

Cattaraugus Rehabilitation Center, Inc.
NYSARC, Inc., Cattaraugus Niagara Counties Chapter
(Hereinafter, Intandem)

The following procedure supports Intandem's belief in the inherent value and dignity of all people, Intandem's commitment to the promotion, protection and respect for rights and freedoms and strives to enhance the lives of people through supports and services.

Procedure Name: False Claims Act

Purpose:

Intandem is committed to conducting all aspects of service provision and business conduct in compliance with applicable federal, state, and local laws and regulations, and to adhere to the highest legal and ethical standards.

Intandem is committed to detecting and preventing fraud, waste and abuse. This procedure explains the Federal False Claims Act, the New York State False Claims Act and the other laws designed to prevent such fraud, waste and abuse. It also explains procedures put in place to prevent violations of these laws.

Federal False Claims Act:

The False Claims Act is one of the laws the government uses to prevent and detect fraud, waste and abuse in federal health care programs. The False Claims Act holds liable anyone who "knowingly" submits false claims. A violation of the False Claims Act can result in a civil penalty between \$10,781 and \$21,563 for each claim submitted, plus up to three times the amount of the damages sustained by the government.

A claim is the bill we send for the services we provide. If we send a bill that isn't true, it is called a false claim. The False Claims Act defines "knowingly" to mean that a person (1) actually knows the claim is false; (2) deliberately ignores whether the claim being submitted is true or false; or (3) acts in reckless disregard of the truth or falsity of the information. The Act may be violated by the following actions:

- a. Knowingly sending or making someone else send a false or fraudulent claim for payment;
- b. Knowingly making, using or causing to be used a false record or statement to get a claim paid;
- c. Conspiring with another to send a false or fraudulent claim to be paid;
- d. Knowingly making, using, or causing to be made a false record or statement to hide, avoid, or decrease an obligation to pay money or transmit property to the government;
- e. Failure to report and return a Medicaid or Medicare overpayment to the government within 60 days of discovery and to notify the government of the reason why.

Examples: A few examples of actions that can violate the False Claims Act include knowingly:

- a. Billing for services or items that were not actually provided;
- b. Charging more than one time for the same service;
- c. Billing for services that are not necessary or appropriately prescribed in an individual's respective service plan; and/or
- d. Falsifying time records or other documentation in the individual's records that are used to bill Medicaid.

The government or an individual acting on behalf of the government (a "Relator") can bring actions under the False Claims Act. If a Relator brings an action under the Act, the government has a period of time to investigate the allegation and decide whether to join the lawsuit. If the government elects to join the lawsuit, the Relator is entitled to 15-25% of any recovery. If the Government chooses not to join the lawsuit, the Relator may still proceed and will be entitled to 25-30% of any recovery.

The False Claims Act prevents Intandem from discriminating against an employee, contractor or agent for taking lawful actions as endorsed under the Act. Under the Act, any employee, contractor or agent who is terminated, demoted, harassed, or otherwise discriminated against because of lawful acts they undertake in respect to the False Claims Act is entitled to all relief necessary to make that person whole. Relief may include reinstatement, as much as twice the amount of back pay due, and compensation for any special damages, including litigation costs and reasonable attorney fees.

<u>Category:</u>	Corporate Compliance
<u>Authored/Revised by:</u>	M Howard, S Cross, T Crisafulli
<u>Origination/Revision Date(s):</u>	2009/03; 2011/07; 2014/04; 2015/08; 2018/12
<u>Reviewed By:</u>	CC Committee
<u>Target Audience:</u>	All Staff
<u>CC review date:</u>	2018/06

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Federal Program Fraud Civil Remedies Act:

The Program Fraud Civil Remedies Act of 1986 is a federal law that provides for administrative recoveries by federal agencies including the Department of Health and Human Services, which operates the Medicaid and Medicare programs. The law prohibits the submission of a claim or written statement that the person knows or has reason to know is false, contains false information or omits material information. Violations of this law are investigated by the Department of Health and Human Services and monetary sanctions may be imposed in an administrative hearing setting. Monetary sanctions may include penalties of up to \$10,781 per claim and damages of twice the amount of the original claim.

New York State False Claims Act:

The NYS False Claims Act was modeled very closely after the Federal False Claims Act. This act provides that anyone who "knowingly" submits false claims to the government is liable for damages up to three times the amount of the erroneous payment plus mandatory penalties between \$6,000 and \$12,000 for each false claim submitted. NYS law defines "knowingly" the same way the Federal Law. Lawful actions can be brought the same as under the Federal Law. In addition, this Act prohibits discrimination and provides the same relief as the Federal Act, for anyone bringing an action.

Social Service Law §145-b:

It is unlawful to knowingly make a false statement or representation, or to deliberately conceal any material fact, or engage in any other fraudulent scheme or device, to obtain payments under the NYS Medicaid Program. The State or local Social Services district has a right to recover civil damages equal to three times the amount of an incorrectly paid claim and can impose monetary penalties. The State and local Social Services district may charge penalties for non-monetary false statements too.

Social Service Law § 366-b:

This law provides that any person who, with intent to fraud, who presents for payment any false claim or submits false information in order to obtain compensation greater than that to which he/she is legally entitled can be charged with a Class A misdemeanor.

Penal Law Article 155:

This law provides that the crime of larceny applies when someone tries to get something that belongs to someone else by a trick, embezzlement, false pretense, false promise or similar behavior. This has been applied to Medicaid fraud cases. This crime is punishable by fines and imprisonment.

Penal Law Article 175:

Under this law, four crimes relating to falsifying business records or filing a false instrument have been applied to Medicaid fraud prosecutions. These crimes are punishable by fines and imprisonment.

Penal Law Article 176:

This law establishes the crime of insurance fraud. A person commits such a crime when he/she intentionally files a health insurance claim, including Medicaid, know it is false. This crime is punishable by fines and imprisonment.

Penal Law Article 177:

This law establishes the crime of health care fraud. A person commits such a crime when, with intent to defraud Medicaid or any other health plan he/she knowingly and willfully provides false information or omits material information for the purpose of requesting payment and as a result receives payment to which he/she is not entitled. This crime is punishable by fines and imprisonment.

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Labor Law 740:

In addition to provisions contained in the Federal and NYS False Claims Acts, this section offers protections to employees who may notice and report inappropriate activities. Under this provision of law, employees are protected from retaliatory personnel action when they:

- a. Disclose or threaten to disclose to a supervisor or to a public body an activity, policy or practice of an employer that is in violation of a law, a regulation that presents a specific danger to the public health or safety, or which constitutes health care fraud;
- b. Provides information to or testifies before any public body conducting an investigation or inquiry into a violation of law, rule or regulation by their employer; or
- c. Objects to or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

To bring an action under this law, the employee must first notify the employer of the alleged violation and give the employer a reasonable opportunity to correct the allegedly unlawful practice. The law permits employees subjected to retaliatory actions to bring civil action in court to seek relief. §740 provides that employees who bring action without basis in law or fact may be held liable to the employer for its attorney fees and costs.

Labor Law 741:

Under this law, an employer may not take any retaliatory personnel action against an employee if the employee discloses certain information about the employer's policies, practices, or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that report, in good faith, the employee believes constitutes improper quality of patient care. To bring an action under this law, the employee must first notify the employer of the alleged violation and give the employer a reasonable opportunity to correct the allegedly unlawful practice. The law permits employees subjected to retaliatory actions to bring civil action in court to seek relief.

Detailed Procedure(s):

- Intandem provides training to all employees upon hire and annually thereafter. Contractors receive information during the contracting process.
- Billing activities are performed in a manner consistent with Medicaid, Medicare and other payer regulations and requirements and in accordance with Intandem's documentation and billing procedures.
- To assist in its efforts to detect and prevent fraud, waste and abuse, Intandem conducts regular audit and monitoring procedures.
- If an Intandem employee, contractor or agent has any reason to believe that anyone is engaging in false billing practices, that employee immediately reports the practice in accordance with Intandem's compliance expectations procedures.
- Intandem does not retaliate against any employee for taking any lawful action under the False Claims Act. In addition, Intandem does not retaliate against any employee, contractor or agent for reporting any potential compliance concern.
- This policy is included in all employee handbooks.

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