

SHADY OAK NURSING AND REHABILITATION, LLC POLICY AND PROCEDURE ON FRAUD AND ABUSE AND DESCRIPTION OF APPLICABLE FEDERAL AND STATE FALSE CLAIMS ACTS

PURPOSE

Shady Oak Nursing and Rehabilitation, LLC is committed to its role in preventing health care fraud and abuse and complying with applicable state and federal law related to health care fraud and abuse. The Deficit Reduction Act of 2005 requires information about both the federal False Claims Act and other laws, including state laws, dealing with fraud, waste, and abuse and whistleblower protections for reporting those issues to be provided to employees, contractors, and agents of Provider. To ensure compliance with such laws, Shady Oak Nursing and Rehabilitation, LLC has developed and implemented these policies and procedures to detect and prevent fraud, waste, and abuse, and also supports the efforts of federal and state authorities in identifying incidents of fraud and abuse.

POLICY AND PROCEDURE

Shady Oak Nursing and Rehabilitation, LLC takes health care fraud and abuse very seriously. It is our policy to provide information to all employees, contractors and agents about the federal and state false claims acts, remedies available under these provisions and how employees and others can access and use them, and about whistleblower protections available to anyone who reports an alleged violation of the federal or state false claims acts. It is also our policy to advise our employees, contractors and agents of the steps Shady Oak Nursing and Rehabilitation, LLC has in place to detect health care fraud and abuse.

Shady Oak Nursing and Rehabilitation, LLC's health care fraud and abuse policy and procedures are intended to detect and prevent fraud, waste and abuse in its health care facility, including fraud, waste, and abuse in the Federal and State health care programs. Our procedures include the following steps:

1. Provide employees with this policy and procedure during orientation. This policy will also be included in the employee manual and available in electronic form at Shady Oak Nursing and Rehabilitation, LLC web site. This policy contains detailed information about the federal and state false claims acts, remedies available under these provisions and how employees and others can use them, and about whistleblower protections available to anyone who alleges a violation of the federal or state false claims acts. All present and future employees will sign an acknowledgment of receipt and understanding of the Shady Oak Nursing and Rehabilitation, LLC's policy and procedure on fraud and abuse.

2. Provide contractors and agents, as identified in CMS letter SMDL #06-025 dated December 13, 2006, with this policy and procedure, which contains detailed information about the federal and state false claims acts, remedies available under these provisions and how employees and others can use them, and protections regarding whistleblowers available to anyone who alleges a violation of the federal or state false claims acts. Contractors and agents will sign an acknowledgment of receipt and understanding of the Shady Oak Nursing and Rehabilitation, LLC's policy and procedure on fraud and abuse.

FEDERAL AND STATE FALSE CLAIMS LAWS

The Role of Federal and State Laws in Preventing Fraud, Waste, and Abuse: The Centers for Medicare & Medicaid Services (CMS) defines "fraud" as the intentional deception or misrepresentation that an individual knows to be false (or does not believe to be true) and makes, knowing that the deception could result in an unauthorized benefit to himself or another person. CMS defines "abuse" as incidents or practices of providers that are inconsistent with sound medical practice and may result in unnecessary costs, improper payment, or the payment for services that either fail to meet professionally recognized standards of care or are medically unnecessary.

The Federal Government and the State of Texas have enacted criminal and civil laws pertaining to the submission of false or fraudulent claims for payment or approval to the federal and state governments and to private payors. These false claims laws, which provide for criminal, civil, and administrative penalties, provide governmental authorities with broad authority to investigate and prosecute potentially fraudulent activities, and also provide anti-retaliation provisions for individuals who make good faith reports of alleged waste, fraud, and abuse.

The Federal Civil False Claims and Program Fraud Civil Remedies Acts, applicable State laws, and anti-retaliation provisions are summarized in the following sections.

1. FEDERAL CIVIL FALSE CLAIMS ACT

The **Civil False Claims Act** (31 U.S.C. §3729 *et seq.*) is a statute that imposes civil liability on any person who:

- knowingly presents, or causes to be presented, a false or fraudulent claim, record or statement for payment or approval,
- conspires to defraud the government by getting a false or fraudulent claim allowed or paid,
- uses a false record or statement to avoid or decrease an obligation to pay the Government, and
- other fraudulent acts enumerated in the statute.

The term "**knowingly**" as defined in the Civil False Claims Act ("FCA") includes a person who has actual knowledge of the information, acts in deliberate ignorance of the

truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

The term “**claim**” includes any request or demand for money or property if the United States Government provides any portion of the money requested or demanded.

Potential civil liability under the FCA currently includes penalties of between five thousand five hundred dollars (\$5,500) and eleven thousand dollars (\$11,000) per claim, treble damages, and the costs of any civil action brought to recovery such penalties or damages.

The **Attorney General of the United States** is required to diligently investigate violations of the FCA, and may bring a civil action against a person. Before filing suit the Attorney General may issue an investigative demand requiring production of documents and written answers and oral testimony.

The FCA also provides for **Actions by Private Persons** (*qui tam* lawsuits) in which a private person can bring a civil action in the name of the government for a violation of the Act. Generally, the action may not be brought more than six (6) years after the violation, but in no event more than ten (10). When the action is filed it remains under seal for at least sixty (60) days. The United States Government may choose to intervene in the lawsuit and assume primary responsibility for prosecuting, dismissing or settling the action. If the Government chooses not to intervene, the private party who initiated the lawsuit has the right to conduct the action.

In the event the government proceeds with the lawsuit, the *qui tam* plaintiff may receive fifteen (15) to twenty-five (25) percent of the proceeds of the action or settlement. If the *qui tam* plaintiff proceeds with the action without the government, the plaintiff may receive twenty-five (25) to thirty (30) percent of the recovery. In either case, the plaintiff may also receive an amount for reasonable expenses plus reasonable attorneys’ fees and costs.

If the civil action is frivolous, clearly vexatious, or brought primarily for harassment, the plaintiff may have to pay the defendant its fees and costs. If the plaintiff planned, or initiated, in the violation, the share of proceeds may be reduced and, if found guilty of a crime associated with the violation, no share will be awarded the plaintiff.

Whistleblower Protection. The Civil False Claims Act also provides for protection for employees from retaliation. An employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in terms and conditions of employment because of lawful acts conducted in furtherance of an action under the FCA may bring an action in Federal District Court seeking reinstatement, two times the amount of back pay plus interest, and other enumerated costs, damages, and fees.

2. FEDERAL PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

The **Program Fraud Civil Remedies Act of 1986** (“Administrative Remedies for False Claims and Statements” at 38 U.S.C. §3801 *et seq.*) is a statute that establishes an administrative remedy against any person who presents or causes to be presented a claim or written statement that the person knows or has reason to know is false, fictitious, or fraudulent due to an assertion or omission to certain federal agencies (including the Department of Health and Human Services).

The term “**knows or has reason to know**” is defined in the Act as a person who has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

The term “**claim**” includes any request or demand for property or money, e.g., grants, loans, insurance or benefits, when the United States Government provides or will reimburse any portion of the money.

The authority.(i.e. federal department), may investigate and with the Attorney General’s approval commence proceedings if the claim is less than one hundred and fifty thousand dollars (\$150,000). A hearing must begin within six (6) years from the submission of the claim. The Act allows for **civil monetary sanctions** to be imposed in administrative hearings, including penalties of five thousand five hundred dollars (\$5,500) per claim and an assessment, in lieu of damages, of not more than twice the amount of the original claim.

3. TEXAS FALSE CLAIMS ACTS

In Texas, there are two statutes that make it unlawful to submit a false claim under the Medicaid Program. These laws can be found in Chapters 32 and 36 of the Texas Human Resources Code.

Texas Human Resources Code - Chapter 36

The Texas Medicaid Fraud Prevention Act, found at TEX. HUM. RES. CODE Chapter 36, provides that a person commits a violation of the Act if a person:

- makes a false statement or misrepresents a material fact to obtain a benefit or payment;
- conceals an event or fact that affects the initial or continued right to a payment or benefit;
- applies for or receives a benefit or payment on behalf of a recipient and converts some or all of the benefit or payment for use other than on behalf of the recipient;
- makes, causes to be made, induces or seeks to induce the making of a false statement or misrepresentation regarding the (a) conditions or operation of a facility to obtain certification or recertification or (b) any other information required to be provided to the Medicaid program;

- accepts or charges any gift, money or other consideration, other than the Medicaid payment, as a condition for the provision of services to a Medicaid recipient;
- presents a claim for payment for services rendered by a person who is not licensed as required by applicable regulations;
- makes a claim for a service that (a) has not been ordered by an appropriate practitioner, (b) is substandard or inadequate or (c) for a product that has been mislabeled or adulterated;
- makes a claim for payment and fails to indicate the type of license or identification number of the provider who actually rendered the services; or
- enters into a conspiracy to defraud the state by obtaining an unauthorized payment or benefit.

If a person violates the Act, he or she could be subject to the following:

- suspension or revocation of the provider agreement, permit, license, or certification;
- exclusion from the Medicaid program for a period of no less than ten (10) years;
- disciplinary action by a state licensing board;
- restitution for the value of any money or benefit received;
- civil penalty from \$1,000.00 to \$15,000.00 depending on the unlawful act; and
- penalties of up to two times the value of the unlawful payment or benefit received.

* If a provider self-reports in a timely manner, penalties are limited to two times the value of the payment or benefit received.

A private citizen may file an action under the Texas Medicaid Fraud Prevention Act, but the Texas Attorney General must be notified and given the opportunity to pursue the case. If the Attorney General proceeds with an action under this subchapter, the person bringing the action may be entitled to receive a percentage of the proceeds recovered by the State. If the Attorney General declines to pursue the case, the case must be dismissed.

A person who reports an alleged violation of the Act or otherwise acts in furtherance of an action brought under the Act cannot be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against. A person who is subject to such discrimination is entitled to:

- reinstatement with the same seniority status the person would have had but for the discrimination; and
- not less than two 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 attorney's fees.

- bring an action in the appropriate district court for relief.

Texas Human Resources Code - Chapter 32

Under Chapter 32, TEX. HUM. RES. CODE, it is unlawful for a person:

- to present or cause to be presented a claim that contains a statement or representation the person knew or should have known to be false;
- to offer to pay or agree to accept, directly or indirectly, overtly or covertly any remuneration in cash or in kind to or from another for securing or soliciting a patient or patronage for or from a person licensed, certified, or registered by any state health care regulatory agency;
- to solicit or receive, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for referring an individual to a person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program;
- to solicit or receive, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for purchasing, leasing, or ordering, or arranging for or recommending the purchasing, leasing, or ordering of, any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program;
- to offer or pay, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to refer an individual to another person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program;
- To offer or pay, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to purchase, lease, or order, or arrange for or recommend the purchase, lease, or order of, any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program; and
- to provide or offer an inducement to an individual, including a recipient, provider, or employee of a provider, for the purpose of influencing a decision regarding selection of a provider or receipt of a good or service under the medical assistance program or for the purpose of otherwise influencing a decision regarding the use of goods or services provided under the medical assistance program.

A person who commits a violation under Chapter 32, TEX. HUM. RES. CODE, is liable for:

- the amount paid as a result of the violation, including interest;
- administrative penalties not to exceed twice the amount paid, plus an amount not less than \$5,000.00 and not more than \$15,000.00 for each violation; and

- exclusion from the Medicaid program for 3 to 10 years depending on the violation.
- An intentional violation of Chapter 32 could constitute a state jail felony.

There is no private cause of action under Chapter 32. However, Texas Government Code § 531.101 allows the Texas Health and Human Services Commission to grant an award to an individual who reports activity that constitutes fraud or abuse of funds in the state Medicaid program or reports overcharges in the program. The disclosure must result in the recovery of an overcharge or in the termination of the fraudulent activity or abuse of funds.

Examples of a possible false claim or unlawful act.

1. Making false statements regarding a claim for payment;
2. Falsifying information in the medical record;
3. Double-billing for items or services;
4. Billing for services or items not performed or never furnished;
5. Concealing an event that affects the initial or continued right to a benefit or payment under the Medicaid program.
6. Making, causing to be made, inducing, or seeking to induce the making of a false statement concerning the conditions or operation of a facility in order that the facility may qualify for certification or recertification required by the Medicaid program.

What should be done if a possible false claim has been made?

1. If an employee discovers an event that is similar to one of the examples of a false claim above, an employee is encouraged to:
 - a. Report to Shady Oak Nursing and Rehabilitation, LLC administrator (to the extent they are not involved) for further investigation;
 - b. If the employee is not comfortable reporting to the administrator, he or she should contact administrator's immediate supervisor or other manager in the chain of command..
2. If a contractor or agent discovers an event that is similar to the one of the examples of a false claim above, a contractor is encouraged to:
 - a. Report to Shady Oak Nursing and Rehabilitation, LLC administrator for further investigation.
2. An employee, agent or contractor is not required to report a possible false claims act violation to the Shady Oak Nursing and Rehabilitation, LLC first. A report may be made directly to the Department of Justice, the Texas Attorney General's Office, the Texas Health and Human Services

Commission, or other state law enforcement authority. However, in many instances Shady Oak Nursing and Rehabilitation, LLC believes that the use of its internal reporting process is a better option because it allows Shady Oak Nursing and Rehabilitation, LLC to quickly address potential issues. In accordance with its policy, provider will investigate all allegations an individual brings forward and make every attempt to correct and prevent those found to be true.

Shady Oak Nursing and Rehabilitation, LLC encourages employees, agents and contractors to consider first reporting suspected false claims to Shady Oak Nursing and Rehabilitation, LLC administrator but the choice is up to the reporting person.

3. Shady Oak Nursing and Rehabilitation, LLC will not retaliate against any employee, who in good faith, informs Shady Oak Nursing and Rehabilitation, LLC or the federal or state government of a possible FCA violation.

An employee, agent or contractor with questions regarding this policy should contact Shady Oak Nursing and Rehabilitation, LLC administrator.

**ACKNOWLEDGEMENT OF RECEIPT OF
Shady Oak Nursing and Rehabilitation, LLC'S
POLICY AND PROCEDURE ON FRAUD AND ABUSE**

I /WE, _____, have received and reviewed Shady Oak Nursing and Rehabilitation, LLC's policy and procedure for detecting and preventing fraud, waste and abuse and information on the Federal and State False Claims Acts.

SIGNATURE OF EMPLOYEE/CONTRACTOR/AGENT

DATE