

Understanding the False Claims Act

SCOPE: Emory Healthcare, Inc. and all its affiliated corporations.

RESPONSIBILITY: All employees, clinicians, and physicians.

PROCEDURE: Ensure employees and contractors/agents as appropriate are provided and/or have access to this policy. Provide education for employees and as appropriate contractors/agents on this policy.

Federal Civil False Claims Act and State False Claims Act (FCAs)

The federal civil False Claims Act, 31 U.S.C. § 3729, et seq. (FCA), was originally enacted in 1863 after a series of Congressional inquiries disclosed several instances of fraud among defense contractors during the Civil War. The current FCA was passed by Congress in 1982 and was amended in 1986. The FCA is designed to enhance the government's ability to identify and recover losses due to fraud. The Georgia Medicaid False Claims Act, OCGA 49-4-7B was enacted in 2007.

FCA Prohibitions

The FCAs prohibit any individual or company from knowingly submitting false or fraudulent claims, causing such claims to be submitted, making a false record or statement in order to secure payment from the federal/state government for such a claim, or conspiring to get such a claim allowed or paid. Under the statute the terms "knowing" or "knowingly" mean that a person (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. Specific intent to defraud is not required for there to be a violation of the law. Examples of the types of activity prohibited by the FCA include billing for services that were not actually rendered, and upcoding (the practice of billing for a more highly reimbursed service or product than the one provided).

The FCA is enforced by the filing and prosecution of a civil complaint. Under the FCAs, civil actions must be brought within six years after a violation or, if brought by the government, within three years of the date when material facts are known or should have been known to the government, but in no event more than ten years after the date on which the violation was committed.

A similar federal law is the Program Fraud Civil Remedies Act of 1986 (PFCRA). It provides administrative remedies for knowingly submitting false claims and statements. A false claim or statement includes submitting a claim or making a written statement that is for services that were not provided, or that asserts a material fact that is false, or that omits a material fact. A violation of the PFCRA results in a maximum civil penalty of \$5000 per claim plus an assessment of up to twice the amount of each false or fraudulent claim.

Penalties

Individuals or companies found to have violated the statute are liable for a civil penalty for each claim of not less than \$5,500 and not more than \$11,000, plus up to three times the amount of damages sustained by the federal government.

The Relator

The FCA authorizes the United States Attorney General and State Attorney General to bring actions alleging violations of the statute. The statute also authorizes private citizens called relators to file a lawsuit in the name of the United States/State of Georgia for false or fraudulent claims submitted by individuals or companies that do business with, or are reimbursed by, the United States/State of Georgia. A lawsuit brought under the FCA by a private citizen commences upon the filing of a civil complaint in federal court, under seal, and service of a disclosure of material evidence on the Attorney General. The government has sixty days to investigate the allegations in the complaint and decide whether it will join the action, in which case the complaint is unsealed, and the Department of Justice or a United States Attorney's Office takes the lead role in prosecuting the claim. If the government decides not to join, the relator may pursue the action alone, but the government may still join at a later date if it demonstrates good cause for doing so. The Act provides that the relator who files the action on behalf of the government may receive a portion of the monies recovered for the government plus attorney's fees and costs. This award may be reduced, however, if for example the court finds the relator planned and initiated the violation. The FCA also provides that relators who prosecute clearly frivolous claims can be held liable to a defendant for its attorneys' fees and costs.

Relators are also offered certain protections against retaliation for bringing an action under the Act. The FCA prohibits discharge, demotion or suspension of employees that act lawfully in furtherance of the FCA. EHC has a policy of non-retaliation against employees that report compliance issues, in good faith, to his/her supervisor or the EHC Compliance Office.

Reporting Concerns Regarding Fraud, Abuse and False Claims

EHC takes issues regarding fraud, abuse and false claims seriously. EHC employees are required as a condition of employment and continued employment to report concerns regarding fraud, abuse, false claims and compliance issues to their supervisor, EHC Compliance Office staff or use the Emory Trustline to report issues anonymously. The Trustline number is 1-888-550-8850 and is available 24 hours 7 days a week. Once issues are reported there is a process whereby an investigation is initiated and corrective action taken if necessary.

EHC has Policies and Procedures for Detecting and Preventing Fraud, Waste and Abuse

EHC has established monitoring processes for claims submission, education requirements, and an internal reporting process whereby employees can report compliance concerns anonymously. An investigation process has been established, and a non-retaliation policy for employees who report compliance concerns has been established - all this to prevent and detect fraud waste and abuse in federal and state payment programs.

EHC requires employees to report compliance issues internally and has processes whereby those issues are investigated. Employees are protected from retaliation for good faith reporting of concerns. Please call the EHC Compliance Office at 404-778-2757 or the 24/7 Emory TrustLine at 1-888-550-8850 to report compliance issues or concerns anonymously.

Effective Date: January 1, 2007

Revised Date: September 1, 2007

Reference:

EHC Compliance Program Manual - Standards of Conduct

EHC Non-Retaliation Policy

EHC Intranet – Compliance Policies & Procedures

WWSL Intranet

WWSL Employee Handbook

31 USC sections 3729-3733

Deficit Reduction Act of 2005, Sections 6031-32, OCGA 49-4-7B