

**Policies and Procedures: WVUPC Policy Pursuant to the
Requirements of the Deficit Reduction Act of 2005**

Section: Compliance
Chapter: Administration
**Policy: WVUPC Policy Pursuant to the Requirements of the Deficit
Reduction Act of 2005**

I. PURPOSE

To establish a policy which reiterates the commitment of West Virginia University Physicians of Charleston (“WVUPC”) to comply with the standards of conduct established by 1) the False Claims Act, 31 U.S.C. Sec. 3729, *et seq.*; 2) state Medicaid plan amendments promulgated to comply with Section 6032 (“*Employee Education About False Claims Recovery*”) of the Deficit Reduction Act of 2005 (“DRA”) and standards of conduct set forth in the WVUPC Corporate Compliance Plan and Code of Conduct.

The DRA requires that state Medicaid Plans be amended to require certain types of health care providers to establish written policies that address the following: 1) the federal False Claims Act (“FCA”); 2) state laws pertaining to civil or criminal penalties for false claims and statements; 3) the whistleblower protections provided under both federal and state laws and the role of these laws in preventing and detecting fraud, waste and abuse; 4) the administrative remedies found in the Program Fraud Civil Remedies Act; and 5) the provider’s policies and procedures for detecting and preventing fraud, waste and abuse. A summary of the relevant laws is attached to this Policy as Exhibit A.

Consistent with the obligations set forth in DRA, WVUPC shall make available to all faculty and staff either written or web-based materials regarding compliance with the FCA and other relevant false claims laws by including summaries substantially similar to that attached as Exhibit A in the following: 1) this Policy; 2) in any employee handbook(s) published for WVUPC employees; and 3) in compliance training provided to employees at the time of hire and annually thereafter.

II. APPLICABILITY

This policy applies to all WVUPC faculty and staff, including employees, officers and directors, and to third parties who provide healthcare related services on behalf of WVUPC.

III. Brief Statement of Policy

It is WVUPC policy to comply fully with all relevant federal and state laws and regulations, including but not limited to those laws and regulations pertaining to billing and coding practices. No WVUPC faculty, staff or independent contractor has the authority to direct, participate in, approve or tolerate any violation of the laws described in this Policy.

IV. PROCEDURE

1. Reporting of Compliance Concerns- Any WVUPC faculty or staff member who knows or reasonably believes that the corporation or any member of its faculty or staff may be involved in any activity prohibited by the FCA or other fraud and abuse laws is required to immediately report such belief using established WVUPC reporting procedures, including the reporting of the matter to the WVUPC Director of Corporate Compliance & Regulatory Affairs at (304) 347-1354, or by using the WVUPC Compliance Hotline (304) 556-3807 or toll free (800) 566-1483.
2. WVUPC will not take, or tolerate, any intimidation or retaliatory act directed against an individual who, in good faith, makes a report of practices reasonably believed to be a violation of this Policy.
3. WVUPC has established internal systems and controls to monitor its coding and billing practices on an ongoing basis to ensure compliance with the FCA and similar state laws.
4. The following WVUPC compliance documents and policies are related to and support this policy: 1) the WVUPC Compliance Plan; 2) the WVUPC Code of Conduct; 3) Policy B-1, Corporate Compliance Committee; 4) Policy B-7, Internal Audit Processes; 5) Policy B-12, Sanction Screening; 6) Policy B-14, Education and Certification; 7) Policy B-16, Compliance Hotline Operation.

V. Amendment or Termination of this Policy

This policy may be amended or terminated at any time.

VI. References

- Pub. L. No. 109-171, Sec. 6031, 120 Stat. 72, 70-72 (2006) amending 42 U.S.C. Sec. 1396(g)

EXHIBIT A

I. Federal Civil False Claims Act (“FCA”)

The 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 it suffers due to fraud. Since the FCA’s enactment, the government has recovered billions of dollars through litigation or settlement of allegations that corporations and individuals violated the statute and improperly obtained federal health care program funds. Congress and the government believe that the FCA is a very effective means to detect fraud, by: 1) encouraging individuals, often called “whistleblowers” or “relators,” to uncover and report fraud; and 2) to prevent fraud, by creating strong incentives for companies and individuals to be vigilant in their pursuit of compliance.

1. FCA Prohibitions

The federal civil False Claims Act prohibits 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 government for such a claim, or conspiring to get such a claim allowed or paid. Under the statute the terms “knowing” and “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. Thus, 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 Act, civil actions must be brought within six years of 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.

2. 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.

3. *Qui Tam* and Whistleblower Protection Provisions

The FCA authorizes the Attorney General to bring actions alleging violations of the statute for false or fraudulent claims submitted by individuals or companies that do

business with, or are reimbursed by, the United States. The statute also authorizes private citizens to file a lawsuit in the name of the United States in a lawsuit commonly known as a *qui tam* action, but the United States Supreme Court has held that the statute does not authorize individuals to sue the states or “arms of the state” in a federal *qui tam* action. A *qui tam* 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 whistleblower may pursue the action alone, but the government may still join at a later date if it demonstrates good cause for doing so. As an incentive to bring these cases, the Act provides that whistleblowers who file a *qui tam* action may receive a reward of 15-30% of the monies recovered for the government plus attorneys’ fees and costs. This award may be reduced if, for example, the court finds the whistleblower planned and initiated the violation. The FCA also provides that putative whistleblowers who prosecute clearly frivolous *qui tam* claims can be held liable to a defendant for its attorneys’ fees and costs.

Whistleblowers are also offered certain protections against retaliation for bringing an action under the Act. Employees who are discharged, demoted, harassed, or otherwise confront discrimination in furtherance of such an action or as a consequence of whistleblowing activity are entitled to all relief necessary to make the employee whole. Such relief may include reinstatement, double back pay, and compensation for any special damages including litigation costs and reasonable attorneys’ fees.

II. State False Claims Acts

Many states have enacted statutes like the federal FCA to provide civil remedies for the submission of false and fraudulent claims to state health care programs, including primarily Medicaid. Other states, including West Virginia, continue to deliberate enactment of similar provisions as well. Like the federal FCA, most state false claims acts include whistleblower provisions that allow enforcement of their provisions through *qui tam* actions, and protect whistleblowers from retaliation. Several state statutes, like the federal False Claims Act, impose criminal penalties for the submission of false claims to a state health care program. Although West Virginia does not currently have a state false claims act statute, West Virginia law does recognize a “public policy” exception to the at-will employment doctrine. This recognized exception to the at-will doctrine would offer legal protection to a “whistleblower” in the event of retaliatory termination of employment.

III. Program Fraud Civil Remedies Act

The Program Fraud Civil Remedies Act of 1986 (PFCRA)¹, provides for administrative remedies against persons who make, or cause to be made, a false claim or written statement to certain federal agencies, including the Department of Health and Human

Services. PFCRA was enacted as a means to address lower dollar frauds, and generally applies to claims of \$150,000 or less. PFCRA provides that any person who makes, presents, or submits, or causes to be made, presented or submitted a claim that the person knows or has reason to know is false, fictitious, or fraudulent is subject to civil money penalties of up to \$5,000 per false claim or statement and up to twice the amount claimed in lieu of damages. Violations are investigated by the Inspector General and enforcement actions must be approved by the Attorney General. PFCRA enforcement can begin with a hearing before an administrative law judge. Penalties may be recovered through a civil action brought by the Attorney General or through an administrative offset against “clean” claims. Because of the availability of other criminal, civil and administrative remedies, cases are not routinely prosecuted under PFCRA; however, the Department of Health and Human Services, Office of Inspector General has asserted its administrative authority under PFCRA in settlement agreements that resolve cases arising under the federal FCA or other federal fraud and abuse statutes.

IV. Policies and Procedures for Detecting and Preventing Fraud, Waste, and Abuse

West Virginia University Physicians of Charleston (“WVUPC”) is responsible for the proactive prevention of fraud and abuse through education and training of its employed faculty and staff, as well as its other “covered” and “relevant covered persons” as defined by the terms of a Corporate Integrity Agreement (CIA) we have with the federal government. Similarly, WVUPC faculty and staff always have a responsibility to report concerns about actual or potential wrong-doing and are not permitted to overlook such actual or potential wrong-doing. Thus, we have developed a voluntary Corporate Compliance Plan, a Code of Conduct, and several policies aimed at protecting fraud, waste, and abuse.

WVUPC is committed to providing an environment of honesty, integrity and trust. Whenever a WVUPC faculty or staff member has any question or concerns about the possible application of the above laws to any activities, s/he should consult with the departmental compliance officer or contact the WVUPC Compliance Hotline at either (304) 556-3807 or toll free at (800) 566-1483.

¹ 31 U.S.C. Secs. 3801-3812.