

# Fraud & Abuse

## Alaska eHealth Network Policy 6.200

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### I. PURPOSE

This policy (the “Policy”) is in place to ensure that Alaska eHealth Network (“AeHN”) complies with the provisions of Social Security Act § 1902(a)(68)(A) by providing detailed information about the Federal False Claims Act (the “Act”), the administrative remedies for false statements and claims, relevant state laws providing for civil and criminal penalties for false claims and statement, and whistleblower protections under the Act and relevant state laws. The Act governs civil and criminal penalties for false claims and statements to the United States Government (the “Government”).

Additionally, this policy will ensure that AeHN complies with federal and state law regarding the detection and prevention of fraud, waste and abuse generally, and that AeHN complies with legal requirements regarding the treatment of employees who report violations of law. This policy will assist in compliance by assuring that violations will be discreetly and thoroughly investigated, and no reprisals will be taken against employees who report violations in good faith.

### II. SCOPE

This applies to all employees, volunteers and those directly reporting independent contractors who furnish, or otherwise authorize the furnishing items or services for AeHN (collectively referred to as “Employees”).

### III. POLICY

- A. AeHN will adopt procedures for detecting and preventing fraud, waste and abuse which comply with State and Federal laws and regulations.
- B. AeHN will provide Employees with written information regarding the Federal False Claims Act; administrative remedies for false claims and statements; any state laws pertaining to civil or criminal penalties for false claims and statements; and the whistleblower protections under such laws.
  1. In addition to receiving written materials specific to this Policy, the procedures adopted in accordance with this Policy shall include a specific discussion of the laws described above, the rights of employees to report fraud and abuse, and AeHN’s policies and procedures for detecting fraud, waste and abuse.
  2. AeHN shall determine the appropriate level of training required for each type of Employee (management, billing, vendors, etc.) and implement educational programs, either via computer or in-person for those Employees determined to need training. Employees may be required to sign written acknowledgements at the conclusion of training sessions or upon receipt and review of written policies and procedures.

- C. AeHN requires Employees to exercise due diligence in the prevention, detection and correction of fraud, waste, and abuse, and to promptly report any suspected fraud, waste and abuse through appropriate channels. As part of the Employee’s responsibility to exercise due diligence, each Employee is expected to be familiar with the applicable laws described in the Fraud and Abuse Procedures.
- D. AeHN will not discharge, threaten, otherwise discriminate against or penalize an employee with regard to compensation, terms, conditions, location or privileges of employment because: (1) the employee in good faith reports a violation of law to an employer or governmental body or law enforcement official; (2) the employee is requested by a public body to participate in an investigation, hearing, or inquiry; or (3) the employee refuses to participate in any activity that the employee, in good faith, believes violates any state of federal law or regulation.
- E. Failure to comply with this Policy and the procedures promulgated herewith may result in legal action against AeHN and/or its directors, officers and employees, or may otherwise result in unnecessary expense and liability.
  - 1. Employees who violate this policy and/or the laws mentioned herein may be subject to corrective action, including but not limited to immediate termination.
  - 2. Employees who violate the Act or any other laws mentioned in this policy may also be subject to monetary penalties and/or prosecution.

#### **IV. APPLICABLE LAW**

- A. Each of the following applicable laws will be described in detail in the Fraud and Abuse Procedures below (which shall be updated as necessary):
  - 1. False Claims Act
  - 2. Anti-Kickback Statute
  - 3. Stark Laws
  - 4. State Fraud and Abuse Laws
- B. The Fraud and Abuse Procedures shall also include a specific discussion of the rights of Employees to be protected as whistleblowers, and AeHN’s policies and procedures described herein.

#### **V. PROCEDURES**

##### **A. Employee Enforcement and Reporting Responsibilities:**

- 1. All employees have a responsibility to comply with the requirements of the law, and AeHN policies and procedures. Employees must remain alert to the possibilities of violations by others and make others aware of violations observed.
- 2. Employees should immediately report violations and suspected violations of the law or AeHN policies to their manager or supervisor. Any report will be taken in good faith on further review and investigation to determine the validity of the reported violation. Failing to report or condoning a violation of the law or AeHN policy may lead to corrective action up to and including termination.

##### **B. Education Programs:**

1. AeHN will institute mandatory education programs for employees. These education programs should cover each individual's responsibilities for assuring compliance with State and Federal law and will be regularly augmented and reinforced.
2. A key component of the education program will be a requirement that all employees be familiar with the applicable State and Federal laws described below.
3. Employees may be asked to sign a written acknowledgement of their participation in the education programs.

**C. Confidentiality:**

1. In order to encourage employees to report violations, employees must be assured that confidentiality will be maintained of all reported incidents.
2. At the request of the employee reporting a violation and to the extent possible and permitted by law, AeHN will strive to maintain the confidentiality of those individuals who report legal or compliance-related violations; however, employees should be aware that their identity may be revealed if governmental authorities become involved in an investigation. AeHN efforts to maintain confidentiality will include both the confidentiality of the person making the report and the person about whom the report is made. Anyone who violates an employee's right to confidentiality or anonymity in connection with a reported incident will be subjected to disciplinary action up to and including dismissal.

**D. Investigations and Monitoring:**

1. It is the policy of AeHN to undertake prompt and discreet investigations of reported violations. AeHN will take all reasonable steps to investigate reported violations promptly and thoroughly. AeHN cannot do so, however, without the assistance of employees. All employees must therefore be prepared to cooperate fully with internal investigation teams. Supervisors or managers directing the investigation should carefully document all actions taken and decisions reached in every reported matter.
2. AeHN shall demonstrate compliance with State and Federal law by:
  - a. Continuously reviewing and evaluating existing controls at all operational sites of the organization;
  - b. Regularly monitoring the effectiveness of and promptly adopting any necessary modifications in various elements of the program; and
  - c. Conducting an ongoing evaluation of all aspects of the programs and materials enacted herein.

**E. Retaliation Strictly Forbidden:**

1. It is absolutely forbidden for any employee to punish another employee who has reported a suspected violation of the law or AeHN policy.
2. Illustrations: The following are examples of forbidden retribution or retaliation against an employee who reports a violation:
  - Firing the employee

- Making untrue reports or statements about the employee's work habits or productivity
- Transferring the employee or giving him or her a less desirable work assignment
- Withdrawing pension or other benefits from the employee
- Harassing the employee physically or verbally
- Any other act or conduct designed to intimidate or harass the employee

**F. Going to the Government:**

AeHN encourages its employees to report violations to AeHN before going to the government. One of the most important purposes of this Policy is to assure AeHN employees of their confidentiality and protection against reprisal if they make an internal report. AeHN will also collaborate with external agencies to deter any fraud, waste and abuse and to report to external agencies and/or law enforcement authorities as appropriate.

**G. Malicious Reporting:**

Employees should make good-faith reports of possible violations of the law or AeHN policy to the appropriate officer responsible for compliance matters. AeHN recognizes, however, that individual employees can abuse the policy to make unfounded accusations against other employees in order to harass them or to exact revenge for personal disputes. For this reason, AeHN must reserve the right to investigate persons who make reports when there is a valid reason to suspect abuse of the reporting process. Those employees found to have made bad faith reports will be subject to corrective action up to and including termination.

**H. Laws Protecting Persons Reporting in Good Faith:**

1. In addition to AeHN's internal policy against reprisals, federal and state law provides protection for employees who communicate with government officials regarding possible illegal behavior in some contexts. Where such protection is available, discrimination against reporting employees in any terms and conditions of their employment is prohibited. These terms and conditions would include anything affecting the employee's working conditions, including wages, terms of employment, conditions, location or any other privileges of employment.
2. AeHN shall comply with the federal and state whistle-blower laws, as they are applicable to AeHN.
3. Illustrations: The following are some examples of employees who are protected under the federal and state whistle-blower laws:
  - Employees who disclose information to appropriate government officials regarding certain government contracts which they reasonably believe to be evidence of a federal violation
  - Employees who disclose information to appropriate government officials regarding possible violations of federal laws
4. Employees involved in any action being taken against any employee for their disclosure of information to a government official should check with a supervisor or administrator to ensure that whistle-blower laws are not being broken.

## I. Applicable Federal and State Laws:

### 1. False Claims Act

#### I. DEFINITIONS

(A) Claim. "Claim" includes any request or demand for money, property, or services made to any employee, officer, or agent of the Government (including, without limitation, Medicare Part B Carriers and Medicare Part A Fiscal Intermediaries), or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, the Government funds, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property.

(B) Knowing and Knowingly. "Knowing" and "knowingly" mean that a person, with respect to information, does any of the following:

1. Has actual knowledge of the information.
2. Acts in deliberate ignorance of the truth or falsity of the information.
3. Acts in reckless disregard of the truth or falsity of the information.

Proof of specific intent to defraud is not required.

(C) Person. "Person" means any employee, volunteer and those contractors who furnish, or otherwise authorize the furnishing of Medicaid items or services for AeHN.

(D) Employer. "Employer" means AeHN.

#### II. ACTS SUBJECTING PERSON TO DAMAGES, COSTS AND CIVIL PENALTIES; EXCEPTIONS

(A) Liability under the Act. According to the Act, any person who commits any of the following acts shall be liable to the United States Government (the "Government") for two times the amount of damages that the Government sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the Government for the costs of a civil action brought to recover any of those penalties or damages, and shall be liable to the Government for a civil action brought to recover any such penalty or damages.

1. Knowingly presents or causes to be presented to any employee, officer, or agent of the Governments, or to any contractor, grantee, or other recipient of Government funds, 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 claim paid or approved.
3. Conspires to defraud the Government by getting a false claim allowed or paid, or conspires to defraud the Government by knowingly making, using, or causing 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.
4. Has possession, custody, or control of public property or money used or to be used by the Government and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt.
5. Is authorized to make or deliver a document certifying receipt of property used or to be used by the Government and knowingly makes or delivers a receipt that falsely represents the property used or to be used.

6. 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.
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.
8. Is a beneficiary of an inadvertent submission of a false claim to any employee, officer, or agent of the Government, or to any contractor, grantee, or other recipient of Government funds, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the Government within a reasonable time after discovery of the false claim.

(B) Damages Limitation. Notwithstanding subsection (a) above, a court may decide that no civil penalty shall be assessed, if such court finds all of the following:

1. The person committing the violation furnished officials of the Government who are responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information.
2. The person fully cooperated with any investigation by the Government.
3. At the time the person furnished the Government with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

## § 2 PROSECUTING AUTHORITY AND CIVIL ACTIONS BY INDIVIDUALS AS QUI TAM PLAINTIFF AND AS PRIVATE CITIZENS

(a) Responsibilities of the Attorney General. According to the Act, the Attorney General shall investigate a violation as described under section 2 above. If the Attorney General finds that a person has violated or is violating section 2, the Attorney General may bring a civil action against that person, in accordance with this section, as set forth below.

(b) Actions by private persons.

1. A person may bring a civil action for a violation of the Act for the person and for the Government in the name of the Government. The person bringing the action shall be referred to as the qui tam plaintiff.
2. A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government Attorney General. The complaint shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and the information.
3. A defendant shall not be required to respond to any complaint filed under this section until after the complaint is unsealed and served upon the defendant pursuant to Government Rules of Civil Procedure.

(c) Rights of the parties to qui tam actions.

1. If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the following limitations:
  - (A) The Government may seek to dismiss the action for good cause.
  - (B) The Government may settle the action with the defendant.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

- (i) Limiting the number of witnesses the person may call;
- (ii) limiting the length of the testimony of such witnesses;
- (iii) limiting the person's cross-examination of witnesses; or
- (iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

- 2. If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action.
  - 3. Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty, such as The Program Fraud Civil Remedies Act (the "PFCR Act"). The PFCR Act permits Federal agencies to use administrative procedures to obtain penalties and assessments from persons who submit false, fictitious, or fraudulent claims, similar to the claims set forth in section 2 above. If an alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section.
- (d) Award to qui tam plaintiff.
- 1. If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to certain limitations, according to the Act receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, which includes damages, civil penalties, payments for costs of compliance and any other economic benefit realized by the government as a result of the action, depending upon the extent to which the person and/or his counsel substantially contributed to the prosecution of the action.
  - 2. If the Government does not proceed with an action in accordance with this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement. Such person shall also receive an amount for reasonable expenses, plus reasonable attorneys' fees and costs.
  - 3. If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.
- (e) Government not liable for certain expenses . The Government is not liable for expenses that a person incurs in bringing an action under this section.

### § 3 PRIVATE ACTION FOR RETALIATION (WHISTLEBLOWER PROTECTION)

Any person who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the employer

because of lawful acts done by the person 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. Such relief shall include reinstatement with the same seniority status such person would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. A person may bring an action in the appropriate court of the Government for the relief provided in this subsection.

#### § 4 LIMITATION OF ACTIONS

- (a) Statute of limitations. A civil action under Section 3 may not be brought more than 10 years after the date on which the violation was committed.
- (b) Retroactivity. A civil action under Section 3 may be brought for activity prior to the effective date of this Act if the limitations period set in subdivision (a) has not lapsed.
- (c) Burden of proof. In any action brought under Section 3, the Government or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.
- (d) Estoppel. Notwithstanding any other provision of law, a guilty verdict rendered in a criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subdivision (a), (b), or (c) of Section 3.

#### 2. Anti-Kickback Statute

##### I. OVERVIEW OF THE FEDERAL ANTI-KICKBACK STATUTE:

- (a) The Federal Anti-Kickback Statute's main purpose is to protect patients and federal health care programs from fraud and abuse. The Federal Anti-Kickback Statute prohibits certain conduct involving improper payments in connection with the delivery of items or services. These prohibitions apply to anyone who knowingly and willfully solicits or receives any payment in return for referring an individual to another person for the furnishing, or arranging for the furnishing, of any item or service that may be paid in whole or in part by the Medicare, Medicaid, or other federally funded health care program.
- (b) The federal Anti-Kickback Statute applies where an individual offers or makes payments to another person in order to induce referrals or other prohibited conduct. Illegal payments or solicitations of payments include those in cash or in kind, i.e., goods, those made directly or indirectly, and those made overtly or covertly.

##### II. LIABILITY FOR VIOLATIONS OF THE ANTI-KICKBACK STATUTE:

- (a) Health organizations and providers that violate the Anti-kickback Statute can be subject to a maximum civil monetary penalty of \$25,000, imprisonment up to five years, or both.
- (b) Conviction would also lead to automatic exclusion from the Medicare, Medicaid, and other federally funded health care programs. Exclusion from these programs may also be sought by the Department of Health and Human Services ("HHS") through an administrative proceeding, without the need to initiate a criminal prosecution. Responsibility for enforcement of the statute is delegated within HHS to the Office of the Inspector General ("OIG").

(c) AeHN prohibits bribes or kickbacks, including a complex array of discounts, rebates, profit-sharing agreements, or other business arrangements that would violate federal laws such as the Anti-Kickback Statute.

3. Stark Laws

I. OVERVIEW OF THE STARK LAWS:

Stark I and II are federal statutes that prohibit providers from making referrals to any entity in which they, or an immediate family member, have a financial relationship and which provides certain designated health services, unless an exception applies. A financial relationship includes, but is not limited to, ownership or investment interest, and compensation arrangements.

II. LIABILITY FOR VIOLATIONS OF THE STARK LAWS:

(a) Providers that violate the Stark Laws can be subject to the denial of payment of all designated health service claims and civil money penalties for knowing violations of the prohibitions.

(b) Violations may also be pursued under the Federal False Claims Act.

(c) AeHN prohibits referrals and prohibits providers from referring patients for health care services to entities in which the provider has a financial relationship that would violate federal laws such as Stark.

4. State Fraud and Abuse Laws

I. OVERVIEW OF THE STATE FRAUD AND ABUSE LAWS:

Alaska has its own version of the Stark and Anti-Kickback laws contained in Alaska Statutes 47.05.210, entitled “Medical Assistance Fraud”. The Alaska Medical Assistance Fraud statute encompasses both referrals and kickbacks, in addition to submission of fraudulent claims, failure to produce medical assistance records to authorized persons, false claims, unauthorized destruction of medical assistance records and violations of Alaska Statutes 47.07 or 47.08 and the respective regulations adopted under each.

II. LIABILITY FOR VIOLATIONS OF THE STATE FRAUD AND ABUSE LAWS:

Medical assistance fraud under AS 47.05.210 is punishable as either a class B felony, a class C felony, a class A misdemeanor, or a class B misdemeanor, depending on the severity of the crime and the dollar value of the violation. Providers that violate the Alaska Medical Assistance Fraud statute may also be subject to exclusion from State medical assistance programs pursuant to their provider agreements.

The requirements and illustrations listed above are by no means intended to be complete explanations. To the extent you have any questions regarding these Procedures, you should contact your manager or supervisor, or another appropriate officer responsible for compliance matters.

<b>FRAUD AND ABUSE POLICY</b>	<b>POLICY #</b>	6.200
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