

## CAPITOL DENTAL CARE

## POLICY

<b>Name:</b>	<b>False Claim Recoveries</b>
<b>Date of Origin:</b>	<b>01/01/2007</b>
<b>Current Effective Date:</b>	<b>03/27/2018</b>
<b>Scheduled Review Date:</b>	<b>03/27/2020</b>

### I. Policy and Information

As a Medicaid Dental Care Organization, Capitol Dental Care, Inc. (“CDC”) takes health care fraud and abuse very seriously. Because payments from CDC are considered payments under the Medicaid program, both federal and state laws may govern if claims for such payments are falsely submitted. With this policy we are providing information to all employees, contractors and agents about the federal False Claims Act, federal administrative remedies available for false claims and statements, and similar state civil and criminal statutes. Our policy also provides information about federal and state law whistleblower protections available to those who report a violation of these laws. In addition, we are advising our employees, contractors and agents of the policies and procedures CDC has in place to detect and prevent health care fraud and abuse.

### II. Federal and State False Claims Recovery Laws

#### Federal False Claims Act (31 USC §§ 3729 to 3733)

The federal False Claims Act provides for recovery of damages and civil penalties against anyone who:

- Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- Knowingly makes, uses or causes to be made or used a false record or statement material to a false or fraudulent claim; or
- Conspires to present a false or fraudulent claim or make a false record or statement material to a false or fraudulent claim; or
- Knowingly conceals or knowingly avoids and improperly avoids or decreases an obligation to pay.

Some examples of what could be considered a “false claim” under the federal False Claims Act include intentionally or recklessly:

- Billing for services not performed or not necessary;
- Overstating or up-coding levels of service;

- Clustering (coding/charging a single level service code on all claims with the intent that charges will net out over time, but actually result in under/over charging on individual claims);
- Systemic or repeated duplicate billing;
- Unbundling (billing for multiple components of a service that should be submitted in a single claim);
- Falsifying information in the dental record to justify a claim; and
- Failing to report an overpayment within sixty (60) days of discovery.

If someone violates the False Claims Act, a federal false claims action may be brought by the U.S. Department of Justice. Under certain circumstances, a case can also be brought under the False Claims Act by an individual on behalf of the federal government. The Department of Justice can then decide whether to intervene and take over prosecution of the case.

If a violation of the False Claims Act is proven, a court can order the person who submitted the false claim to repay the government three times the amount of damages and a civil penalty for each false claim submitted.

#### Program Fraud Civil Remedies Act of 1986 (31 USC §§ 3801 to 3812)

Submitting false claims for payment to the federal government is also prohibited by the Program Fraud Civil Remedies Act of 1986. Under this statute, the federal government can seek administrative civil penalties of up to \$5,000 per claim and damages of twice the amount of the claim. In addition, providers who violate this statute can be suspended or debarred from contracting with the federal government or participating in government programs.

### **III. State Laws Prohibiting False Claims and Statements**

#### **Oregon False Claims Act (ORS 180.750 to 180.780)**

A false claim under Oregon's false claim act is any claim that (a) contains, or is based on, false or fraudulent information; (b) contains any statement or representation that is untrue in whole or part; or (c) omits information that could have a material effect on the value, validity or authenticity of the claim. Oregon's false claims act provides for recovery of damages and civil penalties against anyone who:

- Presents for payment or approval, or causes to be presented for payment or approval, to any public agency a claim that the person knows is a false claim;
- In the course of presenting a claim for payment or approval to any public agency, makes or uses, or causes to be made or used, a record or statement that the person knows to contain, or to be based on, false or fraudulent information;

- Agrees or conspires with other persons to present for payment or approval to any public agency a claim that the person knows is a false claim.

If someone violates Oregon's false claims act, the Oregon Attorney General may bring a civil action. If a violation of Oregon's false claims act is proven, a court will award the State of Oregon all damages arising from the violation and will impose a civil penalty equal to the greater of \$10,000 for each violation or an amount equal to twice the amount of damages incurred for each violation.

### **Other State Laws Prohibiting False Claims and Statements**

Oregon also has laws that prohibit false claims for payment under the Medicaid program. ORS 411.670-411.690. Violation of these laws is a Class C felony and punishable by fines and imprisonment. Oregon's Department of Human Services or Oregon Health Authority can also recover any prohibited payments under these laws in an administrative or civil action and can seek triple the amount of the claim as damages if the provider has previously been warned against the wrongful billing practice.

Depending on the factual circumstances presented, additional state laws may also apply and prohibit any false claim submitted for payment under the Medicaid program. These laws include: ORS 646.605 to 646.656 (prohibiting unlawful trade practices); ORS chapter 162 (crimes related to perjury, false swearing and unsworn falsification); ORS chapter 164 (crimes related to theft); ORS chapter 165 (crimes involving fraud or deception including, but not limited to, ORS 165.080 (falsification of business records) and ORS 165.690 to 698 (criminal penalties for false claims for health care payments)); ORS 166.715 to 166.735 (criminal and civil racketeering); OAR 410-120-1395 to 410-120-1510 (program integrity, sanctions, fraud and abuse); and common law claims including Fraud, Money Paid by Mistake and Money Paid by False Pretenses.

## **IV. Protection for Persons who Report Violations of These Laws**

### Federal Whistleblower Protections

Federal law prohibits an employer from discriminating against an employee in the terms or conditions or his or her employment because the employee initiated or otherwise assisted in a false claims action. The employee is entitled to all relief necessary to make the employee whole. 31 USC § 3730(h).

### State Whistleblower Protections

Oregon law prohibits employers from retaliating against an employee who in good faith reports information that the employee believes is evidence of a violation of state or federal laws. ORS 659A.199. In addition, Oregon law prohibits employers from retaliating against an employee who in good faith reports criminal activity or initiates a criminal proceeding against any person, cooperates in a criminal investigation, or brings or testifies in a civil proceeding against an employer. ORS 659A.230. Further, an employee who believes he or she is the victim of retaliation may file a complaint with the Oregon Bureau of Labor and Industries.

## **V. What You Should Do If You Think a False Claim Has Been Made**

If you see something that is not right, or looks like one of the examples of a false claim discussed earlier, CDC encourages you to report it to CDC for further investigation. You may make your report to CDC's Compliance Officer, QI Director, or Dental Director at the following address:

3000 Market Street, NE  
Salem, OR 97301  
503-587-7162

CDC will not release your identity as a reporter outside CDC unless you consent to release of your identity or CDC is required by law, regulation or its contract with the State of Oregon to release your identity.

You are not required to report a possible law violation to CDC first. You may report directly to the federal Department of Justice or state Medicaid Fraud Control Unit.

CDC will not retaliate against you if you inform CDC or the federal or state governments of a possible violation of the laws described in this policy.

## **VI. Education Policy**

CDC will train all new members of its workforce regarding federal and state false claim recovery statutes and will provide periodic updates for existing members of its workforce, contractors and agents. All contractors and agents are required to accept educational information offered by CDC and to distribute it to any of their employees who perform work related to CDC.

## **VII. CDC's Policies and Procedures for Detecting Fraud and Abuse**

CDC has a detailed Fraud and Abuse Policy and Procedure and a Fraud and Abuse Prevention/Detection Activity Plan. This policy and plan (1) describe our policies and procedures related to data management; (2) identify operational activities we have in place for prevention and detection of fraud and abuse; (3) describe our Member Complaint and Grievance Policy and Procedures; (4) describe where our related standards of conduct can be found; (5) describe our credentialing guidelines as they relate to fraud and abuse; and (6) describe our policies for reporting suspected cases of fraud and abuse to appropriate governmental authorities. You can obtain copies of these policies from:

Capitol Dental Care, Inc - Compliance Officer  
3000 Market Street, NE  
Salem, OR 97301  
503-587-7162

If you have any questions about these policies or the information in this Policy, please call the Compliance Officer at the number stated above.