



To: Achieve Beyond employees and others affiliated with Achieve Beyond

From: Joseph Matuza, Corporate Compliance Officer

Date: May 2023

RE: Compliance Program and Federal Deficit Reduction Act

Achieve Beyond is committed to preventing and detecting fraud, waste and abuse. In support of this commitment, Achieve Beyond has established a Corporate Compliance Program. The purpose of the Corporate Compliance Program is to establish appropriate controls that will help ensure consistent compliance with the federal and State laws which govern our activities, and to detect violations of the law by employees and others affiliated with Achieve Beyond. The Corporate Compliance Program applies to important compliance risk areas, including billing, payment, ordered services, medical necessity, quality of care, governance, mandatory reporting, credentialing and contractor oversight.

Elements of Achieve Beyond's Corporate Compliance Program include:

- A Compliance Officer who is responsible for the day-to-day operations of the Corporate Compliance Program.
- Written standards of conduct, policies and procedures that describe compliance expectations and promote Achieve Beyond's commitment to compliance for all employees, directors, officers, managers, contractors, agents (collectively, "Affected Individuals") and others affiliated with Achieve Beyond.
- A Corporate Compliance Committee that operates and monitors the Corporate Compliance Program and initiates the necessary actions to correct any compliance problems.
- Regular, effective education and training programs for all Affected Individuals whose job descriptions include activities that are subject to the Corporate Compliance Program.
- Procedures to encourage Affected Individuals, clients, and others affiliated with Achieve Beyond to openly bring to the Corporate Compliance Committee's attention any situation that may be a violation of law or the Corporate Compliance Program without fear of threats, intimidation, retaliation or punishment.
- A system that allows for confidential and anonymous reporting of compliance issues or concerns.

- A system to respond to allegations of improper or illegal activities and the enforcement of appropriate disciplinary action against Affected Individuals who have violated the Corporate Compliance policies.
- Fairly and firmly enforced disciplinary policies that encourage good faith participation in the Compliance Program, that articulate expectation for reporting compliance issues and assisting in their resolution and that outline sanctions against Affected Individuals for: a) failing to report suspected problems; b) participating in non-compliant behavior; or c) encouraging, directing, facilitating or permitting non-compliant behavior.
- Compliance audits and/or other evaluation techniques to monitor compliance and assist in the reduction of potential problem areas.

A goal of the Corporate Compliance Program is to educate Affected Individuals with respect to federal and State statutes and regulations with which they must comply. In this regard, the federal Deficit Reduction Act (“DRA”) requires Achieve Beyond to provide all employees, contractors or agents who work in Delaware with “detailed information” about:

- the federal False Claims Act;
- the federal administrative remedies for false claims and statements;
- Delaware laws pertaining to civil or criminal penalties for false claims and statements;
- whistleblower protections provided under federal and State laws; and
- the role of federal and State laws in preventing and detecting fraud, waste and abuse.

This notice provides you with the information required by the DRA.

Federal and Delaware Statutes Related to Filing False Claims and Whistleblower Protections

Numerous federal and State laws prohibit health care providers from submitting “false” or “fraudulent” claims to Medicare and Medicaid and other federally-funded health care programs. Presented below is a listing and description of various federal and State statutes related to the filing of false Medicare and Medicaid claims.

Federal Laws

A. False Claims Reporting

1. False Claims Act, 31 U.S.C. 3729-3733.

The federal False Claims Act imposes penalties and fines on individuals and entities that file false or fraudulent claims for payment from Medicare, Medicaid, or other federal health programs. The penalty for filing a false claim is \$13,508 - \$27,018 per claim and the recoverable damages are between two and three times the value of the amount falsely received. In addition, the false claims filer may have to pay the government’s legal fees.

The False Claims Act allows private individuals to file lawsuits in federal court, just as if they were federal prosecutors. If the suit eventually concludes with payments back to the government, the person who started the case can recover 25-30% of the proceeds if the government did not participate in the suit, or 15-25% if the government did participate in the suit.

2. Administrative Remedies for False Claims, 31 U.S.C. 3801-3812.

This statute allows for administrative recoveries by federal agencies. If a person submits a claim that the person knows is false, or contains false information, or omits material information, then the agency receiving the claim may impose a penalty of up to \$13,508 for each claim. The agency may also recover twice the amount of the claim.

A violation of this law occurs when a false claim is submitted, not when it is paid. Also, unlike the False Claims Act, the determination of whether a claim is false and the imposition of fines and penalties is made by the administrative agency, not by bringing lawsuits in the federal court system.

B. Whistleblower Protections

1. Federal False Claims Act, 31 U.S.C. 3730(h). An employee who is “discharged, demoted, suspended, threatened, harassed or in any manner discriminated against” because of the employee’s lawful acts under the federal False Claims Act is entitled to reinstatement, double back pay with interest, special damages, and litigation costs and attorneys’ fees.

Delaware State Laws

Delaware false claims and reporting laws prohibit anyone from submitting false or fraudulent claims for payment or approval that are presented to an officer, employee or agent of the Delaware government or are made to a recipient if the money or property is to be spent or used on the Delaware government’s behalf or to advance a government program or interest. Many of the provisions overlap with the federal law.

A. False Claims and Reporting Act

1. Violations, Del. Code Ann. Tit. 6 §§ 1201. A person is in violation of the Delaware False Claims Act if they:
 - (a) Knowingly present, or cause to be presented a false or fraudulent claim for payment or approval;
 - (b) Knowingly make, use or cause to be made or used a false record or statement material to a false or fraudulent claim;

- (c) Have possession, custody or control of property or money used or to be used by the Government and knowingly deliver or cause to be delivered, less than all of that money or property;
 - (d) Are 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, make or deliver the receipt without completely knowing that the information on the receipt is true;
 - (e) Knowingly buy, or receive as a pledge of an obligation or debt, public property from an officer or employee of the Government who may not lawfully sell or pledge the property;
 - (f) 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 Government, or knowingly conceal or knowingly and improperly avoid or decrease an obligation to pay or transmit money or property to the Government; or
 - (g) Conspire to commit one of the aforementioned violations.
2. Penalties, Del. Code Ann. Tit. 6 § 1201. A person who has violated the Delaware False Claims and Reporting Act shall be liable to the Government for a civil penalty of not less than \$10,957 and not more than \$21,916, for each act constituting a violation of this section, plus 3 times the amount of damages which the Government sustains because of the act of that person. A person violating this subsection shall also be liable for the costs of a civil action brought to recover any such penalty or damages, including payment of reasonable attorney's fees and costs. The civil penalties may be reduced to not less than 2 times the amount of damages which the Government sustains because of the act of the person if: (1) the person committing the violation furnished officials of the Government, 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 violations; and (3) at the time such person furnished the Government with the information about the violation, no criminal prosecution, civil action, investigation 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 violations.
3. Qui Tam Actions, Del. Code Ann. Tit. 6 §§ 1203-1205. The Delaware False Claims and Recovery Act allows persons to bring qui tam actions. If the government intervenes in a qui tam action, the plaintiff may receive between 15% and 25% of the proceeds of the action or settlement of the claim, depending upon the extent to which the party substantially contributed to the prosecution of the action. Any such party shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. If the government does not intervene in the qui tam action, the plaintiff may receive between 25% and 30% of the proceeds of the action or

settlement. Such party shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs.

4. Employee Protection, Del. Code Ann. Tit. 6 § 1208. Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under the Delaware False Claims and Recovery Act or other efforts to stop violations of the Act. Such relief shall include reinstatement, twice the amount of back pay with interest, and special damages to include litigation costs and reasonable attorneys' fees. A civil action under this subsection may not be brought more than three years after the date when the alleged retaliation occurred.
5. Statute of Limitations, Del. Code Ann. Tit. 6, § 1209. A civil action brought under the Delaware False Claims and Reporting Act may not be brought more than 6 years after the date on which the violation is committed or more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the Government charged with responsibility to act in the circumstances, whichever occurs last. However, in no event may a civil action brought under the Delaware False Claims and Reporting Act be brought more than 10 years after the date on which the violation is committed.

B. Whistleblower Protections

1. Delaware Whistleblowers' Protection Act, Del. Code Ann. Tit. 19, §§ 1703-1704. An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment:
 - (a) because the employee, or a person acting on behalf of the employee, reports or is about to report to a public body, verbally or in writing, a violation which the employee knows or reasonably believes has occurred or is about to occur, unless the employee knows or has reason to know that the report is false;
 - (b) because an employee participates or is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action, in connection with a violation as defined in the Act;
 - (c) because an employee refuses to commit or assist in the commission of a violation, as defined in the Act;
 - (d) because the employee reports verbally or in writing to the employer or to the employee's supervisor a violation, which the employee knows or reasonably believes has occurred or is about to occur, unless the employee

knows or has reason to know that the report is false. Provided, however that if the report is verbally made, the employee must establish by clear and convincing evidence that such report was made; or

- (e) because an employee reports or is about to report to a public body, to the employer or the employee's supervisor, verbally or in writing any noncompliance or an infraction which the employee knows or reasonably believes has occurred or is about to occur, of the Delaware Campaign Contributions and Expenditures Law unless the employee knows or has reason to believe the report is false; or participates or is requested to participate in an investigation, hearing, trial or inquiry, of a person or entity other than employee, regarding noncompliance or an infraction of Delaware Campaign Contributions and Expenditures Law; or refuses to participate or assist in the noncompliance or an infraction of Delaware Campaign Contributions and Expenditures Law.

A person who alleges a violation of the Delaware Whistleblowers' Protection Act may bring a civil action for appropriate declaratory relief, or actual damages, or both within three years after the occurrence of the alleged violation of the Delaware Whistleblowers' Protection Act. A court, in rendering a judgment in an action brought under the Delaware Whistleblowers' Protection Act, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, expungement of records relating to the disciplinary action or discharge, actual damages, or any combination of these remedies. A court may also award, as part of a judgment in an action brought under Delaware's whistleblowers' protection statute, all or a portion of the costs of litigation, including attorneys' fees, if the court determines that such an award is appropriate.

If you become aware of any compliance issues or have any questions regarding the information contained in this notice, please contact Joseph Matuza, Achieve Beyond's Corporate Compliance Officer, at (718) 762-7633 (x 190).