

SUMMARY OF THE FEDERAL FALSE CLAIMS ACT

Under the federal False Claims Act, any individual who has knowledge of a fraud against the United States Government (the so-called “*qui tam* plaintiff”) may file a lawsuit on behalf of the United States against the person or entity that committed the fraud. If that legal action is ultimately successful, the *qui tam* plaintiff will be rewarded with a percentage of the amount recovered. The U.S. Department of Justice may intervene in any such lawsuit and take over the prosecution of the lawsuit. However, if the Justice Department decides not to intervene, the *qui tam* plaintiff may continue the pursuant of the lawsuit on behalf of the government. Generally, if the action is proven, the defendant will be liable for three times the damages sustained by the government and in addition will be forced to pay a penalty of up to \$11,000 for each false claim. In the case of Medicare and Medicaid payments, each submission by a health care entity of a claim for reimbursement is considered to be a separate claim that can be the subject of a lawsuit under the federal False Claims Act. Generally, the *qui tam* plaintiff is entitled to 15 to 25% of the amount recovered.

Any person may be a *qui tam* plaintiff, including all employees of NMH, NMHC and their affiliates. The alleged fraudulent act by the defendant can be either a deliberate act, merely one made with deliberate ignorance of the truth or falsity of the claim or one based on a reckless disregard for the truth or falsity of the claim. Thus, the federal False Claims Act is not limited to those who intentionally misrepresent facts in order to obtain payments under Medicare, Medicaid and other federal government programs.

The federal False Claims Act further provides protections to employees who are retaliated against by an employer because of the employee’s participation in a *qui tam* action. These protections include reinstatement and damages equal to double the amount of lost wages if the employee had been fired and/or suffered any other damages as a result of the employer’s discrimination.

**SUMMARY OF THE
FEDERAL PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986**

As set forth in the United State Code, Title 31, Subtitle III, Chapter 38, the United States government has specific administrative remedies to recover amounts paid as the result of a false claim or statement. This statute applies to any executive department of the United States, including the Department of Health and Human Services. Thus, this statute relates, among other matters, to false claims made by health care providers for benefits under the Medicare or Medicaid program. The statute sets forth how the affected administrative agency of the United States can investigate a false claim, make a determination concerning the falsity of a claim, and recoup any amounts paid as a result of the false claim. The statute, however, does not permit private individuals, so-called whistleblowers, to bring any action under the statute nor to participate in any manner in any recoveries of amounts paid as the result of a false claim.

SUMMARY OF THE ILLINOIS WHISTLEBLOWER REWARD AND PROTECTION ACT

Under the Illinois Whistleblower Reward and Protection Act (740 ILCS 175/1 et seq.), any individual who has knowledge of a fraud against the State of Illinois (the so-called “*qui tam* plaintiff”) may file a lawsuit on behalf of Illinois against the person or entity that committed the fraud. If that legal action is ultimately successful, the *qui tam* plaintiff will be rewarded with a percentage of the amount recovered. Illinois, through the Attorney General, may intervene in any such lawsuit and take over the prosecution of the lawsuit. However, if Illinois decides not to intervene, the *qui tam* plaintiff may continue the pursuit of the lawsuit on behalf of Illinois. Generally, if the action is proven, the defendant will be liable for three times the damages sustained by the government and in addition will be forced to pay a penalty of up to \$11,000 for each false claim. In the case of Medicaid payments, each submission by a health care entity of a claim for reimbursement is considered to be a separate claim that can be the subject of a lawsuit under the Illinois Whistleblower Reward and Protection Act. Generally, the *qui tam* plaintiff is entitled to 15 to 25% of the amount recovered.

Any person may be a *qui tam* plaintiff, including all employees of NMHC, NMH and their affiliates. The alleged fraudulent act by the defendant can be either a deliberate act, one made with deliberate ignorance of the truth or falsity of the claim or one based on a reckless disregard for the truth or falsity of the claim. Thus, the Illinois Whistleblower Reward and Protection Act is not limited to those who intentionally misrepresent facts in order to obtain payments under Illinois programs, including Medicaid.

The Illinois Whistleblower Reward and Protection Act further provides protections to employees who are retaliated against by an employer because of the employee’s participation in a *qui tam* action. These protections include reinstatement and damages equal to double the amount of lost wages if the employee had been fired and/or suffered any other damages as a result of the employer’s discrimination.

SUMMARY OF THE ILLINOIS INSURANCE CODE AND CRIMINAL CODE PROVISIONS

The Insurance Claims Fraud Prevention Act makes it a basis for civil monetary penalties to offer or pay any remuneration to induce a person to obtain services or benefits under a contract of insurance or to file a false claim related to insurance. A private individual (a whistleblower) may bring an action to enforce this statute. Civil penalties can be imposed of not less than \$5,000 nor more than \$10,000 as well as three times the amount of each claim under the contract of insurance. If the action is successful, the individual bringing the action will receive up to 50% of the amount recouped from the individual or entity violating the statute. Actions under this statute include actions to recoup Medicaid payments made as a result of a false claim. Any employee who brings such an action cannot be retaliated against by the person's employer. Any retaliation will result in reinstatement and the payment of two times the amount of any back pay and possibly special damages resulting from the retaliatory action. In addition, the same conduct which is the basis for civil liability under the Insurance Claims Fraud Prevention Act may constitute the criminal offense of insurance fraud or be grounds for civil damages under the Illinois Criminal Code.

Under the Illinois Criminal Code an individual or entity commits the criminal offense of insurance fraud by knowingly making a false claim or by causing a false claim to be made to an insurance company or a self insured entity. An individual may be subject to imprisonment or fines if convicted. However, only the State of Illinois may prosecute an individual or entity for criminal insurance fraud. A whistleblower could not bring a criminal insurance fraud suit nor recover any portion of the proceeds paid by an individual or entity that committed the insurance fraud under the Illinois Criminal Code.

The Illinois Criminal Code also provides for civil monetary penalties for insurance fraud or fraud on a governmental entity (720 ILCS 5/46-5). Under this provision, the individual or entity committing such fraud can be forced to pay up to three times the value of the fraudulent claim. However, only the affected insurance company or governmental entity may bring an action pursuant to this statute. A whistleblower could not file such an action nor recover any portion of the proceeds paid by an individual or entity that committed the fraud.