



CORPORATE POSITION STATEMENT

TITLE: FRAUD AND ABUSE LAWS AND PROTECTIONS

Origination Date: December, 2006 DRAFT/REV: December 7, 2007	Policy No.: CI-032 Revision No.:
Effective Date: January, 2007	
Scope: Ministry Health Care and Wholly Owned Affiliates	

Distribution:

- All Employees of Ministry Health Care and its Wholly-Owned Affiliates
- All Agents and Contractors who furnish or otherwise authorize the furnishing of Medicaid health care items or services on behalf of Ministry or its Affiliates, or who are involved in monitoring health care provided by one of these Entities

Purpose:

To provide information about the role of certain federal and state laws in preventing and detecting fraud, waste, and abuse in federal health care programs.

Policy Statement:

It is the policy of Ministry Health Care and its affiliates to provide health care services in a manner that complies with applicable federal and state laws and that meets the high standards of business and professional ethics. To further this policy, and to comply with Section 6032 of the Deficit Reduction Act of 2005, Ministry Health Care and its affiliates provides the following information about its compliance program, policies and procedures and the role of certain federal and state laws in preventing and detecting fraud, waste, and abuse in federal health care programs.

Background:

It is a Ministry expectation that our affiliates, employees, agents and contractors bill only for services provided and to not knowingly file a false or fraudulent claim. This common sense approach to compliance is emphasized in various ways including our “Guide to Business and Personal Conduct”, “Regulatory Corporate Integrity Summary” as well as policies and procedures. While most of us have a basic understanding of what a false or fraudulent claim is, this policy attempts to further define it as well as the associated fines, penalties and liabilities, which an organization or individual may be subject to.

We hope you will find the following summary of Federal and State laws, and the protections they offer, informative. You will notice that the Ministry message of “doing the right thing,” is what the government laws also emphasize. While employees, agents and contractors are always encouraged to use existing Ministry and Affiliate integrity channels, we feel it is important you also understand you have the ability to contact the government directly. Please contact the entities Local Integrity Officer for more information and/or clarification.

Related Policies/Position Statements/Other Documents:

- [MHC Guide to Business and Personal Conduct](#)
- [MHC Regulatory Corporate Integrity Summary](#)
- [MHC Non-retaliation Policy \(CI-010\)](#)

Summary of Federal and State Laws:

The following is a summary of the Federal False Claims Act, the Program Fraud Civil Remedies Act, and Wisconsin's Medicaid Fraud Statute, and their role in preventing and detecting fraud waste, and abuse in federal health care programs.

Federal False Claims Laws:

1. *False Claims Act; 31 U.S.C. §§ 3729 - 3733*

The Federal False Claims Act imposes liability on any person or entity who:

- Knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval; including filing a false or fraudulent claim for payments to Medicare, Medicaid or other federally funded health care program;
- Knowingly makes, uses or causes to be made or used, a false record or statement to obtain payment or approval by the government on a false or fraudulent claim, including Medicare, Medicaid or other federally funded health care program; or
- Conspires to defraud the Government, Medicare, Medicaid or other federally funded health care program by attempting to have a false or fraudulent claim paid or approved.
- Knowingly makes, uses or causes 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

A person or entity found liable under the False Claims Act is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person or entity.

“Knowingly” means that a person, with respect to information;:

- Has actual knowledge that the information;
- Acts in deliberate ignorance of whether the information is true or false; or
- Acts in reckless disregard of whether the information is true or false, and no proof of specific intent to defraud is required.

31 U.S.C. § 3729. While the False Claims Act imposes liability only when the claimant acts “knowingly”, it does not require that the person submitting the claim have actual knowledge that the claim is false. A person who acts in reckless disregard or in deliberate ignorance of the truth or falsity of the information, also can be found liable under the Act. 31. U.S.C. 3729(b).

In sum, the False Claims Act imposes liability on any person who submits a claim to the federal government that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The False Claims Act also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. An example of this may include a government contractor who submits records that he knows (or should know) is false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to which he may not be entitled, and then uses false statements or records in order to retain the money. An example of this so-called “reverse false claim” may include a hospital who obtains interim payments from Medicare throughout the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare program.

In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States. 31.U.S.C. 3730 (b). These private parties, known as “*qui tam*” relators, may share in a percentage of the proceeds from an FCA action or settlement.

Section 3730 (d)(1) of the FCA provides, with some exceptions, that a *qui tam* relator, when the Government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730 (d) (2) provides that the relator shall receive an amount that the court decides is reasonable and shall be not less than 25 percent and not more than 30 percent.

2. Program Fraud Civil Remedies Act; 31 U.S.C. §§ 3801 - 3812

The Program Fraud and Civil Remedies Act (“PFCRA”) creates administrative remedies for making false claims and false statements. These penalties are separate from and in addition to any liability that may be imposed under the False Claims Act.

The PFCRA imposes liability on people or entities that file a claim that they know or have reason to know:

- Is false, fictitious, or fraudulent;
- Includes or is supported by any written statement that contains false, fictitious, or fraudulent information;
- Includes or is supported by a written statement that omits a material fact, which causes the statement to be false, fictitious, or fraudulent, and the person or entity submitting the statement has a duty to include the omitted fact; or
- Is for payment for property or services not provided as claimed.

A violation of this section of the PFCRA is punishable by a \$5,000 civil penalty for each wrongfully filed claim, plus an assessment of twice the amount of any unlawful claim that has been paid.

In addition, a person or entity violates the PFCRA if they submit a written statement that they know or should know:

- Asserts a material fact that is false, fictitious or fraudulent; or

- Omits a material fact that they had a duty to include, the omission caused the statement to be false, fictitious, or fraudulent, and the statement contained a certification of accuracy.

A violation of this section of the PFCRA carries a civil penalty of up to \$5,000 in addition to any other remedy allowed under other laws.

State False Claims Laws:

Medicaid Fraud Statute, s. 49.49(1), Wis. Stats.

The state Medicaid fraud statute prohibits any person from:

- Knowingly and willfully making or causing to be made a false statement or misrepresentation of a material fact in a claim for Medicaid benefits or payments.
- Knowingly and willfully making or causing to be made a false statement or misrepresentation of a material fact for use in determining rights to Medicaid benefits or payments.
- Having knowledge of an act affecting the initial or continued right to Medicaid benefits or payments or the initial, or continued right to Medicaid benefits or payments of any other individual on whose behalf someone has applied for or is receiving the benefits or payments, concealing or failing to disclose such event with an intent to fraudulently secure Medicaid benefits or payments whether in a greater amount or quantity than is due or when no benefit or payment is authorized.
- Making a claim for Medicaid benefits or payments for the use or benefit of another, and after receiving the benefit or payment, knowingly and willfully converting it or any part of it to a use other than for the use and benefit of the intended person.

Anyone found guilty of the above may be imprisoned for up to six years, and fined not more than \$25,000, plus 3 times the amount of actual damages.

Anti-Retaliation Protections:

Ministry has a strict Non-retaliation policy to protect those who make good faith reports of wrong doing. Likewise, the Federal False Claims Act provides alternative ways an individual can file a complaint directly with the government and offers anti-retaliation protections. Please read the following for more information on government laws and protections:

Individuals within an organization who observe activities or behavior that may violate the law in some manner and who report their observations either to management or to governmental agencies are provided protections under certain laws.

For example, the FCA provides protection to *qui tam* relators who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. 31 U.S.C. 3730 (h). Remedies include reinstatement with comparable seniority as the *qui tam* relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

Under Wisconsin statute 146.997, Health Care Worker Protection, Wisconsin law also protects health care workers who disclose any of the following to an appropriate individual or agency:

- Information that a health care facility or provider has violated any state law or rule or federal law or regulation;
- A situation in which the quality of care provided by, or by an employee of, the health care facility or provider violates established standards and poses a potential risk to public health or safety.

Specifically, the health care facility or provider can not take disciplinary action against an individual who reports the above in good faith. A health care facility or provider who violates this statute shall be subject to not more than \$1,000 for a first violation.

Role of False Claims Laws:

The false claims laws discussed above are an important part of preventing and detecting fraud, waste, and abuse in federal and state health care programs because they provide governmental agencies the authority to seek out, investigate and prosecute fraudulent activities. Enforcement activities take place in the criminal, civil and administrative arenas. This provides a broad spectrum of remedies to battle these problems.

Anti-retaliation protections for individuals who make good faith reports of waste, fraud and abuse encourage reporting and provide broader opportunities to prosecute violators. Statutory provisions, such as the anti-retaliation provisions of the False Claims Act, create reasonable incentives for this purpose. Employment protections create a level of security employees need in order to help in prosecuting these cases.

Responsibility for Implementation:

- Local Integrity Officers

Subject Matter Expert(s):

- Laura Leitch, General Counsel, Wisconsin Hospital Association
- Lori Wink, outside legal counsel, Hall Render
- Bob Reed, Director of Corporate Integrity and Reimbursement, Ministry Health Care

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Key Words:

false claim, fraud, fraudulent claim, anti-retaliation, non-retaliation, whistleblower, qui tam

Sources:

- Wisconsin Hospital Association – DRA 6032 model policy.pdf – November 22, 2006

Applicable Regulations/Standards:

- Section 6032 of the Deficit Reduction Act of 2005

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