

<b>Pro Care Health Plan, Inc. (Pro Care)</b>	
	<i>Administration</i>
	<b>Policy &amp; Procedure</b>
Subject: DRA, False Claims & Whistleblower Protection	Line of Business: [X] Medicaid
Approval Date: 3/31/09	
Effective Date: 2/1/09	Document Number: PC-06-631
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**I. SCOPE:**

To ensure Pro Care Health Plan, Inc. (“Pro Care”) and its employees comply with all state and federal regulatory and contractual requirements pertaining to the Deficit Reduction Act of 2005, and the Federal and Michigan False Claims Acts.

**II. POLICY:**

Pro Care employees shall receive training in terms of requirements of the following Acts:

- o the federal False Claims Act – 31 USC §§3729 - 3733
- o Michigan Medicaid False Claims Act – MCL 400.601 – 400.615
- o Pro Care policies and procedures for detecting and preventing fraud, waste, and abuse; and,
- o Deficit Reduction Act of 2005 - §6032 of DRA of 2005.
- o Pro Care employee’s rights and protections under the Michigan False Claims Acts (also known as the “Whistleblower Act”). MCL 400.610c

**III. PROCEDURE:**

Given below are the process and procedures that Pro Care will adopt to be in compliance with the objectives/purposes of this policy.

- A. Pro Care employees shall receive information and training regarding the responsibilities, and rights under the Deficit Reduction Act and False Claims Acts.
1. Training will be conducted within 30 days of commencing active employment at Pro Care Health Plan, Inc. and annually thereafter.
  2. Training shall also be conducted on an annual basis in staff meetings.
  3. Training will be conducted by the Compliance Officer or designee either face to face during employee new hire orientation or through a Web based training module.
  4. Training will be provided to employees whose functions are affected by a material change in Pro Care policies and procedures, as appropriate.
  5. Sanctions for failure by members of the workforce to complete required Deficit Reduction Act and False Claims Acts training shall be as follows:

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- a. Individual Workforce Members: The failure by employees of Pro Care to complete Deficit Reduction Act and False Claims Acts training, as directed and within the timeframe identified, may result in disciplinary action up to and including written warning, suspension and / or termination or employment.
  - b. Management: Management bears the responsibility of ensuring that all direct reports complete required training as needed and within the timeframes communicated. Failure to appropriately guide and direct their respective workforce towards this end may result in independent sanctions.
- B. Under the Deficit Reduction Act and the False Claims Acts, organization, employers and employees have an obligation to abide by and follow all provisions contained in the laws. An employee who is found to be in violation with the regulatory requirements may be held liable to the Government for any damages sustained. Noncompliance with these obligations shall include, although are not limited to:

**Federal False Claims Act**

(a) Liability for certain acts.

- (1) Any person who knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed forces of the United States a false or fraudulent claim for payment or approval;
- (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claims paid or approved by the Government;
- (3) conspires to defraud the Government by getting a false or fraudulent claim paid or approved by the Government;
- (4) has possession, custody, or control of property or money used; or to be used, by the Government and intending to defraud the Government or willfully to conceal property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
- (5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the

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Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) 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 the property; or  
(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, except that if the court finds that –

(A) the person committing the violation of this subsection furnished officials if the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the defendant first obtained the information;

(B) such person fully cooperated with any government investigation of such violation; and

(C) at the time such person furnished the United States with 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; the court may assess no less than 2 times the amount of damages which the Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of civil action brought to recover any such penalty or damages.

**Michigan Medicaid False Claims Act**

(1) Under Michigan Medicaid Claims Act, there provisions for prison terms of up to four (4) years and fines up to \$50,000 for knowingly making false statement or false representation of a material fact in any application for Medicaid benefits or use in determining rights to a Medicaid benefit; soliciting, offering, or receiving kickbacks or bribes for referrals to another for Medicaid funded services (fines up to \$30,000); entering into an agreement with another to defraud Medicaid through a False Claim; or making and presenting to the State of Michigan a False Claim for payment.

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(2) MCL 400.610c provides protection to employees of Pro Care. The law provides whistle blower protection to employees who report fraud and abuse practices. Under the provisions of law, there can be no retaliation for such reporting such acts. There can be no discharge, suspension, demotion, suspend, or other harassment. If an employer does these and is found guilty, then there is reinstatement of employee with seniority, provisions for paying the employees 2 times lost pay with interest and other compensation and relief as provide by the courts.

- C. Pro Care contractors and agents who receive more than \$5 million per year in Medicaid payments are also held to the same regulatory standards. Contractors and agents that meet the annual \$5 million threshold must provide information, notification and training to all employees regarding the implications and requirements of the standards stated in the referenced acts. Pro Care Provider Services Department and its representatives shall provide notification and educational information regarding these obligations in its Website, Provider Services Manual, and Provider Orientation packets. Other forms of communication may also include provider letters and flyers.
- D. All employees, contractors and agents doing business with Pro Care have an obligation to report any actual or reasonably suspected violation of Medicaid funds, suspected or actual misuse or illegal use of the Medicaid funds either by fraud, waste, or abuse of the Medicaid benefit program. Pro Care has an internal mechanism by which workforce members may report alleged, suspected or known violations, misuse, and or inappropriate or illegal use of the Medicaid program funds and benefits. An internal, confidential and anonymous reporting system includes using the Pro Care Compliance Hotline, or they may report it directly to the Compliance Officer or their direct supervisor.
- E. To encourage individuals to come forward and report incidents of false claims, the Qui Tam "Whistleblower" provision under the federal False Claim Act prohibits discrimination or retaliation by their employer.
- F. An affected employee or individual may personally bring or cause to bring an action against suit on behalf of the individual and the Government against an organization and/or another individual. The action (or potential or actual lawsuit) is referred to as a "Qui Tam Action." These actions may be pursued by the Government on behalf of the individual but in the Government's name.

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These actions may also be brought personally by the individual. Qui Tam Actions are normally brought when an affected employee or private individual discloses violations of the False Claims Act through the internal mechanisms available but no review or action is pursued.

- G. Under the Deficit Reduction Act and False Claims acts, employees have certain rights and protections. These rights and protections are commonly referred to as the “Whistleblower protections”. These protections include:

*Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of his employer or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole.*

These provisions are contained in 31 U.S.C. Sec. 3730(h).

#### IV. DEFINITIONS

**“Abuse”** means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to the Medicaid program (42 CFR 455.2)

**“Contractor or agent”** includes any contractor, subcontractor or person which or on behalf of the entity furnishes or otherwise authorizes the furnishing of Medicaid health care items or services, performs billing or coding functions, or is involved in monitoring of health care provided by the entity.

**“Deficit Reduction Act”** – a very comprehensive federal law implemented to reduce and reconcile the United States deficit. Its major component greatly impacts the Medicaid program, to include any organizations or agents managing a Medicaid program, and receiving federal and state funds for Medicaid services.

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Its affects are broad and far-reaching to include nearly every cabinet and administrative sector of the United States government. This law is effective January 1, 2007.

**“Employee”** includes any officer or employee of the company

**“Fraud”** means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law. (42 CFR 455.2)

**“Qui Tam Action”** – A private civil action brought by an affected person for a violation of the Medicaid False Claims Act. A private individual may cause to bring suit on behalf of the individual and the Government against an organization and/or another individual. Underlying provisions of both the Medicaid Reduction acts and Deficit Reduction Act.

**“Whistleblower Protections”** – Protects workforce members who disclose actual or reasonably suspected violations or provides assistance to the Government in pursuing an action as allowed under the False Claims Act for any allowable civil remedy. These employee rights include protections against discharge, demotion, suspension, threatens or threatening behavior, harassment or otherwise discriminated against in the terms and conditions or employment by the employer because of lawful acts done by the employee on behalf of the employee or others in disclosing information to the Government.