



**Bancroft**<sup>®</sup>  
One world. For everyone.

## Policies and Procedures

<b>Title:</b> Fraud, Abuse and Waste
<b>Jurisdiction(s):</b> Delaware, Pennsylvania, and New Jersey
<b>Applicable Program(s):</b> All Programs
<b>Policy Number:</b> 760
<b>Effective Date:</b> August 1, 2010
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<b>Reviewer:</b> Lisa R. Weinstein, Director of Compliance and Privacy Officer

### **SCOPE**

This policy shall apply to Bancroft NeuroHealth and its subsidiaries and affiliated entities (collectively, "**Bancroft**") located in the jurisdiction(s) or, if applicable, the programs indicated above. This policy replaces all prior Bancroft policies regarding the subject matter contained herein.

### **PURPOSE**

The purpose of this policy is to provide information to each employee, contractor and vendor about: (i) the Federal False Claims Act; (ii) applicable state false claims regulations; (iii) applicable protections for whistleblowers including Bancroft's non-retaliation policy; and (iv) Bancroft's policies to detect and prevent fraud and abuse in federal or state funded healthcare programs.

### **POLICY**

#### **I. Availability of Information**

- A. Information contained in this policy shall be available via: (i) posting of this policy on Bancroft's internal website; (ii) inclusion of this information in the electronic employee handbook; (iii) other hard copy or electronic distribution of this policy; (iv) training regarding this policy; or (v) in any other form or manner including, but not limited to, a combination of the methods previously described.

#### **II. Federal and State False Claims Act Provisions**

##### **1. The Federal False Claims Act**

- a. The Federal False Claims Act (the "Act") allows for triple damages and a penalty of \$5,500 to \$11,000 per claim for anyone who "knowingly" submits or causes the submission of a false or fraudulent claim to the United States. The government does not need to prove specific intent to defraud to find liability; rather, liability can be proven by evidence of deliberate ignorance of the falsity of the claim or if the individual acts in "reckless disregard" of the falsity of the information. A "claim" under the Act generally means each claim submitted for payment but can also result from a false certification of a government required document.
- b. A "false claim" under the Act can result from a number of non-compliant actions; examples of false claims include (but are not limited to) billing for

services not performed, upcoding (billing at a higher level when the applicable level of service was either not performed or the documentation does not support the level of service billed), knowing misuse of provider identification numbers, routine waiver of copayments and deductibles, billing more than once for the same service or billing for services that are known to be non-covered services. The Act also has been used to enforce the Federal Anti-kickback Statute and the Stark law (federal prohibition on physician self-referrals).

- c. The Act provides that any “whistleblower” may bring an action under the Act on his own behalf and for the United States. These actions, which must be filed in U.S. District Court, are known as “qui tam” actions. The government, after reviewing the complaint and supporting evidence, may decide to take over the action, or decline to do so, in which case the whistleblower may continue the action. If either the government or the whistleblower is successful, the whistleblower is entitled to receive a percentage of the recovery.
- d. Whistleblowers are protected under the Act from any type of retaliation by their employer as a result of providing any assistance or information relating to a lawsuit under the Act. This protection includes reinstatement with the same seniority status, two times the amount of back pay, and compensation for any special damages, including litigation costs and reasonable attorney's fees.

## **2. Federal Program Fraud Civil Remedies Act**

- a. This federal law provides federal administrative remedies for false claims and statements, including those made to federally funded healthcare programs. Current civil penalties are \$5,500 for each false claim or statement, and an assessment in lieu of damages sustained by the federal government of up to double damages for each false claim for which the government makes a payment. The amount of the false claims penalty is to be adjusted periodically for inflation in accordance with a federal formula.

## **3. New Jersey Medical Assistance and Health Services Act**

- a. This New Jersey law provides criminal penalties for individuals and entities engaging in fraud or other criminal violations relating to certain state-funded programs. These include: (i) fraudulent receipt of payments or benefits - fine of up to \$10,000, imprisonment for up to 3 years, or both; (ii) false claims, statements or omissions, or conversion of benefits or payments - fine of up to \$10,000, imprisonment for up to 3 years, or both; (iii) kickbacks, rebates and bribes - fine of up to \$10,000, imprisonment for up to 3 years, or both; and (iv) false statements or representations about conditions or operations of an institution or facility to qualify for payments - fine of up to \$3,000, or imprisonment for up to 1 year, or both.
- b. In addition to the criminal penalties discussed above, violations can also result in the following civil sanctions: (i) unintentional violations - recovery of overpayments and interest; (ii) intentional violation - recovery of overpayments, interest, up to triple damages, and, as indicated below, a penalty (\$5,500 to \$11,000) for each false claim. Recovery actions can be obtained against any individual or entity responsible for or receiving the

benefit or possession of the incorrect payments. In addition to recovery actions, violations can result in the exclusion of an individual or entity from participation in all health care programs funded in whole or in part by the N.J. Division of Medical Assistance and Health Services. Recovery and exclusion can also be obtained as part of a criminal prosecution by the Medicaid Fraud Section of the N.J. Division of Criminal Justice.

#### **4. New Jersey Health Care Claims Fraud Act**

- a. This law provides the following criminal penalties for health care claims fraud, including the submission of false claims to programs funded in whole or in part with state funds:
- b. A practitioner who knowingly commits health care claims fraud in the course of providing professional services is guilty of a crime of the second degree, and is subject to a fine of up to 5 times the monetary benefits obtained or sought to be obtained and to permanent forfeiture of his license;
- c. A practitioner who recklessly commits health care claims fraud in the course of providing professional services is guilty of a crime of the third degree, and is subject to a fine of up to 5 times the pecuniary benefit obtained or sought to be obtained and the suspension of his license for up to 1 year;
- d. A person who is not a practitioner subject to paragraph b. or c. above (e.g., someone who is not licensed, registered or certified by an appropriate State agency as a health care professional) is guilty of a crime of the third degree if that person knowingly commits health care claims fraud. Such a person is guilty of a crime of the second degree if that person knowingly commits 5 or more acts of health care claims fraud, and the aggregate monetary benefit obtained or sought to be obtained is at least \$1,000. In addition to all other criminal penalties allowed by law, such a person may be subject to a fine of up to 5 times the monetary benefit obtained or sought to be obtained; and
- e. A person who is not a practitioner subject to paragraph b. or c. above is guilty of a crime of the fourth degree if that person recklessly commits health care claims fraud. In addition to all other criminal penalties allowed by law, such a person may be subject to a fine of up to 5 times the monetary benefit obtained or sought to be obtained.

#### **5. New Jersey Conscientious Employee Protection Act, "Whistleblower Act",**

- a. New Jersey law prohibits an employer from taking any retaliatory action against an employee because the employee does any of the following:
- b. Discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy or practice of the employer or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of a law, or a rule or regulation issued under the law, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care;
- c. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation issued under the law by the employer or another employer, with whom there is a business relationship, or, in the case of an employee who is a licensed or certified health care professional, provides information to,

- or testifies before, any public body conducting an investigation, hearing or inquiry into quality of patient care;
- d. Provides information involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity;
  - e. Provides information regarding any perceived criminal or fraudulent activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity; or
  - f. Objects to, or refuses to participate in, any activity, policy, or practice which the employee reasonably believes:
    - i. is in violation of a law, or a rule or regulation issued under the law or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care;
    - ii. is fraudulent or criminal; or
    - iii. is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment. N.J.S.A. 34:19-3.
    - iv. The protection against retaliation, when a disclosure is made to a public body, does not apply unless the employee has brought the activity, policy or practice to the attention of a supervisor of the employee by written notice and given the employer a reasonable opportunity to correct the activity, policy or practice. However, disclosure is not required where the employee reasonably believes that the activity, policy or practice is known to one or more supervisors of the employer or where the employee fears physical harm as a result of the disclosure, provided that the situation is emergent in nature.

#### **6. New Jersey False Claims Act**

- a. The New Jersey False Claims Act ("NJFCA") has similar provisions to the federal False Claims Act. For example, the Attorney General may bring an action against an individual or entity that makes a false claim. In addition, the NJFCA also allows for individuals to bring a private right of action in the name of the state against wrongdoers and be able to collect a penalty from those wrongdoers. Under the NJFCA, the civil penalties are currently \$5,500 to \$11,000 per false or fraudulent claim under the New Jersey Medical Assistance and Health Services Act. The NJFCA provides that a person will be liable if he/she:
  - i. Knowingly presents or causes to be presented to an employee, officer or agent of the State, or to any contractor, grantee, or other recipient of State funds, a false or fraudulent claim for payment or approval;
  - ii. Knowingly makes, uses, or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the State;

- iii. Conspires to defraud the State by getting a false or fraudulent claim allowed or paid by the State;
- iv. Has possession, custody, or control of public property or money used or to be used by the State and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;
- v. Is authorized to make or deliver a document certifying receipt of property used or to be used by the State and, intending to defraud the entity, makes or delivers a receipt without completely knowing that the information on the receipt is true;
- vi. Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property; or
- vii. 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 State.

#### **7. Pennsylvania and Delaware False Claims Acts**

- a. Please refer to **Attachment A** of this policy for the Pennsylvania Fraud and Abuse Control Act.
- b. Please refer to **Attachment B** of this policy for the Delaware False Claims Act.

### **III. Bancroft Policies to Detect and Prevent Fraud and Abuse**

- A. Bancroft is strongly committed to fostering a culture of compliance and has established policies relating to (i) ethical conduct; (ii) preventing and detecting fraud and abuse; (iii) compliance education and training; (iv) reporting obligations of employees; and (v) protections against retaliation for any employee who in good faith reports suspected fraud and other misconduct.

#### **REFERENCE**

Attachments A and B

Federal False Claims Act

Delaware, New Jersey, and Pennsylvania state false claims regulations

#### **Bancroft Policies:**

131 Code of Ethics

150 Reporting, Investigation and Responding to Identified Compliance Issues

152 Education & Training Compliance

153 Auditing and Monitoring Activities: Compliance

## Attachment A

### **The Pennsylvania Fraud and Abuse Control Act**

1. The Pennsylvania Fraud and Abuse Control Act imposes liability on persons who and companies that make, or cause to be made, false or fraudulent claims to the government for payment or that knowingly make, use or cause to be made or used a false record or statement to get a false or fraudulent claim paid by the government.
2. In addition, Pennsylvania Statute Title 62, Section 1407 provides, in relevant part, that it shall be unlawful for any person to:
  - a. Knowingly or intentionally present for allowance or payment any false or fraudulent claim or cost report for furnishing services or merchandise under medical assistance, or to knowingly present for allowance or payment any claim or cost report for medically unnecessary services or merchandise under medical assistance, or to knowingly submit false information, for the purpose of obtaining greater compensation than that to which he is legally entitled for furnishing services or merchandise under medical assistance, or to knowingly submit false information for the purpose of obtaining authorization for furnishing services or merchandise under medical assistance;
  - b. A person who violates the above provision is guilty of a felony of the third degree with a maximum penalty of \$15,000 and seven years imprisonment. If the person was previously convicted in state or federal court of conduct that would constitute a violation of this provision, a subsequent offense is a felony of the second degree with a maximum penalty of \$25,000 and ten years imprisonment. In addition, the person committing the violation is liable to repay the amount of excess payments plus interest and to pay an amount not to exceed three times the excess payments. A person convicted of a violation is ineligible to participate in the Medicaid program for a period of five years;
  - c. If the state Medicaid agency determines that a provider has committed a prohibited act, it has the authority to terminate the provider's Medicaid provider agreement upon notice, and to institute a civil suit against the provider for twice the amount of excess payments plus interest. Notice of action taken by the agency will be forwarded to the Medicaid Fraud Control Unit of the Department of Justice and to the appropriate licensing board of the Department of State for appropriate action; and
  - d. In addition, Pennsylvania has enacted a Whistleblower Law that provides certain protections to an employee who witnesses or has evidence of wrongdoing or waste while employed and who in oral or written communication makes a good faith report of the wrongdoing or waste to a superior, to an agent of the employer or to an appropriate authority.

## Attachment B

### **Delaware False Claims Act**

1. Delaware has a state false claims act which provides that any person who:  
(i) Knowingly presents, or causes to be presented a false or fraudulent claim for payment or approval; (ii) knowingly makes, uses or causes to be made or used a false record or statement material to a false or fraudulent claim; (iii) conspires to commit a violation of this law; (iv) 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; (v) 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; (vi) knowingly buys, or receives 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; or (vii) 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 shall be liable to the Government for a civil penalty of not less than \$5,500 and not more than \$11,000 for each act constituting a violation of this section, plus three times the amount of damages which the Government sustains because of the act of that person.
2. Notwithstanding the foregoing, the court may assess not less than two times the amount of damages which the Government sustains because of the act of the person, if: (i) the person committing the violation of this subsection 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; (ii) such person fully cooperated with any government investigation of such violations; and (iii) 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. A person violating this law 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.
4. Delaware false claims act law also provides the ability of a whistleblower to bring a false claims action, recover a portion of the damages awarded in such a false claims act, and provides protection against retaliation for that whistleblower.