



# YAI Compliance & Ethics

## Federal and State Laws Relating to False Claims and False Statements

The federal False Claims Act, the federal Program Fraud Civil Remedies Act and certain other New York State laws can subject individuals and organizations to significant fines and penalties if they commit fraud against either the federal or the state government.

### I. Federal Laws

#### ➤ Federal False Claims Act

Under the federal False Claims Act (31 U.S.C. §§ 3729-3733), false claims include knowingly submitting false or fraudulent claims to the government for payment, making or using a false record or statement in connection with the submission of such claims, or obtaining money from the government to which one is not entitled and then using false statements or records to retain the money. Examples of false claims include billing for services with knowledge that such services are not medically necessary or performed, billing twice or multiple times for the same items or services, falsifying internal records that are used to support claims, failing to report known overpayments and credit balances to a government payor, and upcoding claims in order to obtain reimbursement in excess of the proper amount due.

In addition to willful and intentional acts of fraud, individuals and organizations can be penalized for submitting or causing the submission of claims in deliberate ignorance or reckless disregard for the truth. Civil penalties range from \$5,500 to \$11,000 per claim. Violators may also be assessed up to three times the amount of damages caused to the government. If found in violation, Medicare and Medicaid providers can be subject to exclusion from both of these programs.

➤ **Program Fraud Civil Remedies Act**

Like the federal False Claims Act, the federal Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3802) imposes penalties on persons or organizations who deliberately submit false statements or claims to certain federal agencies or submit such claims in deliberate ignorance or reckless disregard of their truth or falsity or omit material information in submissions to federal agencies. Unlike the federal False Claims Act, however, a violation of the federal Program Fraud Civil Remedies Act occurs when a false claim is submitted, not when it is paid. Also unlike the federal False Claims Act, an administrative agency rather than the federal judicial system, determines the existence of a violation and the imposition of penalties. Violations of the federal Program Fraud Civil Remedies Act are subject to civil monetary penalties of up to \$5,000 per false claim or statement and assessments of up to twice the amount of such claim in lieu of damages.

## **II. New York State Laws**

Several New York State statutes also impose civil and criminal penalties for false claims and statements.

➤ **The New York False Claims Act** (N.Y. State Finance Law §§187-194) tracks the Federal False Claims Act, and similarly imposes penalties on individuals and entities that file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. Penalties for filing a false claim can range from \$6,000-\$12,000 per claim and the recoverable damages are between two and three times the value of the amount falsely received. Penalties may also include payment of the government's legal fees.

➤ **N.Y. Social Services Law § 145-b** prohibits the knowing submission of false statements, the deliberate concealment of material facts or other fraudulent schemes to obtain payment from public funds for items or services furnished under any Social Services program, including Medicaid. False statements include not only a claim for payment that is false on its face, but also falsification of the underlying data that forms the basis for a claim or a knowing misrepresentation concerning the licensure status or

qualifications of the individual who renders health care services. The statute imposes up to treble damages for violations, as well as civil monetary penalties that may range from \$2,000 to \$7,500 per claim. N.Y. Social Services Law § 145 makes it a misdemeanor to submit false information or to deliberately conceal material information in order to receive public assistance, including Medicaid. Moreover, under New York Social Services Law § 145-c, any person that makes a false or misleading statement in connection with an application for or receipt of public assistance, including Medicaid, may be excluded from the public assistance program for periods of 6 months to a period of years depending on the number of offenses.

➤ **N.Y. Social Services Law §§ 366-b, 366-d and 366-f** impose criminal penalties and civil monetary penalties up of to \$10,000 on persons or entities who knowingly make false statements, conceal material facts or submit false information for the purpose of obtaining greater compensation for services under the New York Medicaid program than is rightfully due or for obtaining authorization to provide items or services under the Medicaid program.

➤ **N.Y. Penal Law § 155** makes it a felony to commit larceny. Section 155 applies the crime of larceny to a person who, with intent to deprive another of his property, obtains, takes or withholds the property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud. N.Y. Penal Law § 155 has been applied to Medicaid fraud cases. Under N.Y. Penal Law § 155, the nature and extent of the violation determine the penalty. Fourth degree grand larceny involves property valued over \$1,000 and is considered a Class E felony (N.Y. Penal Law § 155.30). Third degree larceny involves property valued over \$3,000 and is considered a class D felony (N.Y. Penal Law § 155.35). Second degree grand larceny involves property valued over \$50,000 and is considered a Class C felony (N.Y. Penal Law § 155.40). First degree grand larceny involves property valued over \$1 million and is considered a Class B felony (N.Y. Penal Law § 155.42).

➤ **N.Y. Penal Law § 175** imposes criminal penalties on persons who deliberately file false information or claims or omit to make a true entry in a business record in violation of a duty to do so. N.Y. Penal Law § 175.05 makes it a Class A misdemeanor to deliberately falsify business records, to provide false information or omit material information in a business record, or to alter a true entry in a business record with the intent to defraud. Section 175.10 makes it a Class E felony to falsify business records with the intent to commit another crime or to conceal its commission. Section 175.30 makes it a Class A misdemeanor to present a claim for payment to a public office knowing that it contains false information. Further, section 175.35 makes it a Class E felony to submit a false claim or document for filing with the intent to defraud the state or a political subdivision.

➤ **N.Y. Penal Law § 176** imposes criminal penalties for making false statements in connection with insurance payments, including Medicaid and other health insurance. Penalties range from Class A misdemeanor for intentionally filing a health insurance claim knowing that it is false (N.Y. Penal Law § 176.10) to a Class B felony involving the filing of an insurance claim for over \$1 million (N.Y. Penal Law § 176.30).

➤ **N.Y. Penal Law § 177** also imposes criminal penalties for deliberately making false statements or omissions in connection with claims for health insurance payments. Penalties range from a Class A misdemeanor to a Class B felony. (See N.Y. Penal Law §§ 177.05 - 177.25).

### **III. Additional Statutory Provisions**

The corporations comprising the YAI Network requires its employees, agents and contractors to support its commitment to accurate billing and to the prevention and detection of false claims, and to report any problems or concerns to a supervisor or to the Compliance Officer without fear of retaliation. However, under the federal and New York State False Claims Act, any person may notify the government if he or she believes that any corporation in the YAI Network is not responding appropriately to reports of potential violations. Both the federal and New York False Claims Acts permit

persons with actual knowledge of false claims to file a lawsuit on behalf of the government and, under certain circumstances, to receive an award of 15-30% of the monies recovered for the government in addition to attorneys' fees and costs. Such person must have direct and independent knowledge of the false claims activity and must voluntarily provide this information to the government. Under the federal and New York False Claims Acts, any potential award may, however, be barred or reduced if (i) a court finds that the person reporting the violation planned or initiated the violation; or (ii) the matter disclosed is already the subject of a federal investigation or the health care provider has previously disclosed the problem to a federal agency. Persons who bring frivolous claims under these false claims acts may be held liable for the defendant's attorneys' fees and costs.

The federal and New York False Claims Acts, N.Y. Labor Law §§ 740 and 741 and the YAI Network's internal policies protect persons who in good faith notify the government of health care fraud from retaliation or discrimination. Under N.Y. Lab. Law § 741, protected disclosures also include those that assert, in good faith, improper quality of patient care. Under N.Y. Lab. Law §§ 740 and 741, the employee's disclosure is protected from retaliatory action only if the employee first notified his or her supervisor and gave YAI a reasonable opportunity to correct the alleged violation. Penalties for retaliatory action under the federal and New York False Claims Acts and under N.Y. Lab. Law §§ 740 and 741 include reinstatement with comparable seniority, back pay with interest, compensation for any special damages, attorneys' fees and, in cases of bad faith, civil penalties.

<u>Version Number</u>	<u>Summary of Changes</u>	<u>Effective Date</u>
1.0	Initial Version	2007
2.0	Updated statutory references and reformatted document	May 25, 2012
3.0	Minor changes to the scope of policy to include other YAI corporations.	August 1, 2014