

FAITH REGIONAL HEALTH SERVICES CORPORATE COMPLIANCE POLICY AND PROCEDURE

False Claims Act Policy

Effective: 01/01/07
Reviewed: 02/01/07
Revised: 02/01/07

I. PURPOSE:

To ensure compliance with federal and state False Claims Acts.

II. SCOPE:

This policy applies to all employees, contractors and agents.

III. POLICY:

As required by 42 U.S.C. §1396(a)(68), it is the policy of Faith Regional Health Services “FRHS” to provide the following detailed information to all employees, contractors and agents about federal and state False Claims Acts and this organization’s policies and procedures to detect and protect fraud.

IV. PROCEDURE:

1. Federal False Claims Act

The federal False Claims Act, among other things, applies to the submission of claims by health care providers for payment by Medicare, Medicaid and other federal and state health care programs. The False Claims Act is the federal government’s primary civil remedy for improper or fraudulent claims. It applies to all federal programs.

2. Prohibitions of the Federal False Claims Act

The False Claims Act prohibits, among other things:

- (a) knowingly presenting or causing to be presented to the federal government a false or fraudulent claim for payment or approval;
- (b) Knowingly making or using, or causing to be made or used, a false record or statement in order to have a false or fraudulent claim paid or approved by the government;
- (c) Conspiring to defraud the government by getting a false or fraudulent claim allowed or paid; and
- (d) Knowingly making or using, or causing to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the government.

“Knowingly” means that a person, with respect to information: (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, and no proof of specific intent to defraud is required.

3. Enforcement

The United States Attorney General may bring civil actions for violations of the False Claims Act. As with most other civil actions, the government must establish its case by presenting a preponderance of the evidence rather than by meeting the higher burden of proof that applies in criminal cases.

The False Claims Act allows private individuals to bring “qui tam” actions for violations of the Act.

4. Protection for “Whistleblowers”

If any employee has knowledge or information that any such activity may have taken place, the employee should notify his or her supervisor or director or call the Compliance Hotline at (402)644-7658. Information may be reported to the Hotline anonymously. In addition, federal and state law and FRHS policy prohibit any retaliation or retribution against persons who report suspected violations of these laws to law enforcement officials or who file “whistleblower” lawsuits on behalf of the government. Anyone who believes that he or she has been subject to any such retribution or retaliation should also report this to the Compliance Hotline.

5. Program Fraud Civil Remedies Act of 1986

The Program Fraud Civil Remedies Act of 1986 (“PFCRA”) authorizes federal agencies such as the Department of Health and Human Services (“HHS”) to investigate and assess penalties for the submission of false claims to the agency.

The conduct prohibited by the PFCRA is similar to that prohibited by the False Claims Act. For example, a person may be liable under the PFCRA for making, presenting, or submitting, or causing to be made, presented, or submitted, a claim that the person knows or has reason to know:

- (a) is false, fictitious, or fraudulent;
- (b) includes or is supported by any written statement which asserts a material fact which is false, fictitious or fraudulent;
- (c) includes or is supported by any written statement that
 - (i) omits a material fact;
 - (ii) is false, fictitious, or fraudulent as a result of such omission; and
 - (iii) is a statement in which the person making, presenting or submitting such statement has a duty to include such material fact; or
- (d) is for payment for the provision of property or services which the persons has not provided as claimed.

If a government agency suspects that a false claim has been submitted, it can appoint an investigating official to review the matter. The investigating official may issue a subpoena to further the investigation, or may refer the matter to the Department of Justice for proceedings under the False Claims Act.

If, based on the investigating official's report, an agency concludes that further action is warranted, it may issue a complaint (following approval from the Department of Justice) regarding the false claim. A hearing would be held, following the detailed due process procedures set forth in the regulations implementing the PFCRA.

6. False Medicaid Claims Act

There is also liability under the State of Nebraska False Medicaid Claims Act for false or fraudulent claims with respect to Medicaid program expenditures, including:

- (a) Knowingly presents, or causes to be presented, to an officer or employee of the state, a false or fraudulent claim for payment or approval;
- (b) Knowingly makes or uses, or causes to be made or used, a false record or statement to obtain payment or approval by the state of a false or fraudulent claim;
- (c) Conspires to defraud the state by obtaining payment or approval by the state of a false or fraudulent claim;
- (d) Has possession, custody or control of property or money used, or that will be used, by the state and, intending to defraud the state or willfully conceal the property, delivers, or causes to be delivered, less property than the amount for which such person receives a certificate or receipt;
- (e) Buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the state knowing that such officer or employee may not lawfully set or pledge such property.

“Knowing” and “knowingly” means that a person, with respect to information: (a) has actual knowledge of such information; (b) acts in deliberate ignorance of the truth or falsity of such information; or (c) acts in reckless disregard of the truth or falsity of information.

Similar protections as are available under the False Claims Act for whistleblowers exist under the False Medicaid Claims Act.

7. Distribution

This policy and any amendments shall be provided to all employees in the normal course of providing policies. A copy of this policy shall also be distributed to contractors and agents of FRHS who act on behalf of FRHS to furnish, authorize or monitor Medicaid services, or who perform billing and coding functions. Contractors and agents must agree to act with honesty and integrity, and follow laws and regulations that apply to their work activities on behalf of FRHS.