



SUBJECT: False Claims Act

PURPOSE: To provide information about the federal False Claims Act and other laws pertaining to civil and criminal penalties for false claims.

SCOPE: This policy applies to the hospital's approach to compliance with federal and state laws prohibiting the submission of false or misleading claims to any government agency or payor source (Medicare, Medicaid, etc.)

TEXT: **A. General Policy**

The hospital does not tolerate making or submitting false or misleading claims or statements to any government agency or payor source. Employees shall be informed that it is illegal to knowingly submit an inappropriate bill to Medicare or Medicaid or to cause a false claim to be sent to Medicare or Medicaid.

Unacceptable billing practices include the following:

- Billing for services not provided
- Billing for medically unnecessary services
- Upcoding & "DRG Creep" – claiming a higher level of service than was actually provided by using incorrect codes
- Duplicate / double billing
- "Unbundling" – billing separately for services required to be billed at a lower "package" rate

B. False Claims Acts

Under the Deficit Reduction Act of 2005 hospital employees must be informed about laws regarding false claims, protection for whistleblowers, and hospital procedures for detecting and preventing Medicaid fraud, waste and abuse. This information shall be provided in General Orientation and mandatory housewide annual education.

C. Hospital Procedures to Prevent & Detect Billing Fraud, Waste and Abuse

Hospital procedures designed to prevent and detect fraud in billing, waste and

abuse in the Medicaid program include the following:

- Internal Controls
- Departmental procedures for coding services provided and billing
- Internal / departmental audits
- Audits by consultants/others
- Edits and flagging of errors by coding & billing software
- Checking current and prospective employees for exclusion from the Medicare or Medicaid programs
- Policies and procedures for reporting, investigating and addressing fraud, waste and abuse
- Compliance Hotline

D. Civil & Criminal Penalties for Violations of False Claims Acts

Employees shall be informed about penalties for violations of false claims acts. Individuals and hospitals (a) can be fined based on the number of inappropriate claims and the amount overpaid and (b) can be excluded from Medicare/Medicaid reimbursement. Individuals and hospitals can be fined \$5500-\$11,000 per claim plus three (3) times the government's losses.

E. What to Do When Inappropriate or Illegal Billing is Suspected

Any employee who suspects inappropriate or illegal billing must notify their supervisor and/or the Compliance Officer, who can be reached at 584-6401 or through the anonymous Compliance Hotline at 1-866-896-9415.

F. Whistleblower Protection

It is hospital policy to not retaliate against an employee who in good faith (a) reports illegal activity or (b) refuses to participate in what they believe is an illegal activity. Refer to HR 108 Conscientious Employee.

References:

- Deficit Reduction Act of 2005, S. 1932
- Federal False Claims Act, 31 U.S.C. 3729 – 3733
- Federal Program Fraud Civil Remedies Act, 31 U.S.C. 3801-3812
- NJ False Claims Act (N.J.S. 2A:32C-1 to 2A:32C-15 and 2A:32C-17 to 2A:32C-18)
- Health Care Claims Fraud Act (N.J.S. 2C:21-4.2 and 4.3; N.J.S. 2C:51-5)
- NJ Medical Assistance and Health Services Act – Criminal Penalties, N.J.S. 30:4D-17(a) – (d)
- NJ Medical Assistance and Health Services Act – Civil Remedies, N.J.S. 30:4D-7.h; N.J.S. 30:4D-17(e)-(i); N.J.S. 30:4D-17.1.a
- Conscientious Employee Protection Act, N.J.S. 34:19—1 et seq.

Attachment to False Claims Act Policy

The following is an outline of some of the major statutory provisions for liability for false claims.

Federal False Claims Act, 31 U.S.C. 3729 – 3733

The False Claims Act is a statute that imposes civil liability (\$5,500 to 11,000 per claim and three times the total damages) on any person or entity who:

- Knowingly submits a false claim, record or statement for payment or approval
- Knowingly makes or uses a false record or statement to obtain payment or approval of a claim by the Federal government
- Uses a false statement to decrease an obligation to pay the Government.

This includes claims submitted to Medicaid, Medicare, Tricare, or any other program that is funded completely or partially by the federal government.

The following fall within the definition of “knowingly:

- Actual knowledge of the truth or falsity of a claim or statement
- Acting with reckless disregard or deliberate ignorance of the truth or falsity of the claim.

A private person can bring an action (qui tam lawsuit) in the name of the Government for a violation of the Act. The person can file a complaint “under seal” or confidentially. The US Attorney has sixty days or more to review the complaint and consider whether the Government will join in and take over the complaint. If the action is pursued and is successful, the plaintiff is entitled to part of the recovery, from 15 to 30% depending on whether the Government becomes involved in the case.

The Federal False Claims Act provides protection for employees from retaliation. It states that an employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in the terms and conditions of employment because of lawful actions conducted under the False Claims Act may bring an action in Federal District Court seeking reinstatement with back pay plus interest and other costs.

Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801-3812

This Act provides for civil penalties of \$5000 per claim for each false claim submitted to a federal agency and an assessment of twice the amount of the claim against anyone who submits a false or fraudulent claim, includes a false statement or material fact or omits a material fact, or makes claims for services that were not provided as claimed.

New Jersey False Claims Act (N.J.S. 2A:32C-1 to 2A:32C-15 and 2A:32C-17 to 2A:32C-18)

This 2007 Act amends the New Jersey Medicaid statute and authorizes the NJ Attorney General and whistleblowers to initiate false claims litigation similar to what is authorized under the Federal False Claims Act, and has similar whistleblower protections.

New Jersey Health Care Claims Fraud Act (N.J.S.A. 2C:21-4.2 and 4.3 and 2C:51-5)

This law makes health care claims fraud a criminal offense and provides for the forfeiture of professional licenses (i.e. medical, nursing) in certain instances in which a practitioner commits health care claims fraud. The law also extends to non-practitioners who commit health care claims fraud (i.e. hospital billing personnel). Liabilities under this law include fines of up to \$150,000 or five times the amount of damages for each false claim, and punishments can include prison terms of up to ten years.

New Jersey Medical Assistance and Health Services Act (N.J.S. 30:4D-17)

This law provides for civil and criminal penalties for fraud committed in connection with the NJ Medical Assistance (Medicaid) Program. The Act allows for the imposition of a criminal penalty of up to \$10,000 or imprisonment for not more than 3 years or both for willfully obtaining medical assistance benefits to which the person is not entitled or for willfully receiving medical assistance payments to which the provider is not entitled. Providers are also subject to suspension or disqualification from participation in the Medical Assistance Program if found guilty of violation of this Act.

Conscientious Employee Protection Act, N.J.S. 34:19-1 et seq.

This Act prohibits retaliatory actions by employers against employees who, in good faith, disclose information to a supervisor or public body, that the employee reasonably believes is in violation of any law, regulation, statute or procedure or is fraudulent or criminal. The Act also protects the employee from retaliation for any objection or refusal to participate in any activity or practice that the employee reasonably believes is in violation of any law, regulation, statute, policy or procedure that is fraudulent or criminal. Additionally these procedures extend to testimony given during any investigation or hearing.