

FALSE CLAIMS ACT (FCA) and RIGHT TO REPORT VIOLATIONS

PURPOSE:

The purpose of this policy is to comply with the Deficit Reduction Act of 2005. This policy will help our employees, clinicians and personnel understand the provisions of the federal and state laws regarding submitting a false claim for reimbursement and all the associated implications, as well as to inform our employees, clinicians and personnel of their right to report violations of federal and state law.

POLICY/PROCEDURE:

Detailed information regarding both state and federal false claims laws is provided in Attachment I to this policy. It is important that our employees, clinicians and personnel understand the provisions of these laws, and how we avoid submitting false claims.

The government defines (in part) a false claim as knowingly making, using or causing to be made or used a false statement or record to get a claim paid or approved. This somewhat legalese statement includes everything from documenting false items in the medical record, to not coding appropriately or using the wrong revenue code. There are numerous different data elements that are included when submitting a bill; all must be accurate.

However, please be aware that one does not need to “know” a certain act is in violation of the law. The regulations place an affirmation obligation on Southern New Hampshire Health System (SNHHS) to know and understand the rules regarding submitting claims. The government publishes this information in many forms, and we must understand the rules and regulations before submitting a claim for reimbursement.

Violation of the false claim statutes can subject SNHHS to fines between \$5,000 and \$10,000 plus three times the actual damages. SNHHS has in place internal and external audits, and subscribes to many publications to help us detect and prevent any problems with our claims. These fines can be eliminated by us finding our own errors, notifying Medicare, and cooperating in correcting the matter. The statutes require us to respond to investigators as they investigate potential wrongdoing. [Refer to the SNHHS Code of Conduct, Reporting Procedure and Requirements Policy, Investigations of Alleged Violations Policy and Government Investigations/Search Policy for further guidance].

SNHHS employees, clinicians and personnel should also be aware that they may notify the government themselves if they believe SNHHS does not respond appropriately when given notification of a potential violation. SNHHS is prohibited from taking any adverse actions whatsoever against the employee or clinician should said person notify the government directly. [Refer to the SNHHS Code of Conduct and the Reporting Procedure and Requirements Policy for further guidance].

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ATTACHMENT I

INFORMATION REGARDING FEDERAL AND STATE FALSE CLAIM LAWS

With the high stakes involved in False Claim Act lawsuits and/or regulatory actions, health care providers cannot afford to leave billing and coding compliance up to chance. Health care billing and coding compliance refers to SNHHS's ability to operate within the rules, regulations, and policies set by the government, insurance programs and fiscal intermediary (a commercial insurer contracted by the Department of Health and Human Services for the purpose of processing and administering Medicare claims).

Many SNHHS employees are directly involved in development of a claim, including admissions, clinical departments, coding and billing, however, it is important that all employees and clinicians have a basic understanding of the state and federal False Claims Acts.

Health care providers that do not comply with certain government rules and regulations face harsh penalties that could result in their exclusion from government-sponsored programs. Health care providers suspected of fraud or abuse must deal with government audits and reviews. These investigations can result in costly civil monetary settlements.

What is the False Claims Act or FCA? The government relies mostly on the FCA to prosecute billing fraud. The FCA imposes civil liability on hospitals (and individuals) that make or cause false or fraudulent claims to the government for payment. Anyone who violates the FCA is liable to the U.S. government for a civil penalty between \$5,000 and \$10,000, plus three times the amount of the damages that the government sustains. In addition, the government can exclude violators from participating in Medicare, Medicaid, and other government programs.

Who is liable under the FCA? The government can use the FCA against both individuals and organizations that commit billing fraud.

The FCA applies to any person who does the following:

- (1) Knowingly presents the government with a false claim for payment or approval.
- (2) Knowingly makes a false statement to get a fraudulent claim paid by the government.
- (3) Conspires to defraud the government by getting a false or fraudulent claim paid.
- (4) Knowingly makes a false record or statement to conceal, avoid, or decrease an obligation to pay the government.
- (5) Causes a false claim to be submitted.

Simply put.....

- A hospital submits a claim for payment to the government
- The claim is false
- The submitter knew it was false
- The government relied on the information, and as a result there was harm to the government.
- The key element is the fact that the submitter knew it was false!

Examples of False Claims....

- billing of items or services that were never rendered by the health care provider

- billing for services that are medically unnecessary
- upcoding (practice of billing for Medicare/Medicaid using a billing code providing a higher payment rate than the billing code intended to be used for the service or item furnished to the patient)
- billing separately for services that should be bundled
- billing separately for outpatient services that were provided within 72 hours (before or after) an inpatient stay
- billing for a discharge in lieu of a transfer

Important to remember.....**NEVER** submit a false claim to the government. If you know of someone who has submitted a false claim, report it immediately to your supervisor, if appropriate, and the Corporate Compliance Officer.

What are qui tams? The FCA includes an important provision that allows private citizens to initiate a lawsuit on behalf of the federal government and request the government to join in the suit. In return, that citizen may share a percentage of any recovery or settlements. This type of lawsuit is known as a qui tam and the individual, or relator, is a “whistleblower”, who brings forth evidence of the crime. The purpose of this qui tam provision is to give an incentive for whistleblowers to come forward to help the government discover and prosecute fraudulent claims by awarding them a percentage of the recovery.

First, to prevail under a lawsuit, the whistle-blower (or relator) must be the “original source” of the information reported to the federal government. Specifically, the whistle-blower must have direct and independent knowledge of the false claims activities and voluntarily provide this information to the government. If the matter disclosed is already the subject of a federal investigation, or if the health care provider or supplier has previously disclosed the problem to a federal agency, the whistle-blower may be barred from obtaining a recovery under the FCA.

Whistleblower Protection – Federal Law

- The Federal False Claim Act protects employees who are discharged, demoted, suspended, harassed, or in any manner discriminated against by their employer because of their participation or assistance (e.g., testimony, initiation of investigation) in a false claim action.
- The Act entitles employees to relief to “make them whole”, including restatement with the same seniority status they would have had but for the discrimination, twice the back pay, interest on back pay, and compensation for any special damages sustained as a result of the discrimination including litigation costs and reasonable attorneys’ fees.

New Hampshire False Claims Act (NH RSA 167:61-a et seq.)

New Hampshire also has its own FCA. The following are the general elements of the Act.

- No person shall knowingly make, present or cause to be made, any false or fraudulent claim for payment of any good or service, or for the determination of any rights or benefits under Medicaid or other state assistance program.
- No person shall knowingly file a false or fraudulent report which is used to determine a rate for payment for goods or services, or include a false or fraudulent statement or representation in connection with any report or filing.
- No person can knowingly file claims for payments of goods or services that are not medically necessary in accordance with professionally recognized standards.

- No person can destroy or conceal or cause to be destroyed or concealed any book, record, document, data or instrument used as documentation for any goods or services for which payment is sought under Medicaid or other similar state program.
- The NH False Claims Act forbids any knowing and willful conduct involving the solicitation, receipt, offer or payment of any kind of compensation or gift in return for referring an individual or for recommending or arranging the purchase, lease, or ordering of an item or service that may be wholly or partially paid for by Medicaid or other similar state program. This prohibition is often referred to as the antikickback statute, and an identical prohibition exists under federal law.
- No person can accept any gift, money, donation or other consideration either as a precondition of admitting or expediting the admission of a patient to a hospital, skilled nursing facility, or intermediate care facility in which the cost of such services to the patient is paid for in whole or in part under Medicaid or other similar program.
- The statute defines “knowingly” to mean the following:
 1. intentionally make or cause to be made any false or fraudulent statement, or
 2. intentionally offer or cause to be offered or presented, in whole or in part, any fraudulent record, document, data or instrument to any state official or law enforcement personnel, in connection with any audit or investigation involving any claim for payment or rate of payment for any good or service under Medicaid or other similar state program.

New Hampshire -The Whistleblowers’ Protection Act (RSA 275-E)

- Protection is available to employees who report violations of law or refuse to execute illegal directives, participate in investigations, or hearings.
- An employer cannot discharge, threaten, or discriminate against any employee who reports such violations or participates in any such investigations:

If the employee, in good faith, reports or causes to report an alleged violation; *or* participates in an investigation, hearing, or inquiry conducted by any government entity or any court; *or* the employee refuses to execute a directive that violates any law or rule that violates any law or rule adopted by the State of New Hampshire or political subdivision of the United States.

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