

Addendum to Employee Standards and Code of Ethical Conduct Virginia State False Claims Act

This is a supplement to Trilogy's Employee Standards and Code of Ethical Conduct Handbook (Code) for employees who work in Virginia. As stated in our Code, the federal False Claims Act and similar state laws assist the federal and state governments in combating fraud and recovering losses resulting from fraud in government programs, purchases, and/or contracts. These laws are very important laws that govern our business.

The Virginia Fraud Against Taxpayers Act ("VFATA") and False Claims Act ("VFCA") and other Virginia laws impose liability on any person who, with intent to defraud or deceive, makes, or causes to be made or assists in the preparation of any false statement, representation, or omission of a material fact in any claim or application for any payment, regardless of amount, from the Medicaid Agency, knowing the same to be false. These Virginia laws prohibit, among other things:

- Making claims for items or services not rendered or not provided as claimed (such as billing for three hours of therapy when only a few minutes were provided);
- Submitting claims to any payor, including Medicaid, for services or supplies that are not medically necessary or that were not ordered by the resident's physician or other authorized caregiver;
- Submitting claims for items or services that are not provided as claimed, such as billing Medicaid for expensive prosthetic devices when only non-covered adult diapers were provided;
- Submitting claims to any payor, including Medicaid, for individual items or services when such items or services either are included in the health facility's per diem rate for a resident or are of the type that may be billed only as a unit and not unbundled;
- Double billings (billing for the same item or service more than once);
- Paying or receiving anything of financial benefit in exchange for Medicaid referrals (such as receiving non-covered medical products at no charge in exchange for ordering Medicaid-reimbursed products); or
- Participating in kickbacks

Civil and Criminal Penalties for False Claims or Statements

A violation of these Virginia laws may result in civil penalties of \$5,500 to \$11,000 per claim, plus three times the amount of damages sustained by the state government. In addition, a person who violates the Virginia Fraud Against Taxpayers Act, specifically VC §8.01-216.1 et seq. and Virginia False Claims Act VC §8.01-216.3 et seq.

Individuals may also be subject to class Class 3 felony which provides for a term of imprisonment to not less than five years nor more than 20 years and a fine of not more than \$100,000. 2007 Va. Acts cc. 562,653.

Civil Lawsuits

Like the federal False Claims Act, Virginia law also allows civil lawsuits to be filed by the state government or by private citizens, including employees. If the private citizen (also called a *qui tam* plaintiff) is successful in the lawsuit, he/she may share a percentage of any monetary recovery and receive an award for reasonable attorney's fees and costs. However, if the state chooses not to litigate a case, and the private citizen litigates and loses, then the court may award the defendant its reasonable attorney fees and costs against the private citizen.

No Retaliation

Like federal law and Trilogy policy, various Virginia laws, including the VFATA and Virginia's Whistle-blower statutes, prohibit employers from retaliating, discriminating or harassing employees because of their lawful participation in a false claims disclosure or their refusal to assist employers in violating laws such as the VFATA. These laws also provide for certain monetary awards and equitable relief to the prevailing plaintiff including compensation for lost wages and reinstatement to a former position. Employees who work for private employers must first notify the employer in writing of any suspected illegal activity, policy, or practice before disclosing it to the appropriate government agency unless the employer is believed to be involved in the illegal conduct. The purpose of this particular requirement is to give the employer a reasonable opportunity to correct the activity, policy, or practice.

Any employee who engages in or condones any form of retaliation against another employee because that employee either (1) reported a potential violation of violation of Trilogy's Code of Conduct or regulatory violation, or (2) refused to violate Trilogy's Code of Conduct or a government law or regulation, will be subject to disciplinary action up to and including separation of employment. See Trilogy's Open Door Policy and the procedure outlined in the Employee Handbook for information on reporting concerns.

Copies of Virginia Laws

The Virginia laws summarized above include: Virginia Fraud Against Taxpayers Act VC §8.01-216.1 et seq.; Virginia False Claims Act VC §8.01-216.3 et seq.; Va. Acts cc. 562,653. If you have questions about any of these requirements, you may contact Trilogy's Compliance Hotline at 1-800-908-8618 (extension 2800). This summary and others are also posted on Trilogy's external web site at www.trilogyhs.com, and Trilogy's intranet site under the Compliance home page.