

**VIDANT HEALTH
POLICY & PROCEDURE**

MANUAL: Vidant Health

SUBJECT: Fraud and Abuse/False Claims Act

NUMBER: VH-AC 16 **Page** 1 of 8

EFFECTIVE: 01/2007

PREPARED BY: Office of Audit & Compliance

REVISED: 11/09, 2/12, 2/15

REVIEWED: 2/07, 2/08, 2/09, 3/10, 2/11, 2/13,
2/14, 2/16

CEO APPROVAL:

<p>Topic: To Prevent and Detect Fraud and Abuse and Information regarding the Federal False Claims Act and the North Carolina Medical Assistance Provider False Claims Act</p>

I. Purpose:

Vidant Health is committed to effective and efficient operations, reliable financial reporting and compliance with all applicable laws and regulations. The purpose of this policy is to inform all employees, contractors, and agents of Vidant Health about (i) the Federal False Claims Act; (ii) North Carolina Medical Assistance Provider False Claims Act (the “North Carolina False Claims Act”); (iii) whistleblower protections in the Federal False Claims Act and the North Carolina False Claims Act; (iv) the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410), (v) the Fraud Enforcement and Recovery Act of 2009 (Public Law 411-21, S.L. 386, 2009), (vi) the roles of such laws in preventing and deterring fraud, waste, abuse; and (vii) internal processes at Vidant Health for the prevention and detection of fraud and abuse. This policy is intended to effect compliance of Vidant Health with the requirement under Section 6032 of the Deficit Reduction Act of 2005 (Pub. Law. 190-171, Feb. 8, 2006).

II. Program Goals

- A. Maintain zero tolerance of fraud.
- B. Prevent, detect, and respond to unacceptable legal risk and its financial implications.
- C. Route non-compliance issues to appropriate areas.

III. Code of Conduct

- A. As organizational employees, physicians, physician extenders, contractors, and agents, you are expected to abide by a high standard of ethical behavior at all times.
- B. Employees, physicians, physician extenders, contractors, and agents must obey the laws and rules that apply to health system operations and their particular duties.
- C. It is the employees, physicians, physician extenders, contractors, and agents’ duty to report any transaction or conduct that they think may be a violation of federal, state, or local law or a violation of any health system policy.

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IV. General Compliance Policy Statements

- A. Vidant Health will not take any adverse action or retribution against any employee/agent due to the good faith reporting of a suspected violation or irregularity.
- B. Employees, physicians, physician extenders, contractors, and agents are expected to obey the law and report any suspected violations of the following:
 - 1. Federal, state, and local laws and government regulations
 - 2. Health system policies and procedures
 - 3. Organizational rules and regulations
 - 4. Corporate Compliance Program
 - 5. Code of Conduct
- C. All clinical professional services will be documented in the medical record, and such documentation will comply with applicable payer regulations.
- D. All clinical professional services will be coded to accurately reflect the documentation in the medical record.
- E. All claims shall be submitted in compliance with applicable payer regulations or requirements.
- F. Employees, physicians, physician extenders, contractors, and agents will not knowingly and willfully solicit, receive, offer, or pay any remuneration directly or indirectly, in cash or in kind, in exchange for Medicare and/or Medicaid referrals.
- G. Employees, physicians, physician extenders, contractors, and agents will not knowingly and willfully:
 - 1. Falsify, conceal or cover up a material fact,
 - 2. Make any false, fictitious or fraudulent statement or representation, or
 - 3. Make or use false writing or document known to contain false, fictitious, or fraudulent statement in information submitted to the government.
- H. Employees, physicians, physician extenders, contractors, and agents will not conceal or fail to disclose knowledge of an event affecting an initial or continued right to any benefit or payment with intent to secure such benefit or payment fraudulently.
- I. Employees, physicians, physician extenders, contractors, and agents will not knowingly present or cause to be presented false or fraudulent claims, including situations where the service was not provided as claimed, the service was provided during a period in which the provider was excluded from participating in Federal healthcare programs, and the service as provided due to false or misleading information on coverage in order to influence a decision regarding when to discharge a person from inpatient hospital services.

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- J. Employees, physicians, physician extenders, contractors, and agents will not knowingly make or present a false, fictitious, or fraudulent claim to a Federal agency.
- K. Employees, physicians, physician extenders, contractors, and agents will not use the U.S. Postal Service or electronic submission processes as part of a scheme to defraud the government or obtain money by false or fraudulent pretenses.
- L. Employees, physicians, physician extenders, contractors, and agents will not embezzle, steal, or otherwise convert to the benefit of another person or intentionally misapply money, funds, securities, premiums, credits, property, or other assets of a health care benefit program.
- M. Employees, physicians, physician extenders, contractors, and agents will not willfully prevent, obstruct, mislead, delay, or attempt to prevent, obstruct, mislead, or delay the communication of information or records relating to a violation of Federal health care offense to a criminal investigator. Note: Vidant Health's Legal Counsel should be contacted immediately upon learning of such investigations.
- N. Employees, physicians, physician extenders, contractors, and agents will not conspire to defraud any government agency or health care benefit program in any manner for any purpose.

V. False Claims Act

- A. The False Claims Act prohibits the submission of "knowing" false or fraudulent claims to the United States.
- B. The law is not limited to claims submitted with fraudulent intent or actual knowledge of their falsity.
 - 1. Deliberate Ignorance
 - 2. Reckless Disregard of Truth or Falsity
 - 3. Gross Negligence

VI. False Claims Act Liability

- A. The False Claims Act, 31 U.S.C. § 3729 et seq., provides for liability for not less than \$5,500 and not more than \$11,000 per claim plus three times the amount of damages which the Government sustains because of act of that person. A person violating the False Claims Act will also be liable to the United States Government for the costs of a civil action brought to recover any penalties or damages.
- B. Reduced damages. Damages may be reduced to not less than 2 times the amount of damages sustained by the Government if the court finds that:

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1. The person committing the violation furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;
2. Such person fully cooperated with any Government investigation of such violation; and
3. At the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.

C. Definitions

1. The term **“claim”** means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property that (i) is presented to an officer, employee, or agent of the United States; or (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if:
 - The United States Government provides or has provided any portion of the money or property requested or demanded; or
 - Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and
 - Does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property.
2. The terms **“knowing”** and **“knowingly”** mean that a person, with respect to information
 - 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; and
 - Require no proof of specific intent to defraud.

D. Liability for Certain Acts - Any person who:

1. Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

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2. Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
3. Has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;
4. Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
5. Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property;
6. Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government; or
7. Conspires to commit a violation of any of the above.

VII. North Carolina False Claim - General Statute §§ 1-605, 108A-63, 108A-70.12

A. Definitions

1. "Claim" means:

- An application for payment or approval or for use in determining entitlement to payment presented to the Medical Assistance Program in any form, including written, electronic, or magnetic, which identifies a service, good, or accommodation as reimbursable under the Medical Assistance Program; or
- Any request or demand that is presented to an officer, employee, or agent of the State of NC or to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the State's behalf or to advance a State program or interest *and*
 - where the State government provides or has provided any portion of the money or property that is requested or demanded, or
 - where the State will reimburse the contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.
- A claim does not include requests or demands for money or property that the State of NC has paid to an individual as compensation for State employment or as income subsidy with no restrictions on the individual's use of the money or property.

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2. **"Knowingly"** means that a person, with respect to the information, does any of the following:
- 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.
- B. It shall be unlawful for any provider to:
1. Knowingly present, or cause to be presented to the Medical Assistance Program a false or fraudulent claim for payment or approval; or
 2. Knowingly make, use, or cause to be made or used a false record or statement material to a false or fraudulent claim; or
 3. Possess or have in custody or control property or money used or to be used by the State of NC and knowingly deliver or cause to be delivered less than all of that money or property; or
 4. Authorize, make or deliver a document certifying receipt of property used or to be used by the State of NC without completely knowing the information on the receipt is true; or
 5. Knowingly buy, or receive as a pledge of an obligation or debt, public property from any officer or employee of the State of NC who lawfully may not sell or pledge the property; or
 6. Knowingly make, use or cause to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the State of NC; or
 7. Knowingly conceal or knowingly and improperly avoid or decrease an obligation to pay or transmit money or property to the State of NC; or
 8. Knowingly and willfully execute, or attempt to execute, a scheme or artifice to (i) defraud the Medical Assistance Program, or (ii) obtain by means of false or fraudulent pretenses, representations, or promises of material fact, any of the money or property owned by, or under the custody or control of, the Medical Assistance Program.
 9. Knowingly and willfully make or cause to be made a false entry in, alter, destroy, or conceal, or make a false statement about a financial, medical, or other record related to the provision of a benefit, item, or service with the intent to obstruct, delay, or mislead an investigation of a false claim by the Attorney General's office.
 10. Conspire to commit any of the above violations.

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VIII. North Carolina False Claims Penalty

- A. Civil penalty of not less than five thousand five hundred dollars (\$5,500) and not more than eleven thousand dollars (\$11,000) plus three times the amount of damages which the State of NC sustained because of the act of the person violating the statute.
- B. The violator can also be liable for the costs of a civil action brought to recover any penalty or damages.

IX. Qui Tam Provision of Federal and North Carolina False Claims Act

- A. Qui tam is a provision under both the Federal and State False Claims Act that allows private citizens to file a lawsuit in the name of the Government charging fraud by government contractors and others who receive or use government funds, and share in any money recovered.
- B. If the Government joins, and successfully prosecutes the case, and the person who filed the suit (relator) was not involved in the wrongdoing, the relator can receive between 10 and 25 percent depending on the extent of the relator's contribution to the case.
- C. If the Government does not join and the relator successfully prosecutes the case, the relator can receive between 25 and 30 percent of the proceeds.
- D. In any case the relator may be entitled to reasonable expenses, plus attorneys' fees and costs.

X. Federal Healthcare Program Exclusion

- A. The Office of Inspector General has exclusion authority.
 - 1. Conviction of program-related crimes. Minimum Period: 5 years
 - 2. Misdemeanor conviction relating to health care fraud. Minimum Period: 3 years
 - 3. Conviction relating to obstruction of an investigation. Minimum Period: 3 years

XI. How to Report Compliance Issues

- A. Notify a supervisor or manager.
- B. Contact the Chief Audit/Compliance Officer at 252-847-0125.
Email the Office of Audit and Compliance at Compliance@vidanthealth.com
- C. Email the Chief Audit/Compliance Officer at Jeffery.Wiggins@vidanthealth.com
- D. Make a toll-free call to the compliance hotline at 1-888-777-2617.
- E. You can report issues anonymously.

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XII. Office of Inspector General (OIG)

- A. Should employees, physicians, physician extenders, contractors, and agents feel that the health system has not taken appropriate action to address a potential violation, they can also lodge a complaint concerning waste, fraud, and abuse directly to the Federal Government to the Health and Human Service's Office of Inspector General.

XIII. A System of Employee Empowerment and Accountability

- A. It is the policy that Vidant Health will not take any adverse action or retribution against any employees, physicians, physician extenders, contractors, or agents of the health system due to the good faith reporting of a suspected violation or irregularity.
- B. The health system encourages employees, physicians, physician extenders, contractors, and agents to report any suspected violations of law to the Chief Audit/Compliance Officer and to ask questions if they are unsure of a regulation.