

## Policy and Standards

<b>Policy Number:</b>	<b>COM.1916.10-2018</b>
<b>Policy Name:</b>	<b>False Claims Laws and Whistleblower Protections</b>
<b>Review Type:</b>	No Changes
<b>Contract or Regulatory Reference:</b> (include citation if applicable)	N/A

### Corporate Policy Approvals

08– 2018 had no changes or the changes were non-substantive; thus, full corporate approvals were not required.

John J. DiBernardi, Jr., Esq.	<i>Approval on file</i>	August 15, 2018
Magellan Health, Senior Vice President & Chief Compliance Officer		Date

**Product Applicability:** (For Health Insurance Marketplaces, policies and procedures are the same, unless contractual requirements dictate a more stringent variation in which case customized documents are created.)

#### Commercial

#### Medicaid

#### Medicare Part: C (Medicare Advantage)

#### Medicare Part: D

### Business Division and Entity Applicability:

#### Magellan Healthcare

Armed Forces Services Corporation  
 Federal Occupational Health  
 HealthPeaksMD  
 Magellan Complete Care of Arizona  
 Magellan Complete Care Florida  
 Magellan Complete Care The Management Group  
 Magellan Complete Care Virginia  
 Magellan Healthcare (Behavioral)  
 National Imaging Associates  
 Senior Whole Health of New York  
 Senior Whole Health

#### Magellan Rx Management

4D Pharmacy Management Systems  
 Magellan Medicaid Administration  
 Magellan Method (formerly CDMI)  
 Magellan Pharmacy Solutions  
 Magellan Rx Management  
 Magellan Rx Medicare  
 Magellan Rx Pharmacy  
 VRx Pharmacy  
 VRx

### Policy Statement

Magellan Health, its subsidiaries and affiliates, (Magellan) is subject to both federal and state laws designed to prevent fraud and abuse in government programs including Medicare and Medicaid and in federally funded contracts. Magellan, in conjunction with the appropriate government agencies, actively pursues all suspected fraud and abuse. As part of Magellan's corporate compliance program

## FALSE CLAIMS LAWS AND WHISTLEBLOWER PROTECTIONS

for the prevention of fraud, waste and abuse, Magellan complies with all state and federal requirements for government-sponsored programs and federally funded contracts, including the Federal False Claims Act, the Deficit Reduction Act of 2005, the American Recovery and Reinvestment Act of 2009, the Patient Protection and Affordable Care Act (PPACA) of March 2010, applicable Whistleblower Protection laws, and any state false claims statutes.

### Purpose

To identify the requirements of the Federal False Claims Act, the administrative remedies for false claims and statements and any applicable state laws pertaining to civil or criminal penalties for false claims and statements, including the remedies and whistleblower protections under these laws.

### Policy Terms & Definitions Glossary

#### Key Terms *(as used in this policy)*

*None*

*Policy Terms & Definitions* are available should the reader need to inquire as to the definition of a term used in this policy.

To access the *Policy Terms & Definitions Glossary* in C360, click on the below link: *(internal link(s) available to Magellan Health employees only)*

[Policy Terms & Definitions Glossary](#)

### Standards

- I. Employees, contractors and providers are notified that they are required to report any suspected cases of fraud, waste, abuse, and overpayments to Magellan.
  - A. Information about the applicable federal and state laws regarding fraud, waste, abuse, overpayments and whistleblower protections are provided in this policy.
    - Information about whistleblower protections available under other laws is also available at: <http://www.whistleblowers.gov/>
  - B. Information about these laws in terms of the procedures, controls and policies implemented by Magellan to ensure compliance are covered in the *Medicaid Compliance Program Policy*, *Employee Code of Conduct Handbook* as well as during the annual Code of Conduct Training, and Fraud, Waste and Abuse Training (Fraud Identification and Recognition Education) which includes information that is consistent with section 6032 of the federal Deficit Reduction Act (DRA) of 2005 such as information about:
    1. The False Claims Act;
    2. Penalties for submitting false claims & statements;
    3. The DRA's role in preventing and detecting fraud, waste and abuse;
    4. Each person's responsibility relating to detection and prevention;
    5. The toll-free state telephone numbers for reporting fraud, waste, abuse, overpayments; and
    6. Applicable federal and state whistleblower protections.
  - C. For more information about how to report fraud, waste, and/or abuse including overpayments see the Magellan Health website [www.magellanhealth.com](http://www.magellanhealth.com) for Magellan's

DRA Compliance Statement and link to the State False Claim Acts for state-by-state information about how to report fraud, waste, and/or abuse including overpayments.

II. Federal False Claims Act, 31 USC § 3729

- A. The Federal False Claims Act is a federal statute that covers fraud involving any federally funded contract or program, including the Medicare and Medicaid programs.
- B. The act establishes liability for any person who:
1. Knowingly presents, or causes to be presented, 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 material to a false or fraudulent claim;
  3. Conspires to commit a violation of any of the provisions of the False Claims Act as outlined under Standard II.B.: 1., 2., 4., 5., 6., or 7. in this policy.
  4. 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;
  5. 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;
  6. Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or
  7. 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.
- C. For purposes of the False Claims Act, a “claim” includes any request or demand for money that is submitted to the Federal government or its contractors and subcontractors. A claim also:
1. Means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that:
    - a) Is presented to an officer, employee, or agent of the United States; or
    - b) Is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government:
      - i. Provides or has provided any portion of the money or property requested or demanded; or
      - ii. Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.
  2. Does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property.

## FALSE CLAIMS LAWS AND WHISTLEBLOWER PROTECTIONS

- D. Examples of false claims and false statements include, but are not limited to the following:
1. Billing for services or procedures that have not been performed;
  2. Submitting false information about the services performed or the charges for services performed;
  3. Inserting a diagnosis code that has not been obtained from a physician or other authorized individual;
  4. Misrepresenting the services performed (for example, up-coding to increase reimbursement);
  5. Violation of another law. For example, a claim was submitted appropriately but the service was the result of an illegal relationship between a physician and the hospital (physician received kick-backs for referrals); and
  6. Submitting claims for services ordered by a provider that has been excluded from participating in Medicare, Medicaid and other federally funded healthcare programs and federally funded contracts.
- E. For purposes of the False Claims Act, an electronic claim in the health care context is submitted using the HIPAA 837P for physician claims and the 837I for institutional claims.
- If paper claims are submitted, then these claims would be submitted via Centers for Medicare and Medicaid Services Forms (CMS) UB-92 and the hospital cost report Form CMS 2552-10 for Part A services and Form CMS 1500 for Part B services.
- F. The statute of limitations under the Federal False Claims Act (31 USCS § 3731(b)).
1. A civil action 3730 (31 USCS § 3730) may not be brought:
    - a) More than six (6) years after the date on which the violation of Section 3729 was committed; or
    - b) More than three (3) years after the date when material facts to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but no later than ten (10) years after the date on which the violation was committed.
  2. Whichever occurs last.
- III. Liability under the Federal False Claims Act
- A. Persons and organizations (including health care providers and contractors) that violate the False Claims Act can be subject to civil monetary penalties ranging from \$5,500 to \$11,000 for each false claim submitted. Pursuant to 28 CFR 85.5, for civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department range from \$11,000 to \$21,563.
  - B. In addition to a civil penalty, violators can be required to pay three times the amount of damages sustained by the U.S. government.
  - C. If a person or organization is convicted of a False Claims Act violation, the Office of Inspector General (OIG) may seek to exclude or suspend that person or organization from participation in federal health care programs.
- IV. Qui Tam (Whistleblower) Provisions under the Federal False Claims Act

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- A. To encourage individuals to come forward and report misconduct involving false claims, the False Claims Act includes a “qui tam” or “whistleblower” provision.
- B. This provision essentially allows any person with actual knowledge of false claims activity to file a lawsuit on behalf of the U.S. government.
- C. Such persons are referred to as “relators”. Relators who seek whistleblower status are subject to the following standards.
  1. Original Source
    - a) To prevail under a lawsuit, the relator must be the original source of the information reported to the federal government.
    - b) Specifically, the relator must have direct and independent knowledge of the false claims activities and voluntarily provide this information to the government.
    - c) Or the relator has prior to a public disclosure, voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based.
    - d) If the matter disclosed is already the subject of a federal investigation, or if the health care provider, supplier or entity alleged to have violated the False Claims Act has previously disclosed the problem to a federal agency, the relator may be barred from obtaining a recovery under the False Claims Act.
  2. Whistleblower Procedures
    - a) The relator must file his or her lawsuit in a federal district court.
    - b) The lawsuit will be filed under seal meaning that the lawsuit is kept confidential while the government reviews and investigates the allegation contained in the lawsuit and decides how to proceed.
  3. Rights of Parties of Whistleblower Actions
    - a) If the government determines that the lawsuit has merit and decides to join/ intervene, the prosecution of the lawsuit will be directed by the U.S. Department of Justice.
      - At this point, the government will be the plaintiff or party suing the health care provider.
    - b) If the government decides not to intervene, the relator can continue with the lawsuit on his or her own.
  4. Award to Whistleblowers
    - a) If the lawsuit is successful, the relator may receive an award ranging from fifteen (15%) to thirty (30%) percent of the amount recovered by the government.
    - b) The relator may also be entitled to reasonable expenses, including attorney's fees and costs for bringing the lawsuit.
    - c) The False Claims Act entitles relators to additional relief, including employment reinstatement, back pay, and any other compensation arising from retaliatory conduct against a relator for filing an action under the False Claims Act or committing other lawful acts, such as investigating a false claim, providing testimony, or assisting in a False Claims Act action.
- D. No Retaliation

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1. Magellan does not retaliate against an employee for reporting or bringing a civil suit for a possible False Claims Act violation.
2. Magellan does not discriminate against an employee in the terms or conditions of his or her employment because the employee initiated or otherwise assisted in a False Claims Act action.
3. Magellan does not retaliate against any of its agents and contractors for reporting suspected cases of fraud, waste, or abuse to us, the federal government, state government, or any other regulatory agency with oversight authority.
4. Federal and state law also prohibits Magellan from discriminating against agents and contractors because the agent or contractor initiated or otherwise assisted in a False Claims Act action.
5. Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under Standard IV, in this policy, or other efforts to stop one (1) or more violations of the False Claims Act.
  - a) Relief shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, two (2) 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.
  - b) An action under this standard, Standard IV.D.5, may be brought in the appropriate district court of the United States for the relief provided in this standard.
  - c) A civil action under this standard, Standard IV.D.5, may not be brought more than three (3) years after the date when the retaliation occurred.

### V. Administrative Remedies for False Claims and Statements, 31 U.S.C. § 3802

- A. 3802(a)(1) - Under the Federal Program Fraud Civil Remedies Act, any person/organization that makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know is false, fictitious, or fraudulent shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$5,500 for each such claim. Pursuant to 28 CFR 85.5, for civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department of not more than \$10,781 for each such claim.
  1. Further, such person or organization shall also be subject to an assessment, in lieu of damages sustained by the Federal Government because of such claim, of not more than two times the amount of such claim.
  2. A determination of liability under this section permits the OIG to seek to suspend or exclude any person who is eligible to enter into contracts with the federal government from participation in federal health care programs.
- B. 3802(a)(2) - (2) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that: (A) the person knows or has reason to know (i) asserts a material fact which is false, fictitious, or fraudulent; or (ii) (I) omits a material fact; and (II) is false, fictitious, or fraudulent as a result of such omission; (B) in

the case of a statement described in clause (ii) of subparagraph (A), is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and (C) contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$ 5,000 for each such statement. Pursuant to 28 CFR 85.5, for civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department of not more than \$10,781 for each such statement.

VI. Whistleblower Protections Under The American Recovery and Reinvestment Act of 2009 (ARRA)

A. "Covered funds" means any contract, grant, or other payment received by Magellan if:

1. The Federal Government provides any portion of the money or property that is provided, requested, or demanded; and
2. At least some of the funds are appropriated or otherwise made available by ARRA.

B. No Retaliation

1. Magellan receives covered funds under ARRA through its contracts directly with state Medicaid agencies and as a subcontractor through its contracts with other entities that have contracts with state Medicaid agencies such as Medicaid Managed Care Organizations. Magellan also receives covered funds under ARRA through its contracts with the federal government and other federally funded EAP contracts.
2. An employee of Magellan may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of:
  - a) Gross mismanagement of an agency contract or grant relating to covered funds;
  - b) A gross waste of covered funds;
  - c) A substantial and specific danger to public health or safety related to the implementation or use of covered funds;
  - d) An abuse of authority related to the implementation or use of covered funds; or
  - e) A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

C. An employee who believes that he or she has been subjected to a reprisal prohibited by Standard VI.B.2, may submit a complaint regarding the reprisal to the appropriate inspector general.

D. 3.907 Whistleblower Protections under the American Recovery and Reinvestment Act Of 2009 (The Recovery Act). (HISTORY: [74 FR 14633, 14634, Mar. 31, 2009, as confirmed and amended at 75 FR 34258, 34259, June 16, 2010])

1. 48 CFR 3.907-1 - Definitions  
As used in this section:

## FALSE CLAIMS LAWS AND WHISTLEBLOWER PROTECTIONS

- a) Board means the Recovery Accountability and Transparency Board established by Section 1521 of the Recovery Act.
  - b) Covered funds means any contract payment, grant payment, or other payment received by a contractor if:
    - i. The Federal Government provides any portion of the money or property that is provided, requested, or demanded; and
    - ii. At least some of the funds are appropriated or otherwise made available by the Recovery Act.
  - c) Covered information means information that the employee reasonably believes is evidence of gross mismanagement of the contract or subcontract related to covered funds, gross waste of covered funds, a substantial and specific danger to public health or safety related to the implementation or use of covered funds, an abuse of authority related to the implementation or use of covered funds, or a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to covered funds.
  - d) Inspector General means an Inspector General appointed under the Inspector General Act of 1978. In the Department of Defense that is the DoD Inspector General. In the case of an executive agency that does not have an Inspector General, the duties shall be performed by an official designated by the head of the executive agency.
  - e) Non-Federal employer means any employer that receives Recovery Act funds, including a contractor, subcontractor, or other recipient of funds pursuant to a contract or other agreement awarded and administered in accordance with the Federal Acquisition Regulation.
2. 48 CFR 3.907-2 - Policy (HISTORY: [74 FR 14633, 14634, Mar. 31, 2009, as confirmed at 75 FR 34258, 34259, June 16, 2010])
- a) Non-Federal employers are prohibited from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing covered information to any of the following entities or their representatives:
    - i. The Board;
    - ii. An Inspector General;
    - iii. The Comptroller General;
    - iv. A member of Congress;
    - v. A State or Federal regulatory or law enforcement agency;
    - vi. A person with supervisory authority over the employee or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct;
    - vii. A court or grand jury; or
    - viii. The head of a Federal agency.
3. 48 CFR 3.907-3 - Procedures for filing complaints (HISTORY: [74 FR 14633, 14634, Mar. 31, 2009, as confirmed and amended at 75 FR 34258, 34259, June 16, 2010])
- a) An employee who believes that he or she has been subjected to reprisal prohibited by the Recovery Act, Section 1553 as set forth in 3.907-2, may submit



- a complaint regarding the reprisal to the Inspector General of the agency that awarded the contract.
- b) The complaint shall be signed and shall contain:
    - i. The name of the contractor;
    - ii. The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;
    - iii. The covered information giving rise to the disclosure;
    - iv. The nature of the disclosure giving rise to the discriminatory act; and
    - v. The specific nature and date of the reprisal.
  - c) A contracting officer who receives a complaint of reprisal of the type described in 3.907-2 shall forward it to the Office of Inspector General and to other designated officials in accordance with agency procedures (e.g., agency legal counsel).
4. 48 CFR 3.907-4 - Procedures for investigating complaints (HISTORY: [74 FR 14633, 14634, Mar. 31, 2009, as confirmed at 75 FR 34258, 34259, June 16, 2010])
    - Investigation of complaints will be in accordance with section 1553 of the Recovery Act.
  5. 48 CFR 3.907-5 - Access to investigative file of Inspector General (HISTORY: [74 FR 14633, 14634, Mar. 31, 2009, as confirmed at 75 FR 34258, 34259, June 16, 2010])
    - a) The employee alleging reprisal under this section shall have access to the investigation file of the Inspector General, in accordance with the Privacy Act, 5 U.S.C. 552a. The investigation of the Inspector General shall be deemed closed for the purposes of disclosure under such section when an employee files an appeal to the agency head or a court of competent jurisdiction.
    - b) In the event the employee alleging reprisal brings a civil action under section 1553(c)(3) of the Recovery Act, the employee alleging the reprisal and the non-Federal employer shall have access to the investigative file of the Inspector General in accordance with the Privacy Act.
    - c) The Inspector General may exclude from disclosures made under 3.907-5(a) or (b):
      - i. Information protected from disclosure by a provision of law; and
      - ii. Any additional information the Inspector General determines disclosure of which would impede a continuing investigation, provided that such information is disclosed once such disclosure would no longer impede such investigation, unless the Inspector General determines that the disclosure of law enforcement techniques, procedures, or information could reasonably be expected to risk circumvention of the law or disclose the identity of a confidential source.
    - d) An Inspector General investigating an alleged reprisal under this section may not respond to any inquiry or disclose any information from or about any person alleging such reprisal, except in accordance with 5 U.S.C. 552a or as required by any other applicable Federal law.
  6. 48 CFR 3.907-6 - Remedies and enforcement authority (HISTORY: [74 FR 14633, 14634, Mar. 31, 2009, as confirmed at 75 FR 34258, 34259, June 16, 2010])
    - a) Burden of Proof

- i. Disclosure as contributing factor in reprisal.
  - a. An employee alleging a reprisal under this section shall be deemed to have affirmatively established the occurrence of the reprisal if the employee demonstrates that a disclosure described in section 3.907-2 was a contributing factor in the reprisal.
  - b. A disclosure may be demonstrated as a contributing factor in a reprisal for purposes of this paragraph by circumstantial evidence, including:
    - i) Evidence that the official undertaking the reprisal knew of the disclosure; or
    - ii) Evidence that the reprisal occurred within a period of time after the disclosure such that a reasonable person could conclude that the disclosure was a contributing factor in the reprisal.
  - ii. Opportunity for rebuttal - The head of an agency may not find the occurrence of a reprisal with respect to a reprisal that is affirmatively established under section 3.907-6(a)(1) if the non-Federal employer demonstrates by clear and convincing evidence that the non-Federal employer would have taken the action constituting the reprisal in the absence of the disclosure.
- b) No later than 30 days after receiving an Inspector General report in accordance with section 1553 of the Recovery Act, the head of the agency concerned shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the complainant to a reprisal prohibited by subsection 3.907-2 and shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:
  - i. Order the employer to take affirmative action to abate the reprisal.
  - ii. Order the employer to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
  - iii. Order the employer to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal.
- c) The complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the employer to seek compensatory damages and other relief available under this section in the appropriate district court of United States, which shall have jurisdiction over such an action without regard to the amount in controversy if:
  - i. The head of an agency:
    - a. Issues an order denying relief in whole or in part under paragraph (a) of this section;
    - b. Has not issued an order within 210 days after the submission of a complaint in accordance with section 1553 of the Recovery Act, or in the case of an extension of time in accordance with section 1553 of the

Recovery Act, within 30 days after the expiration of the extension of time;  
or

- c. Decides in accordance with section 1553 of the Recovery Act not to investigate or to discontinue an investigation; and
  - ii. There is no showing that such delay or decision is due to the bad faith of the complainant.
  - d) Such an action shall, at the request of either party to the action, be tried by the court with a jury.
  - e) Whenever an employer fails to comply with an order issued under this section, the head of the agency shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this section, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorney's fees and costs.
  - f) Any person adversely affected or aggrieved by an order issued under paragraph (b) of this subsection may obtain review of the order's conformance with the law, and this section, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency.
7. 48 CFR 3.907-7 - Contract Clause (HISTORY: [74 FR 14633, 14634, Mar. 31, 2009, as confirmed at 75 FR 34258, 34259, June 16, 2010])

Use the clause at 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 in all solicitations and contracts funded in whole or in part with Recovery Act funds.

VII. The Patient Protection and Affordable Care Act (PPACA) of March 2010

- A. The PPACA links the retention of program overpayments to potential liability under the False Claims Act. Furthermore, states are required to terminate the participation of any individual or entity that has been excluded under any other State plan, CHIP, or Medicare.
- B. Section 6402 (d): REPORTING AND RETURNING OF OVERPAYMENTS.—42 USCS § 1320a-7k
  1. Failure to report and repay any overpayment within the timeframe outlined (in Section 6402) below may result in a violation of the False Claims Act, civil monetary penalty, or other penalties.
  2. In general, if a person has received an overpayment, the person shall:
    - a) Report and return the overpayment to the Secretary, the State, an intermediary, a carrier, or a contractor, as appropriate, at the correct address; and
    - b) Notify the Secretary, State, intermediary, carrier, or contractor to whom the overpayment was returned in writing of the reason for the overpayment.
  3. An overpayment must be reported and returned by the later of:
    - a) The date which is sixty (60) days after the date on which the overpayment was identified; or
    - b) The date any corresponding cost report is due, if applicable.

4. Enforcement: Any overpayment retained by a person after the deadline for reporting and returning the overpayment is an obligation (as defined in section 3729(b) (3) of title 31, United States Code) for purposes of section 3729 of the False Claims Act.
5. Definitions
  - a) Knowing and knowingly - The terms "knowing" and "knowingly" have the meaning given those terms in section 3729(b) of title 31, United States Code.
  - b) Overpayment - The term "overpayment" means any funds that a person receives or retains under title XVIII or XIX [42 USCS §§ 1395 et seq. or 1396 et seq.] to which the person, after applicable reconciliation, is not entitled under such title.
  - c) Person-In general. The term "person" means a provider of services, supplier, Medicaid managed care organization (as defined in section 1903(m)(1)(A) (42 USCS § 1396b(m)(1)(A))), Medicare Advantage organization (as defined in section 1859(a)(1) (42 USCS § 1395w-28(a)(1))), or PDP sponsor (as defined in section 1860D-41(a)(13) (42 USCS § 1395w-151(a)(13))). Such term does not include a beneficiary.

C. Section 6402(f): HEALTH CARE FRAUD.—42 USCS § 1320a-7b[g]

1. A claim that includes items or services resulting from a violation of the Anti-Kickback Statute now constitutes a false or fraudulent claim under the False Claims Act pursuant to Section 6402(f).
2. Kickbacks. In addition to the penalties provided for in this section or section 1128A (42 USCS § 1320a-7a), a claim that includes items or services resulting from a violation of this section constitutes a false or fraudulent claim for purposes of subchapter III of chapter 37 of title 31, United States Code (31 USCS §§ 3721 et seq.).

VIII. Section 806 of the Sarbanes-Oxley Act of 2002 (SOX) – Whistleblower Provisions for Employees of Publicly Traded Companies (18 USCS § 1514A)

- A. Magellan complies with all applicable state and federal Whistleblower Protections and Anti-Retaliatory requirements including but not limited to the Whistleblower Protections under the Sarbanes Oxley Act (SOX).
- B. Additional information about Whistleblower Provisions under SOX is available at: <https://www.osha.gov/Publications/osha-factsheet-sox-act.pdf>.
- C. A company is covered under the SOX Whistleblower Provision if it has a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).
  - It includes any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company, or nationally recognized statistical rating organization (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c)).
- D. No officer, employee, contractor, subcontractor, or agent of any company or nationally recognized statistical rating organization that is subject to the SOX Whistleblower Provision may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee:
  1. To provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes

constitutes a violation of section 1341 (frauds and swindles), 1343 (fraud by wire, radio, or television), 1344 (bank fraud), or 1348 (securities and commodities fraud), any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by:

- a) A Federal regulatory or law enforcement agency;
  - b) Any Member of Congress or any committee of Congress; or
  - c) A person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct).
2. To file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348 [18 USCS § 1341, 1343, 1344, or 1348], any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

E. Enforcement Action

1. In general. A person who alleges discharge or other discrimination by any person in violation of Standard D., above may seek relief under Standard F., below by:
  - a) Filing a complaint with the Secretary of Labor; or
  - b) If the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.
2. Statute of limitations. An action brought under this provision shall be commenced not later than 180 days after the date on which the violation occurs, or after the date on which the employee became aware of the violation.

F. Remedies

1. An employee prevailing in any action under this provision shall be entitled to all relief necessary to make the employee whole.
2. Compensatory damages. Relief for any action shall include:
  - a) Reinstatement with the same seniority status that the employee would have had, but for the discrimination;
  - b) The amount of back pay, with interest; and
  - c) Compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.
3. Rights retained by employee. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.
4. Nonenforceability of certain provisions waiving rights and remedies or requiring arbitration of disputes.

- a) Waiver of rights and remedies. The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.
- b) Predispute arbitration agreements. No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.

IX. 41 USCS § 4712 - Enhancement Of Contractor Protection From Reprisal For Disclosure Of Certain Information. (History: (Added Jan. 2, 2013, P.L. 112-239, Div A, Title VIII, Subtitle C, § 828(a)(1), 126 Stat. 1837; Dec. 26, 2013, P.L. 113-66, Div A, Title X, Subtitle I, § 1091(e), 127 Stat. 876; Dec. 16, 2016, [P.L. 114-261](#), § 1(a)(2), (3)(A), [130 Stat. 1362](#).)

A. Prohibition of Reprisals

1. In general - An employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.
2. Persons and bodies covered - The persons and bodies described in this paragraph are the persons and bodies as follows:
  - a) A Member of Congress or a representative of a committee of Congress;
  - b) An Inspector General;
  - c) The Government Accountability Office;
  - d) A Federal employee responsible for contract or grant oversight or management at the relevant agency;
  - e) An authorized official of the Department of Justice or other law enforcement agency;
  - f) A court or grand jury; and
  - g) A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.
3. Rules of construction- For the purposes of Standard 1 above:
  - a) An employee who initiates or provides evidence of contractor, subcontractor, or grantee misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Federal contract or grant shall be deemed to have made a disclosure covered by such paragraph; and
  - b) A reprisal described in Standard 1 above is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

B. Investigation of Complaints

1. Submission of Complaint

- a) A person who believes that the person has been subjected to a reprisal prohibited by Standard A. above may submit a complaint to the Inspector General of the executive agency involved.
  - b) Unless the Inspector General determines that the complaint is frivolous, fails to allege a violation of the prohibition in Standard A. above, or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor or grantee concerned, and the head of the agency.
2. Inspector General Action
- a) Determination or submission of report on findings - Except as provided under subparagraph (b), the Inspector General shall make a determination that a complaint is frivolous, fails to allege a violation of the prohibition in subsection (A), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant or submit a report under paragraph (1) within 180 days after receiving the complaint.
  - b) Extension of time- If the Inspector General is unable to complete an investigation in time to submit a report within the 180-day period specified in subparagraph (a) and the person submitting the complaint agrees to an extension of time, the Inspector General shall submit a report under paragraph (1) within such additional period of time, up to 180 days, as shall be agreed upon between the Inspector General and the person submitting the complaint.
3. Prohibition on Disclosure - The Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is:
- a) Made with the consent of the person alleging the reprisal;
  - b) Made in accordance with the provisions of section 552a of title 5 [5 USCS § 552a] or as required by any other applicable Federal law; or
  - c) Necessary to conduct an investigation of the alleged reprisal.
4. Time Limitation - A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.

C. Remedy and Enforcement Authority

1. In general - Not later than 30 days after receiving an Inspector General report pursuant to subsection (B), the head of the executive agency concerned shall determine whether there is sufficient basis to conclude that the contractor or grantee concerned has subjected the complainant to a reprisal prohibited by subsection (A) and shall either issue an order denying relief or shall take one or more of the following actions:
  - a) Order the contractor or grantee to take affirmative action to abate the reprisal;
  - b) Order the contractor or grantee to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken; or

- c) Order the contractor or grantee to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the executive agency.
  2. Exhaustion of remedies - If the head of an executive agency issues an order denying relief under paragraph (1) or has not issued an order within 210 days after the submission of a complaint under subsection (B), or in the case of an extension of time under paragraph (B)(2)(b), not later than 30 days after the expiration of the extension of time, and there is no showing that such delay is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the contractor or grantee to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury. An action under this paragraph may not be brought more than two years after the date on which remedies are deemed to have been exhausted.
  3. Admissibility of evidence - An Inspector General determination and an agency head order denying relief under paragraph (2) shall be admissible in evidence in any de novo action at law or equity brought pursuant to this subsection.
  4. Enforcement of orders - Whenever a person fails to comply with an order issued under paragraph (1), the head of the executive agency concerned shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the executive agency.
  5. Judicial review - Any person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the executive agency. Review shall conform to chapter 7 of title 5. Filing such an appeal shall not act to stay the enforcement of the order of the head of an executive agency, unless a stay is specifically entered by the court.
  6. Burdens of proof - The legal burdens of proof specified in section 1221(e) of title 5 [5 USCS § 1221(e)] shall be controlling for the purposes of any investigation conducted by an Inspector General, decision by the head of an executive agency, or judicial or administrative proceeding to determine whether discrimination prohibited under this section has occurred.
  7. Rights and remedies not waivable - The rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment.
- D. Notification of Employees - The head of each executive agency shall ensure that contractors, subcontractors, and grantees of the agency inform their employees in writing



of the rights and remedies provided under this section, in the predominant native language of the workforce.

E. Construction - Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (A) or to modify or derogate from a right or remedy otherwise available to the employee.

F. Exceptions

1. This section shall not apply to any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).
2. This section shall not apply to any disclosure made by an employee of a contractor, subcontractor, or grantee of an element of the intelligence community if such disclosure:
  - a) Relates to an activity of an element of the intelligence community; or
  - b) Was discovered during contract, subcontract, or grantee services provided to an element of the intelligence community.

G. Definitions

1. The term "abuse of authority" means an arbitrary and capricious exercise of authority that is inconsistent with the mission of the executive agency concerned or the successful performance of a contract or grant of such agency.
2. The term "Inspector General" means an Inspector General appointed under the Inspector General Act of 1978 [5 USCS Appx] and any Inspector General that receives funding from, or has oversight over contracts or grants awarded for or on behalf of, the executive agency concerned.

H. Construction - Nothing in this section, or the amendments made by this section, shall be construed to provide any rights to disclose classified information not otherwise provided by law.

X. SUBPART 3.9 -- WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES  
3.908 PILOT PROGRAM FOR ENHANCEMENT OF CONTRACTOR EMPLOYEE  
WHISTLEBLOWER PROTECTIONS

A. 48 CFR section 3.908, implementing section 828, entitled "Pilot Program for Enhancement of Contractor Employee Whistleblower Protections," of the National Defense Authorization Act (NDAA) (Pub. L. 112-239, enacted on January 2, 2013) applies to this award at 41 U.S.C. 4712.

1. 48 CFR 3.908-1 - Scope (HISTORY: [78 FR 60169, 60171, Sept. 30, 2013, as confirmed at 80 FR 75911, Dec. 4, 2015])
  - a) This section implements 41 U.S.C. 4712.
  - b) This section does not apply to:
    - i. DoD, NASA, and the Coast Guard; or
    - ii. Any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)). This section does not apply to any disclosure made by an employee of a contractor or subcontractor of an element of the intelligence community if such disclosure:
      - a. Relates to an activity of an element of the intelligence community; or

- b. Was discovered during contract or subcontract services provided to an element of the intelligence community.
2. 48 CFR 3.908-2 – Definitions (HISTORY: [78 FR 60169, 60171, Sept. 30, 2013, as confirmed at 80 FR 75911, Dec. 4, 2015])
  - a) Abuse of authority means an arbitrary and capricious exercise of authority that is inconsistent with the mission of the executive agency concerned or the successful performance of a contract of such agency.
  - b) Inspector General means an Inspector General appointed under the Inspector General Act of 1978 and any Inspector General that receives funding from, or has oversight over contracts awarded for, or on behalf of, the executive agency concerned.
3. 48 CFR 3.908-3 - 3.908-3 Policy (HISTORY: [78 FR 60169, 60171, Sept. 30, 2013, as confirmed at 80 FR 75911, Dec. 4, 2015])
  - a) Contractors and subcontractors are prohibited from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the entities listed at paragraph (b) of this subsection, information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract, a gross waste of Federal funds, an abuse of authority relating to a Federal contract, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract). A reprisal is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non- discretionary directive and is within the authority of the executive branch official making the request.
  - b) Entities to whom disclosure may be made:
    - i. A Member of Congress or a representative of a committee of Congress;
    - ii. An Inspector General;
    - iii. The Government Accountability Office;
    - iv. A Federal employee responsible for contract oversight or management at the relevant agency;
    - v. An authorized official of the Department of Justice or other law enforcement agency;
    - vi. A court or grand jury; or
    - vii. A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.
  - c) An employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Federal contract shall be deemed to have made a disclosure.
4. 48 CFR 3.908-4 - Filing Complaints (HISTORY: [78 FR 60169, 60171, Sept. 30, 2013, as confirmed at 80 FR 75911, Dec. 4, 2015])
  - A contractor or subcontractor employee who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 3.908-3 of this section may submit a complaint with the Inspector General of the agency concerned. Procedures for submitting fraud, waste, abuse, and whistleblower complaints are generally accessible on agency Office of Inspector

- General Hotline or Whistleblower Internet sites. A complaint by the employee may not be brought under *41 U.S.C. 4712* more than three years after the date on which the alleged reprisal took place.
5. 48 CFR 3.908-5 - Procedures for investigating complaints (HISTORY: [78 FR 60169, 60171, Sept. 30, 2013, as confirmed and revised at 80 FR 75911, 75913, Dec. 4, 2015])
    - a) Investigation of complaints by the Inspector General will be in accordance with *41 U.S.C. 4712(b)*.
    - b) Upon completion of the investigation, the head of the agency or designee shall ensure that the Inspector General provides the report of findings to--
      - i. The complainant and any person acting on the complainant's behalf;
      - ii. The contractor alleged to have committed the violation; and
      - iii. The head of the contracting activity.
    - c) The complainant and contractor shall be afforded the opportunity to submit a written response to the report of findings within 30 days to the head of the agency or designee. Extensions of time to file a written response may be granted by the head of the agency or designee.
    - d) At any time, the head of the agency or designee may request additional investigative work be done on the complaint.
  6. 48 CFR 3.908-6 - Remedies (HISTORY: [78 FR 60169, 60171, Sept. 30, 2013, as confirmed and amended at 80 FR 75911, 75913, Dec. 4, 2015])
    - a) Agency response to Inspector General report. Not later than 30 days after receiving an Inspector General report in accordance with *41 U.S.C. 4712*, the head of the agency shall --
      - i. Determine whether sufficient basis exists to conclude that the contractor or subcontractor has subjected the employee who submitted the complaint to a reprisal as prohibited by 3.908-3; and
      - ii. Issue an order denying relief or take one or more of the following actions:
        - a. Order the contractor to take affirmative action to abate the reprisal.
        - b. Order the contractor or subcontractor to reinstate the complainant-employee to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
        - c. Order the contractor or subcontractor to pay the complainant- employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.
    - b) Complainant's right to go to court. If the head of the agency issues an order denying relief or has not issued an order within 210 days after the submission of the complaint or within 30 days after the expiration of an extension of time granted in accordance with *41 U.S.C. 4712(b)(2)(B)* for the submission of the Inspector General's report on the investigative findings of the complaint to the

head of the agency, the contractor or subcontractor, and the complainant, and there is no showing that such delay is due to the bad faith of the complainant--

- i. The complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint; and
    - ii. The complainant may bring a de novo action at law or equity against the contractor or subcontractor to seek compensatory damages and other relief available under *41 U.S.C. 4712* in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury. An action under this authority may not be brought more than two years after the date on which remedies are deemed to have been exhausted.
  - c) Admissibility in evidence. An Inspector General determination and an agency head order denying relief under this section shall be admissible in evidence in any de novo action at law or equity brought pursuant to *41 U.S.C. 4712*.
  - d) No waiver. The rights and remedies provided for in *41 U.S.C. 4712* may not be waived by any agreement, policy, form, or condition of employment.
7. 48 CFR 3.908-7 - Enforcement of orders (HISTORY: [78 FR 60169, 60171, Sept. 30, 2013, as confirmed at 80 FR 75911, Dec. 4, 2015])
- a) Whenever a contractor or subcontractor fails to comply with an order issued under 3.908-6(a)(2) of this section, the head of the agency concerned shall file an action for enforcement of the order in the U.S. district court for a district in which the reprisal was found to have occurred. In any action brought pursuant to this authority, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorney fees and costs. The complainant-employee upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.
  - b) Any person adversely affected or aggrieved by an order issued under 3.908-6(a)(2) may obtain review of the order's conformance with *41 U.S.C. 4712* and its implementing regulations, in the U.S. court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Filing such an appeal shall not act to stay the enforcement of the order of the head of an agency, unless a stay is specifically entered by the court.
8. 48 CFR 3.908-8 - Classified information (HISTORY: [78 FR 60169, 60171, Sept. 30, 2013, as confirmed at 80 FR 75911, Dec. 4, 2015])
- *41 U.S.C. 4712* does not provide any right to disclose classified information not otherwise provided by law.
9. 48 CFR 3.908-9 - Contract clause (HISTORY: [78 FR 60169, 60171, Sept. 30, 2013, as confirmed at 80 FR 75911, Dec. 4, 2015])
- The contracting officer shall insert the clause at **52.203-17**, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts that exceed the simplified acquisition threshold.
10. 48 CFR 52.203-17 - Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (HISTORY: [78 FR 60169, 60172, Sept. 30, 2013; 79 FR 24253, Apr. 29, 2014, as confirmed at [80 FR 75911](#), Dec. 4, 2015])

- a) As prescribed in 3.908-9, insert the following clause:  
Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (APR 2014)
  - i. This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.
  - ii. The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
  - iii. The Contractor shall insert the substance of this clause, including this paragraph (iii), in all subcontracts over the simplified acquisition threshold.  
(End of clause)

XI. The Defend Trade Secrets Act (DTSA) of 2016 - Whistleblower Protection for Disclosing Trade Secrets

- A. The Defend Trade Secrets Act (DTSA) of 2016 amended the federal law (18 USCS § 1833) that governs the exceptions to the prohibition of the disclosure of trade secrets. As a result, the federal law now provides *under certain conditions*, whistleblower protection for individuals who disclose trade secrets. *Any individual performing work as a contractor or consultant for Magellan shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made: (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (2) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.*
- B. Anti-Retaliation - *An individual who files a lawsuit for retaliation by an employer (Magellan) for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (1) files any document containing the trade secret under seal; and (2) does not disclose the trade secret, except pursuant to court order.*
- C. TITLE 18. CRIMES AND CRIMINAL PROCEDURE PART I. CRIMES CHAPTER 90. PROTECTION OF TRADE SECRETS 18 USCS § 1833 - EXCEPTIONS TO PROHIBITIONS
  - 1. In general - This chapter [[18 USCS §§ 1831](#) et seq.] does not prohibit or create a private right of action for:
    - a) Any otherwise lawful activity conducted by a governmental entity of the United States, a State, or a political subdivision of a State; or
    - b) The disclosure of a trade secret in accordance with subsection (b).
  - 2. Immunity from liability for confidential disclosure of a trade secret to the government or in a court filing.
    - a) Immunity - An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that:
      - i. Is made:

- a. In confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and
  - b. Solely for the purpose of reporting or investigating a suspected violation of law; or
  - ii. Is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
- b) Use of trade secret information in anti-retaliation lawsuit - An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual:
- i. Files any document containing the trade secret under seal; and
  - ii. Does not disclose the trade secret, except pursuant to court order.
- c) Notice
- i. In general - An employer shall provide notice of the immunity set forth in this subsection in any contract or agreement with an employee that governs the use of a trade secret or other confidential information.
  - ii. Policy document - An employer shall be considered to be in compliance with the notice requirement in subparagraph (A) if the employer provides a cross-reference to a policy document provided to the employee that sets forth the employer's reporting policy for a suspected violation of law.
  - iii. Non-compliance - If an employer does not comply with the notice requirement in subparagraph (A), the employer may not be awarded exemplary damages or attorney fees under subparagraph (C) or (D) of section 1836(b)(3) [[18 USCS § 1836\(b\)\(3\)](#)] in an action against an employee to whom notice was not provided.
  - iv. Applicability - This paragraph shall apply to contracts and agreements that are entered into or updated after the date of enactment of this subsection [enacted May 11, 2016].
- d) Employee defined - For purposes of this subsection, the term "employee" includes any individual performing work as a contractor or consultant for an employer.
- e) Rule of construction - Except as expressly provided for under this subsection, nothing in this subsection shall be construed to authorize, or limit liability for, an act that is otherwise prohibited by law, such as the unlawful access of material by unauthorized means.
- D. 18 USCS § 1839 "Trade secret" means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:
- 1. The owner thereof has taken reasonable measures to keep such information secret; and
  - 2. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

XII. State False Claims Acts

- A. State False Claim Acts are state-level extensions of the Federal False Claims Act and generally stipulate that those who knowingly submit, or cause another person or entity to submit, false claims for payment of government funds can be held liable for the government’s damages plus civil penalties.
- B. Similar to the Federal False Claims Act, State False Claims Acts contain qui tam, or whistleblower provisions that allow citizens with evidence of fraud against government contracts and programs to sue in state court on behalf of the government in order to recover the stolen funds - a portion of which may be awarded to the whistleblower.
- C. Various states in which Magellan does business have enacted false claims acts. Please see our Magellan Health website [www.magellanhealth.com](http://www.magellanhealth.com) for summaries of State False Claim Acts or by contacting the Compliance Hotline at (800) 915-2108 or emailing us at [compliance@Magellanhealth.com](mailto:compliance@Magellanhealth.com). Internally, a summary of the State False Claims Acts can be accessed on our MagNet intranet site.

**Cross Reference(s)**

*Medicaid Compliance Program; Medicare Compliance Program; Magellan Compliance Program for Non-Government Funded Programs*

**Corporate Policy Life History**

<b>Date of Inception:</b> January 01, 2007	<b>Previous Review Date:</b> August 08, 2017	<b>Current Review Date:</b> June 14, 2018
<b>Previous Corporate Approval Date:</b> August 18, 2017	<b>Current Corporate Approval Date:</b> August 15, 2018	<b>Unit Effective Date:</b> September 15, 2018

**Associated Corporate Forms & Attachments** *(internal link(s) available to Magellan Health employees only)*

[State False Claims Laws](#)

[Magellan Deficit Reduction Act Compliance Statements](#)

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