
Compliance with Federal and State Law for Billing and Reimbursement of Health Care Services

It is the policy of Armstrong to comply with all federal and state laws and regulations to ensure that its billing to the Medicare program, the Massachusetts Medicaid program and other federal and state health care programs is accurate and in full conformity with applicable laws. In furtherance of this commitment, Armstrong encourages employees to contact the Privacy Officer with any compliance questions or concerns or to report any suspected fraud or abuse. Armstrong also will conduct regular audits throughout the Company to ensure compliance with proper billing practices.

The federal False Claims Act, the federal Program Fraud Civil Remedies Act, and certain Massachusetts laws prohibit the knowing submission of false claims or statements to the government for payment. Although they differ in their specific detail, these laws define false claims as knowingly submitting false or fraudulent claims for payment to the federal or state government or failing to disclose the occurrence of events that affect the right to benefits. Examples of false claims could include billing for services not rendered or goods not provided, falsifying certificates of medical necessity, falsifying medical records, unauthorized use or unauthorized assignment of provider billing numbers, and failing to report overpayments or credit balances. Violations of these laws can subject Armstrong to significant fines and penalties.

The laws that prohibit the submission of false claims impose an affirmative obligation on Armstrong and its employees, agents and contractors to know and to understand the rules and regulations regarding the submission of claims. Armstrong makes it a part of the duty of all employees to report any potential improprieties directly to their supervisors or to the Chief Executive Officer without fear of retaliation. Consistent with these statutes, any person may, under certain circumstances, become a whistleblower and notify the government, if he or she believes that Armstrong is not responding appropriately to reports of problems or concerns. Armstrong is prohibited from taking any adverse action against persons who notify the federal government of potential violations, who aid another in doing so, or who participate in the investigation of an alleged violation.

Armstrong has set forth detailed information about the provisions of the federal False Claims Act, the federal Program Fraud Civil Remedies Act and Massachusetts' civil and criminal state laws pertaining to false claims and statements.

Federal

Under the federal False Claims Act and the Program Fraud Civil Remedies Act, false claims may include knowingly submitting false or fraudulent claims to the government for payment or making or using a false record or statement in connection with the submission of such claims. Examples of false claims include billing for services with knowledge that such services are not medically necessary or performed; billing twice or multiple times for the same items or services; falsifying internal records that are used to support claims; failing to report known overpayments and credit balances to a government payor; and upcoding claims in order to obtain reimbursement in excess of the proper amount due.

In addition to willful and intentional acts of fraud, individuals and organizations can be penalized for submitting or causing the submission of claims in deliberate ignorance or reckless disregard for the truth. Civil actions under

these statutes must be brought within six years of a violation or, if brought by the government, within three years of the date when material facts are known to the government (or should have been known) but not more than ten years after the violation occurred. Civil penalties range from \$5,500 to \$11,000 per claim. Violators may also be assessed up to three times the amount of damages caused to the government. If found in violation, Medicare and Medicaid providers are subject to exclusion from both of these programs.

Like the federal False Claims Act, the Program Fraud Civil Remedies Act imposes penalties on person or organizations that deliberately submit false statements or claims to certain federal agencies or 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.

Massachusetts

Several Massachusetts statutes impose civil and criminal penalties for false claims and statements. The Medicaid False Claims Act¹ (Medicaid FCA) imposes civil and criminal penalties on persons who knowingly and willfully make or cause to be made false statements or false claims in connection with claims for payment under the state Medicaid program. Under the Medicaid FCA, false claims include: (1) knowingly and willingly making false statements in the application for payment or the determination of right to payment; (2) having knowledge of the occurrence of an event affecting the right to payment and concealing or failing to disclose such an event; and (3) converting the payment made pursuant to a Medicaid claim for use other than for Medicaid items and services. If the Massachusetts Attorney General or district attorney believes that a person or entity has violated the Medicaid FCA, the Attorney General or the district attorney may bring a civil action, in lieu of or in addition to a criminal prosecution, to recover three times the amount of damages sustained including the costs of the litigation.

Massachusetts has also adopted a False Claims Act² (Massachusetts FCA) that is similar to the federal False Claims Act. Like the federal FCA, the Massachusetts FCA prohibits the knowing use of false claims or representations in connection with the submission of a claim for payment to the Commonwealth or to an employee, agent, representative or division of the Commonwealth. The Massachusetts FCA defines false claims to include, among other things: (1) knowingly presenting or causing to be presented false claims; (2) knowingly making, using or causing to be made or used a false statement to obtain payment or approval of a false claim by the Commonwealth or any political subdivision thereof; and (3) being the beneficiary of a false claim submitted to the Commonwealth and failing to disclose the known falsity of the claim. The Massachusetts FCA imposes civil penalties of \$5000 to \$10,000 per violation, plus three times the amount of damages that the Commonwealth sustains as a result of the violation, plus costs and attorneys' fees.

Chapter 175H of the Massachusetts General Laws also contains a general prohibition on false health care claims that extends to private health care corporations and insurers. Chapter 175H provides for fines up to \$10,000 and imprisonment up to 5 years for any person who knowingly makes any false statement in an application for a payment of a health care benefit or for use in determining a right to a health care benefit, or fails to disclose knowledge of any events affecting an individual's right to health care benefits with an intent to defraud. The

¹ M.G.L. c. 118E § 40.

² M.G.L. c. 12 § 5 et seq.

Attorney General can bring a criminal proceeding for violations of this chapter. A health care corporation or health care insurer can also bring a civil action under this chapter against a person who knowingly submitted a false claim to it or to whom it paid a benefit that the person was not entitled to receive.

Whistleblower protections

Under the federal FCA, any person may notify the government if he or she believes that Armstrong is not responding appropriately to reports of potential violations. The federal FCA permits persons with actual knowledge of false claims to file a lawsuit in a federal district court on behalf of the United States Government and, under certain circumstances, to receive an award of 15-30% of the monies recovered for the government in addition to attorneys' fees and costs. Such person must have direct and independent knowledge of the false claims activity and must voluntarily provide this information to the government. Any potential award may, however, be barred or reduced if: (i) a court finds that the whistleblower planned or initiated the violation, (ii) the matter disclosed is already the subject of a federal investigation or the health care provider has previously disclosed the problem to a federal agency. Persons who bring frivolous claims under the federal FCA can be held liable for the defendant's attorneys' fees and costs. Like the federal FCA, the Massachusetts FCA allows a private citizen to initiate a case against a person or entity who violates the statute, and if the case is successful, to earn a portion of the recovery.

These federal and state laws contain certain protections for whistleblowers who alert the appropriate governmental authority of a violation as described above. Employers are prohibited from taking adverse or retaliatory action against a whistleblower who in good faith notifies the appropriate governmental authority of an alleged violation. Whistleblowers may also be entitled to relief, including employment reinstatement, back pay, and other compensation arising from retaliatory conduct against the whistleblower.