

False Claims Act Policy

Corporate Compliance

11/14/2011

SCOPE: Camden Clark Medical Center, Camden-Clark Physician Corporation

PURPOSE: Federal law requires that certain entities establish written policies for its employees, contractors and agents that furnish detailed information regarding the federal and state False Claims Act, the administrative remedies available under the acts, and whistleblower protection under the acts.

POLICY: It is the policy of the Hospital to provide the following detailed information to all employees, contractors and agents about federal and state False Claims Act and the Hospital's policies and procedures to detect and prevent fraud, waste and abuse.

The information in this policy shall be included in the Hospital's employee handbook and distributed to all contractors and agents as required by the Deficit Reduction Act of 2005 (42 U.S.C. 1396a(a)(68)).

I. False Claims Act Information

A. Federal False Claims Act.

The Federal False Claims act, among other things, applies to the submission of claims by health care providers for payment by Medicare, Medicaid and other federal and state health care programs. The False Claims Act is the federal government's primary civil remedy for improper or fraudulent claims. It applies to all federal programs, from military procurement contracts to welfare benefits to health care benefits.

B. Prohibitions of the Federal False Claims Act.

The False Claims Act prohibits, among other things:

- (a) knowingly presenting or causing to be presented to the federal government a false or fraudulent claim for payment or approval;
- (b) knowingly making or using or causing to be made or used, a false record or statement in order to have a false or fraudulent claim paid or approved by the government;
- (c) conspiring to defraud the government by getting a false or fraudulent claim allowed or paid; or

(d) knowingly making or using, or causing to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the government.

"Knowingly" and "knowing" means that a person with respect to information:

(1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

#### C. Enforcement

The United States Attorney General may bring civil actions for violations of the False Claims Act. As with most other civil actions, the government must establish its case by presenting a preponderance of the evidence rather than by meeting the higher burden of proof that applies in criminal cases.

The False Claims Act allows private individuals to bring "qui tam" actions for violations of the act.

#### D. Protection for "Whistleblowers"

If any employee has knowledge or information that any such activity may have taken place, the employee should notify his or her supervisor or call the CCMC ComplianceLine (the "ComplianceLine") at 1-888-616-2473. Information may be reported to the Hotline anonymously. In addition, federal and state law and Hospital policies prohibit any retaliation or retribution against person who report suspected violations of these laws to law enforcement officials or who file "whistleblower" lawsuits on behalf of the government. Anyone who believes that he or she has been subject to any such retaliation or retribution should also report this to the ComplianceLine.

#### E. Program Fraud Civil Remedies Act of 1986

The Program Fraud Civil Remedies Act of 1986 (PFCRA) authorized federal agencies such as the Department of Health and Human Services ("HHS") to investigate and assess penalties for the submission of false claims to the agency. The conduct prohibited by the PFCRA is similar to that prohibited by the False Claims Act. For example, a person may be liable under the PFCRA for making, presenting or submitting, or causing to be made, presented, or submitted, a claim that the person knows or has reason to know:

- (a) is false, fictitious, or fraudulent;
- (b) includes or is supported by any written statement which asserts a material fact which is false, fictitious or fraudulent;
- (c) includes or is supported by any written statement that --

- (i) omit a material fact;
  - (ii) is false, fictitious, or fraudulent as a result of such omission; and
  - (iii) is a statement in which the person making, presenting or submitting such statement has a duty to include such material fact; or
- (d) is for payment for the provision of property or services which the person has not provided as claimed.

If a government agency suspects that a false claim has been submitted, it can appoint an investigating official to review the matter. The investigating official may issue a subpoena to further the investigation, or may refer the matter to the Department of Justice for proceedings under the False Claims Act.

If, based on the investigating official's report, an agency concludes that further action is warranted, it may issue a complaint (following approval from the Department of Justice) regarding the false claim. A hearing would be held, following the detailed due process procedures set forth in the regulations implementing the PFCRA.

#### F. State Law

Although West Virginia has not yet adopted a State False Claims Act, there can also be liability under state law for false or fraudulent claims with respect to Medicaid program expenditures, including:

Knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval to the Medicaid program.

Knowingly making, using or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Medicaid program.

Conspiring to defraud the Medicaid program by getting a false or fraudulent claim allowed or paid.

Knowingly making, using or causing to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Medicaid program.

Similar protections are available for whistleblowers under state law.

#### PROCEDURE(S):

The Hospital's responsibilities include, but are not limited to the following:

- a) Ensuring that all employees, including management, and any contractors or agents of the facility, are provided with this policy, effective January 1, 2007;
- b) Including the information in this policy in the Hospital's Employee Handbook; and,

- c) Making revisions to this policy as necessary to comply with changes in the law. Changes must be documented and implemented.

REFERENCES: 42 U.S.C. 1396a(a)(68)

CROSS REFERENCES: