

FALSE CLAIMS ACT & FEDERAL HEALTH CARE PROGRAMS

PURPOSE:

To help employees, agents or contractors of Marshall Medical Center (MMC) understand the provisions of the False Claims Act established under Title 31 of the United States Code (The “Act”). Specifically, federal and state laws regarding submitting a false claim for reimbursement under the Medicare and Medicaid (Medi-Cal) programs and informing our employees of their right to report violations of federal and state laws and what protections they have under such laws.

A. FALSE CLAIMS LIABILITY

1. Section 3729 of Title 31 the United States Code (USC) establishes liability for any person who knowingly submits or causes to be submitted a false or fraudulent claim to the government for payment. The term “knowingly” is defined to mean a person who,
 - (a) Has actual knowledge of the falsity of the claim,
 - (b) Acts in deliberate ignorance of the truth or falsity of the claim, or
 - (c) Acts in reckless disregard of the truth or falsity of the claim.
2. The Act does not require proof that an intentional act to defraud the government was committed. Instead, healthcare providers are obligated to know and understand the laws and regulations that govern claims made for reimbursement under the Medicare and Medicaid programs.
3. Some general examples of health care fraud include, but not limited to:
 - (a) Knowingly billing for services and/or goods not provided;
 - (b) Falsifying documentation in the medical record and/or billing for medically unnecessary services;
 - (c) Intentionally unbundling services identified by Medicare and/or Medicaid as a single service;
 - (d) Deliberately upcoding;
 - (e) Failing to report and repay known overpayments;
 - (f) Intentional duplicate billing;
 - (g) Giving inducements to physicians in exchange for referrals.

4. A person who is found guilty of violating the False Claims Act faces a host of different criminal, civil, and administrative sanction penalties including:
 - (a) civil penalties of not less than \$5,000 and not more than \$10,000 per false claim plus three (3) times the amount of damages sustained by the government;
 - (b) criminal fines and/or imprisonment of up to 10 years if convicted of healthcare fraud, or for violations of the Anti-kickback, imprisonment up to five years and/or a criminal fine of up to \$25,000;
 - (c) administrative sanctions including up to a \$10,000 civil monetary penalty per line item on a false claim, assessments of up to three (3) times the amount falsely claimed, and/or exclusion from participation in Medicare and Medicaid programs.
5. MMC has in place a Compliance Program and Standards of Conduct, whose structure includes policies that reaffirm the obligation of all employees, medical staff, volunteers, and contractors to report suspected fraud and abuse through the existing reporting structure; i.e., the Compliance Office or the Compliance Hotline. In addition, the Compliance Office conducts internal audits of claims to help detect and prevent claim errors. When errors are found, MMC notifies Medicare or Medicaid and repays any overpayments the error may have caused.

B. CIVIL ACTIONS FOR FALSE CLAIMS

1. Section 3730 of Title 31 USC assigns responsibility to the Attorney General to diligently investigate a violation of the False Claims Act and bring a civil action against a person or facility if a violation has occurred.
2. Section 3729 of Title 31 USC allows an individual to bring a civil action for a violation of the False Claims Act of which the individual has actual knowledge. The action is filed in the name of the government. The provision under this section is known as Qui Tam, or “Whistleblower” provision.
3. If the government finds merit in the civil action brought by the Whistleblower, this individual receives at least 15 percent but not more than 25 percent of the proceeds of the settlement. These amounts are subject to the extent to which the Whistleblower contributed to the prosecution. If the government decides not to intervene, the Whistleblower can continue with the civil action on their own. If successful on his/her own, the Whistleblower can receive up to 30 percent of the recovery.
4. Any MMC employee, agent or contractor who files an action is entitled to protection from retaliation under Section 3730, subsection (h) of the Act. Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against is entitled to additional relief, including employment reinstatement, back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees.

C. FALSE CLAIMS PROCEDURE

For procedure on subpoena service, timeline on filing a civil action, and evidentiary process, refer to Section 3731 of Title 31 USC.

D. FALSE CLAIMS JURISDICTION

For procedure on filing a civil action under Section 3730, refer to Section 3732 of Title 31 USC.

E. CALIFORNIA FALSE CLAIMS ACT

In 1992, California enacted the False Claims Act under California Government Code, Article 9, Sections 12650 – 12655. This state law generally mirrors the provisions of the federal law pertaining to civil, criminal and administrative penalties for false claims and statements, whistleblower protections, and the rights of private individuals to bring a suit on behalf of the government.

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Administrative Services Director

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Date

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