud, Waste and Abuse.** Odyssey has an established health care compliance program that includes regular education, an employee hotline, written policies and procedures, regular audits and reviews. Odyssey’s “Monitoring Compliance” policies, MC-001 to MC-005, and Odyssey’s

“Responding to Compliance Issues/Corrective Action” policies, RC-I001 to RCI-005, specifically address Odyssey’s ongoing efforts to detect and prevent fraud, waste and abuse in Federal and state health care programs. Copies of these policies and procedures are available to all Odyssey employees on the Company’s intranet. Additionally, employees receive training on the compliance program annually. Contractors and agents also receive copies of relevant compliance program policies and procedures and are expected to adhere to them when working on Odyssey’s behalf.

**VIII. Questions.** Any questions regarding this Policy, the FCA or state FCAs should be directed to Odyssey’s Chief Compliance Officer or General Counsel.

**IX. References.** Federal False Claims Act -- 31 U.S.C. §§ 3729-3733; Program Fraud Civil Remedies Act -- 31 U.S.C. Chapter 38; Civil Monetary Penalties Law -- 42 U.S.C. § 1320a-7(a); Deficit Reduction Act of 2005 -- Public Law 109-171 § 6032 (Feb. 8, 2006) (to be codified at 42 U.S.C. § 1396a(a)).

**History**

Version No.	Approved By	Date	Action Taken (revision, retirement, etc)
1	Chief Compliance Officer	1/22/07	New Policy

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