

# Deficit Reduction Act (DRA)

## Required Federal Anti-Fraud Notice

### **A. Prevention and Detection of Fraud, Abuse, and Waste.**

Consumer Directions, Inc. (CDI) has a longstanding practice of fair and truthful dealing with persons served, families, professionals and other business associates. Employees and business associates of CDI shall not engage in any acts of fraud, abuse or waste, and shall not knowingly make false statements of material fact in the preparation and submission of any claim for reimbursement under the Medicaid program, or commit any other activity prohibited herein. Violation of this policy is grounds for immediate termination.

Fraud is an intentional misrepresentation that, when relied on by a payor, or other person, deceives them to their detriment. Abusive tactics are broader than fraud and may include submitting deceptive or misleading claims to a government program like Medicaid or using a false statement to support a claim. Waste may include other deceptive tactics, such as over-utilization of otherwise necessary services or requiring “pay to play” kickback arrangements where contracts are awarded or goods purchased only if the vendor promises to kick back an incentive to either the Medicaid provider or its employee.

Types of fraud, abuse or waste which may lead to the submission of false claims to the Medicaid program include, but are not limited to the following:

1. Billing for services not actually provided, including missed appointments;
2. Charging a rate higher than is allowed under the waiver rate maximums;
3. Documenting care or service not actually provided;
4. Making payments to a phantom vendor or phantom employee;
5. Paying a vendor or employee for services not actually provided;
6. Paying or submitting an invoice known to be false;
7. Accepting or soliciting kickbacks or illegal inducements from vendors of services, or offering or paying kickbacks or illegal inducements to vendors of services;
8. Paying or offering gifts, money, remuneration or free services to entice a Medicaid recipient to use a particular vendor;
9. Using Medicaid reimbursement to pay a personal expense;
10. Embezzling;
11. Ordering and charging for over-utilized medical services that are not necessary for the client.

## **B. Mandatory Reporting Requirement.**

Employees of CDI who have a reason to believe that any employee, including managerial staff, or any contractor or agent hired by CDI has violated this requirement by committing fraud, abuse or waste, has a duty to report their observation and concern immediately to the Employee and Public Relations Administrator. No employee, contractor or agent of CDI shall retaliate against another for submitting a report pursuant to this policy.

All reports shall be investigated under the supervision of Board of Directors. All employees have a duty to cooperate with any investigation conducted by CDI under this requirement, including but not limited to providing information upon request and meeting with CDI's legal, Human Resources, Quality Assurance or Accounting representatives, if directed to do so by the Board of Directors.

If substantiated, CDI will take any action which may be necessary to respond appropriately to any offense and to prevent any further similar offenses, including but not limited to terminating employees or terminating a contractor or agent's contract. Offenses will be evaluated for voluntary self-disclosure under applicable federal laws, and when warranted, offenses will be referred for prosecution. CDI will cooperate with government officials prosecuting any individual referred by CDI for prosecution.

## **C. Notification of Federal and State Laws.**

### **(i) Sanctions.**

Federal law also requires Medicaid providers like CDI to provide you with detailed information about the federal False Claims Act, 31 U.S.C. §§ 3729-3733, and the administrative remedies for false claims and statements established by 31 U.S.C. §§ 3801-3812. These laws are important to you and CDI because they not only provide severe civil and criminal sanctions for submitting false claims to the federal Medicaid program, they also provide individuals who alert federal and state officials to offenses with whistleblower protections.

Under the False Claims Act, individuals or organizations that are found to have submitted false claims totaling \$1 or more to the federal government, including the Medicaid program, are subject to civil liability in the amount of \$5,500 to \$11,000 per claim, plus treble damages, and can also face exclusion from the Medicaid and Medicare program. Administrative civil money penalties may be imposed against any person who makes or presents a claim the person knows or has reason to know is false, fictitious or fraudulent. In addition to other remedies authorized by law, these civil money penalties may be levied up to \$5,000 for each false claim and double damages. Knowingly submitting a false claim with actual knowledge, reckless disregard or deliberate ignorance may lead to criminal prosecution and incarceration.

In addition to the criminal and civil sanctions levied by federal law, Minnesota law contains criminal and civil penalties for Medical Assistance fraud. Under Minn. Stat. § 609.466, any person who, with the intent to defraud, presents a claim for reimbursement which is false in whole or in part is guilty of an attempt to commit theft of public funds and may be sentenced accordingly. Under Minn. Stat. § 256B.121 any vendor of medical care who willfully submits a claim for reimbursement that is known to be a false claim is also subject to a civil action by the State of Minnesota for treble damages, costs and attorneys' fees. Subjecting a vulnerable adult to unnecessary and over utilized services for the profit or advantage of another may also constitute financial exploitation under the Minnesota Vulnerable Adults Act under Minn. Stat. § 626.5572, subd. 9 and § 609.2335.

(ii) Rights of Employees Under Whistleblowing Protections and Qui Tam Actions

The False Claims procedures at 31 U.S.C. § 3730(h) provide anti-retaliation protections for whistleblowing employees. If an employee participates in the investigation for, initiation of, testimony for, or assistance in an action filed under the False Claims Act, the employer may not discharge, demote suspend threaten, harass or in any other manner discriminate against the employee in the terms and conditions of employment, in retaliation for the employee's protected action.

An employee who is retaliated against in violation of 31 U.S.C. § 3730 (h) may file an action to be made whole, and relief includes reinstatement, double back pay with interest on the back pay, and compensation for any special damages including litigation costs and reasonable attorney's fees.

Under Minn. Stat. § 181.932, Minnesota law prohibits employers from discharging, disciplining, threatening or otherwise discriminating against or penalizing an employee for good faith reporting of suspected violations of any state or federal law or rule, or for participating in a government investigation. The law allows employees to refuse an employer's order to perform an act that violates federal or state law. The Minnesota law expressly authorizes an employee to report in good faith violations of federal or state health care standards that put the public at risk.

The Federal False Claims Act also enables private individuals to initiate lawsuits on behalf of the federal government against any party who submitted false claims for payment from the Medicaid program. Known as "qui tam" actions, the suing private plaintiff, if successful, may be rewarded part of any penalty recovered and the remainder goes to the government. Depending upon the circumstances of each case, the government may intervene. In cases where the government declines to intervene and the private plaintiff pursues the action on his or her own, the plaintiff's recovery share may be as great as 25 to 30% of the penalty. In cases where the government elects to intervene, the court may award between 15 and 25% recovery.