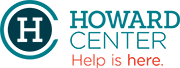
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| Policy Name | Policy to Provide Information about Detecting Waste, Fraud and Abuse, False Claims Recovery, and Whistleblower Protections |
| Policy Owner | Director of Information Management and Compliance |
| Corresponding Procedure | N/A |
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**POLICY TO PROVIDE INFORMATION ABOUT DETECTING WASTE, FRAUD AND ABUSE, FALSE CLAIMS RECOVERY AND WHISTLEBLOWER PROTECTIONS**

**OBJECTIVE/PURPOSE:**

It is the policy of Howard Center to obey the law and to work to stop and to eliminate waste, fraud and abuse with respect to payments to Howard Center from federal or state programs providing payment for patient care. This policy applies to all employees, management, contractors and agents of Howard Center.

This policy and the information contained in it shall be distributed to all current and new employees and to all contractors and agents of Howard Center.

This policy includes the following information concerning tools this agency, federal and state agencies, and individuals use to fight fraud, waste and abuse in the administration of federal and state health programs:

* Federal False Claims Act;
* Administrative remedies found in the Program Fraud Civil Remedies Act;
* Vermont’s False Claims Act;
* A summary of protections for employees who report compliance concerns;
* The role of such laws in preventing and detecting fraud, waste, and abuse in federal and state health care programs
* Howard Center’s existing policies, procedures, and trainings for detecting and preventing fraud, waste and abuse.

A detailed description of the forgoing points follows:

1. **The Federal False Claims Act**

**Summary of Provisions:** The False Claims Act (“FCA”) was enacted to prevent, detect and remedy waste, fraud and abuse in federal contracting programs, including its health care programs. The FCA prohibits knowingly making or causing to be made a false claim against the government. A “knowing” violation includes actual knowledge that a claim is false or deliberate ignorance or reckless disregard of whether a claim is true or false. False claims can take the form of “knowingly” delivering a lesser amount of or lower cost type of good or service than what is billed to the government, underpaying money owed to the government, keeping government money that was improperly paid, submitting records or documentation to the government that are false, and charging for one good or service while providing another.

**Penalties:**

Persons (including organizations such as hospitals) may be fined a civil penalty of not less than $13,508 nor more than $27,018, plus three (3) times the amount of damages sustained by the government for each false claim. The amount of damages in health care terms is the amount paid for each false claim that is filed. No proof of specific intent to defraud the government is required to be liable for civil violations of the FCA.

Additionally, under Federal criminal laws, entities and individuals such as corporate officers can face criminal penalties, such as fines and imprisonment, for filing false claims.

***Reporting Overpayments***

If a health care provider identifies that it has received an overpayment from Medicare (e.g., it was paid for a service not provided or it was paid for too much for a service provided), it has sixty (60) days or until the due date of any cost report corresponding to the overpayment, whichever date is later, to report and return the overpayment to the Centers for Medicare and Medicaid Services (“CMS”). An overpayment is considered “identified” by a health care provider when the provider has or should have through the exercise of “reasonable diligence”, determined that an overpayment was received and has quantified the overpayment. A health care provider must report and return overpayments only if they are identified within six (6) years of the date the overpayment was received. Health care providers who fail to report an overpayment within this timeframe could potentially face FCA liability and civil monetary penalties, as well as exclusion from federal health care programs.

***Qui Tam (Whistleblower) Provisions***

A person who is the original source of information regarding a false claim (i.e., voluntarily discloses information about a false claim to the government before that information is made public or who has independent knowledge of information about a false claim that materially adds to the publicly disclosed claim and voluntarily discloses the same) may bring an action for a violation of the FCA (called a *qui tam* relator or whistleblower suit) in federal court. The case is initiated by causing a copy of the complaint and substantially all material evidence and information the person possesses to be served on the federal government. The case will remain sealed for at least 60 days and will not be served on the defendant until a court so orders after the government has time to investigate the complaint. The government may obtain additional time for good cause. The government on its own initiative may also initiate a case under the FCA.

Before the expiration of the 60-day period or any extensions (which may be long extended), the government may pursue the matter in its own name or decline to proceed. If the government declines to proceed, the person bringing the action has the right to conduct the action on their own in federal court.

If the government proceeds with the case, the *qui tam* relator bringing the action will receive between 15 and 25 percent of any proceeds, depending upon the contributions of the individual to the success of the case. If the government declines to pursue the case, the *qui tam* realtor will be entitled to between 25 and 30 percent of the proceeds of the case, plus reasonable expenses and attorney’s fees and costs awarded against the defendant.

Any case for a violation of the FCA must be brought within one of the following time periods, whichever is longest: a) within six years after the date on which the violation of the FCA is committed; or b) within three years after the date the federal government knows or reasonably should know about the violation of the FCA, but no case can be brought more than ten years after the violation was committed.

**Antidiscrimination:** Anyone initiating a *qui tam* case may not be discriminated or retaliated against in any manner by their employer. The employee is authorized under the FCA to initiate court proceedings to make themselves whole for any job related losses resulted from any such discrimination or retaliation, including any discharge, demotion, suspension, threats, or harassment done because of the person’s lawful participation in the qui tam case. Penalties for discriminating or retaliating against the person participating in the qui tam case include reinstatement of an employee with the same seniority, two times the amount of back pay owed, interest on the back pay and compensation for any special damages sustained as a result of the discrimination.

1. **Program Fraud Civil Remedies Act**

The Program Fraud Civil Remedies Act (“PFCRA”) creates administrative penalties for making false claims separate from and in addition to, the judicial or court remedy for false claims provided by the FCA.

The Act is quite similar to the FCA in many respects, but is somewhat broader and more detailed, with differing penalties. The PFCRA deals with submission of improper “claims” or “written statements” to a federal agency.

Specifically, a person violates the PFCRA if they know or have reason to know they are submitting a claim that is

* + False, fictitious or fraudulent; or,
  + Includes or is supported by written statements that are false, fictitious or fraudulent; or,
  + Includes or is supported by a written statement that omits a material fact; the statement is false, fictitious or fraudulent as a result of the omission; and the person submitting the statement has a duty to include the omitted facts; or
  + For payment for property or services not provided as claimed.

A violation of this prohibition carries a civil penalty of up to 13,508 for each such wrongfully filed claim. In addition, an assessment of two times the amount of the claim may be made if the Government has made a payment based on the claim. The government may also pursue separate administrative and/or contractual claims based on false claims.

A person also violates the PFCRA if they submit a written statement which they know or should know:

* + Asserts a material fact which is false, fictitious, or fraudulent; or,
  + Omits a material fact and is false, fictitious or fraudulent as a result of the omission. In this situation, there must be a duty to include the fact, and the statement submitted contains a certification of the accuracy or truthfulness of the statement.

A violation of the prohibition for submitting an improper statement also carries a civil penalty of up to $13,508. No additional assessment will be made for this type of violation unless a government payment has been made based on the written statement.

**3. Vermont False Claim Act**

Vermont’s False Claims Act law prohibits a person a) from knowingly presenting or causing to be presented a false claim or material false documentation; b) from knowingly receiving or withholding property and/or money belonging to the government; and c) from knowingly making any false or fraudulent material statements, or falsifying, concealing, or covering up with any trick, scheme or device any material facts, or falsifying any documents or writings knowing they contain a material fact, regarding any matter within the jurisdiction of a state or local government body. “Knowingly” has the same definition under the Vermont and federal false claims acts.

The penalty for a violation of the Vermont False Claims Act is not less than $5,500.00 and not more than $11,000.00 for each violation, plus up to three times the amount of damages (i.e., the amount paid by the government for the false claim) sustained by the State and the costs of the investigation and prosecution of the violation.

Private individuals may also bring qui tam actions under the Vermont False Claims Act (a “qui tam relator”). The content of the complaint and information filed by qui tam relator, as well as the timeline for the government to intervene and the results of the government intervening are the same under the Vermont False Claims Act as they are under the federal FCA (e.g., the state government has 60 days (plus any extensions) after receiving the person’s complaint and material information about a false claim to decide whether to pursue the case).

Similar to the federal FCA, under the Vermont False Claims Act, the qui tam relator will receive between 15 and 25 percent of any proceeds recovered and collected in a false claims action brought by the government and between 25 and 30 percent of the proceeds of a case that the government declined to pursue. However, if the false claims act action is one that the court finds to be based primarily on information other than that disclosed by the qui tam relator, the court may not award more than 10 percent of the proceeds to the relator.

Qui tam relators under the Vermont law are also protected against discrimination. No employee, contractor or agent may be discriminated or retaliated against because of lawfully participating in a Vermont False Claims Act action. Penalties for retaliating or discriminating against an employee, contractor or agent are the same under the Vermont False Claims Act as under the federal FCA. The Vermont Healthcare Whistleblower Protection Act (discussed below) provides for additional penalties for retaliating or discriminating against qui tam relators.

**4. Protections for Employees Who Report Compliance Concerns**

“Whistleblowers” are generally employees who observe activities or behavior that they believe violates the law in some manner. These individuals report their observations either to management or to governmental agencies or refuse to participate in the activity. Laws have been enacted to protect Whistleblowers. The Vermont Whistleblower Protection Act, 21 V.S.A. § 507, prohibits employers from retaliating against employees who act as whistleblowers. Whistleblowers acting as “qui tam” relators are also protected under the Vermont and Federal False Claims Acts (see discussion, above).

If an employee, contractor or agent believes that he/she witnesses an actual or potential violation of a law, regulation or policy or if an employee, contractor or agent believes he/she witnesses any poor quality of patient care or other actual or potential misconduct, he/she has a duty to report, in good faith, the matter to his/her supervisor or, in the case of contractors or other agents, to the Compliance Officer. An employee, contractor, or agent may also report any suspected actual or potential compliance concern by (a) contacting the Compliance Officer, (b) making a report through the Howard Center e-mail address [*compliancecomplaint@HowardCenter.org*](mailto:compliancecomplaint@HowardCenter.org)*,* or (c) calling the Compliance Hotline (1-802-488-7195), which may be used to report compliance concerns anonymously.

Howard Center has adopted a policy that prohibits retaliation against any employee, contractor or agent who, in good faith, reports a compliance concern. This policy also provides for disciplinary action to be taken against any employee, contractor or agent who engages in retaliatory conduct.

1. **The Role of Such Laws in Preventing and Detecting Fraud, Waste, and Abuse in Federal and State Health Care Programs**

The laws described in this policy create a comprehensive scheme for controlling waste, fraud and abuse in federal and state health care programs by giving appropriate governmental agencies the authority to seek out, investigate and prosecute violations. Enforcement activities are pursued in three available forums: criminal, civil and administrative. This provides a broad spectrum of remedies to battle this problem.

Moreover, whistleblower statutes and protections for individuals reporting waste fraud and abuse in good faith encourage reporting of waste fraud and abuse, creating broader opportunities to prosecute violators. Whistleblower statutes, such as the federal FCA, create reasonable incentives for this purpose. Employment protections create a level of security employees need to help in prosecuting these cases.

1. **Howard Center’s Existing Policies and Procedures for Detecting and Preventing Fraud**

* Corporate Compliance Policy and Program
* Policy and Procedure Related to Ethical and Corporate Responsibility