

UNIVERSITY OF MARYLAND MEDICAL SYSTEM

FALSE CLAIMS ACT AND WHISTLEBLOWER PROTECTION EDUCATION POLICY

PURPOSE

The purpose of this policy is to inform employees, contractors and agents of the University of Maryland Medical System and its affiliates¹ (collectively referred to herein as the “Medical System”) of the federal False Claims Act (the “FCA”), the federal Program Fraud Civil Remedies Act (the “PFCRA”) and the Maryland Medicaid Fraud law; to provide general information regarding the Medical System’s efforts to combat fraud, waste and abuse in the Medical System; and to describe the remedies and fines for violations that can result from certain types of fraudulent activities.

POLICY

All employees, contractors, agents and volunteers of the Medical System have a responsibility to report to the Medical System’s Compliance Office any incidents of actual or suspected fraud, waste, abuse or misconduct that potentially violate federal or state law, the Medical System’s policies or the Medical System’s Code of Conduct. The Medical System engages in specific compliance efforts to detect and prevent fraud, waste and abuse.

Information about the Compliance Program and specific compliance policies can be obtained by contacting the Compliance Office at 410-328-3848. To report a concern, individuals should contact any member of senior management, the Compliance Office (410-328-3848), or the Compliance Hotline at 1-877-300-DUTY (3889) or www.reportit.net.

The Medical System will not take or tolerate any intimidating or retaliatory action against an individual who, in good faith, makes a report of practices reasonably believed to be in violation of this Policy.

I. Federal False Claims Act

- A. The federal FCA prohibits any individual or company from: knowingly submitting false or fraudulent claims payable by the federal government, causing such claims to be submitted, making a false record or statement material to a claim for payment from the federal government, conspiring to get such a claim allowed or paid; or concealing, avoiding or decreasing an obligation to pay amounts to the federal government. “Knowing” and “knowingly” mean that a person (1) has actual knowledge of the

¹ University of Maryland Medical Center, Maryland General Hospital, Baltimore Washington Medical System, Chester River Health System, James Lawrence Kernan Hospital, Shore Health System, University Specialty Hospital, and Mt. Washington Pediatric Hospital.

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. Examples of the type of activity prohibited by the FCA include billing a federally funded program, such as Medicare or Medicaid, for services that were not provided and/or upcoding, i.e., billing for a highly reimbursed service in lieu of the service actually provided. Another example is retaining improper overpayments received from a federally funded program. The FCA applies to billing and claims sent from the Medical System to any government payor program, including Medicare and Medicaid.

- B. It is the policy of the Medical System that any employee, contractor or agent of the Medical System who knowingly and intentionally submits a false claim or fails to pay or repay amounts owed to the federal government will be reported to the necessary authorities. The FCA imposes civil penalties on individuals and companies who knowingly submit or cause to be submitted a false claim payable by the federal government (e.g., a federally funded program), make a false record or statement material to such a claim, retain funds owed to the federal government or otherwise conspire to defraud the government in order to receive or retain payment.

Any person or company determined to have violated the FCA may be fined between \$5,500.00 and \$11,000.00 for each such claim submitted, regardless of the size of the false claim, plus up to three times the amount of damages sustained by the federal government.

- C. The FCA also protects individuals who report suspected fraud. The Medical System prohibits retaliation and will take no adverse action against persons for making such reports in good faith (“whistleblowers”), even if the report turns out not to be correct. Any person who lawfully reports information about actual or potential violations of the FCA, may not be retaliated against, demoted, suspended, threatened, or harassed by the Medical System for making such a report. The FCA also protects individuals who assist in an investigation, provide testimony, or participate in the government’s handling of a false claim. Any employee, contractor, or agent who believes that he or she has been subjected to retaliatory conduct for reporting a suspected violation of the FCA or for refusing to engage in an activity that would be a violation of the FCA should report such activity to his or her supervisor, any member of senior management, the Compliance Office (410-328-3848), or the Compliance Hotline at 1-877-300-DUTY (3889) or www.reportit.net.
- D. The FCA provisions are generally enforced by the U.S. Department of Justice. The FCA provides that an individual may initiate a formal claim if he or she is the “original source” of the information. This means that

the person bringing the claim must have direct and independent knowledge of the alleged fraud. If any funds are recovered, a portion of the funds may be paid to the person who initiated the formal claim, at the discretion of a federal court.

If a person wishes to file a claim regarding fraud or suspected fraud related to a healthcare payment directly with the government, he or she must first present a formal complaint, along with all material evidence relating to the alleged fraud, to the authorities at the U.S. Department of Justice. The authorities have sixty (60) days to investigate, during which time the complaint is kept confidential. Upon completion of the investigation, the government will decide either to pursue the case on its own or decline to proceed with the case. If the federal government declines the case, the individual may still proceed with the case on his or her own, but without the government's assistance, and at his or her own expense.

A private legal action under the FCA must be brought within six (6) years from the date that the false claim was submitted to the government. A government initiated claim may be brought up to ten (10) years after the false claim, depending on the circumstances.

II. Federal Program Fraud Civil Remedies Act

Individuals or companies that commit fraud on the federal government, by false claim or statement, can be assessed monetary penalties in addition to the penalties of the FCA under the Program Fraud Civil Remedies Act (the "PFCRA"). Specifically, PFCRA penalties of \$5,000.00 per false claim or statement apply if an individual or company submits or causes to be submitted a claim to the federal government that: the person knows or has reason to know is false, fictitious or fraudulent; includes or is supported by written statements containing false, fictitious or fraudulent information; includes or is supported by written statements that omit a material fact, which causes the statements to be false, fictitious or fraudulent, and the person submitting the statement has a duty to include the omitted fact; or is for payment of property or services that were not provided as claimed.

III. Maryland Medicaid Fraud Law

- A. Maryland has enacted a law similar to the federal False Claims Act that provides for criminal and civil remedies for the submission of false and fraudulent claims to the Medicaid program. Under the Maryland Medicaid Fraud law, it is a crime for an individual to knowingly and willfully:
- Defraud or attempt to defraud the Medicaid program in connection with the delivery of or payment for a health care service; or

- Obtain or attempt to obtain by means of false representation anything of value in connection with the delivery of or payment for a health care service through the Medicaid Program.

False representations include knowingly and willfully:

- Concealing, falsifying or omitting a material fact;
- Making a materially false or fraudulent statement; or
- Using a document that contains a statement of material fact that the user knows to be false or fraudulent.

B. Remedies for violating the Maryland Medicaid Fraud law include imprisonment, fines and civil penalties of up to three times the amount of the overpayment.

C. Maryland law protects employees from retaliation if they, in good faith:

- Disclose or threaten to disclose to a supervisor or board any potential violation of state or federal law by the Medical System;
- Provide information or testify before any public body conducting an investigation, hearing or inquiry into any potential violation of state or federal law by the Medical System; or
- Object to or refuse to participate in any activity, policy or practice in violation of a law, rule or regulation.