

TO: CHS Contractors/Vendors
FROM: CHS Corporate Compliance Department
DATE: January 1, 2007
RE: Deficit Reduction Act Information and Policy

This information about healthcare fraud and abuse is being provided to fulfill the requirements of the Deficit Reduction Act, effective January 1, 2007.

Covenant Health System (CHS) has a Corporate Compliance Program to provide education and to prevent and detect conduct that may violate state or federal fraud and abuse laws. If you have any questions about the Compliance Program, its policies, or this information, you may contact the CHS Compliance Department (806)725-4574. CHS also has an anonymous hotline to report any concerns about fraud and abuse (877-808-8733).

FRAUD AND ABUSE REGULATIONS

Anyone associated with CHS must follow fraud and abuse laws. These laws prohibit anyone from knowingly and willfully offering, paying, soliciting or receiving any money, gifts, kick-backs, rebates or any other type of value, remuneration or services in return for the referral of patients or to induce the purchase, lease or ordering of any item, good or service for which payment may be made by the federal or state government.

Examples of fraud and abuse include:

- Payment of an incentive each time a patient is referred to a CHS ministry;
- Provision or receipt of free or significantly discounted billing, nursing care, rent or other staff services;
- Payment for services in excess of their fair market value; and
- Forgiveness of a debt absent a charitable or risk management purpose.

The following actions are prohibited by CHS:

- Billing for supplies or services not delivered or delivered in less than promised amounts.
- Misrepresenting or overcharging for products or services actually provided.
- Duplicate billing for services actually rendered.
- Falsely certifying that services were medically necessary or failure to perform a service.
- Falsely certifying that an individual meets the Medicare requirements for certain services.
- Seeking to increase reimbursement by improper billing procedures such as “upcoding” (changing a procedure code in order to obtain higher reimbursement for the procedure actually performed), or “unbundling” (dividing a procedure of service into two or more parts to obtain higher reimbursement).
- Offering to or transferring money, gifts, or other items of value to a private party in order to receive that party’s business.
- Accepting money, gifts, or other items of value from a private party.
- Accepting of overpayments from the government.

CHS ministries strive to maintain honest and accurate records in compliance with all state and federal False Claims Acts (FCA). In order to do this, ministry employees must be aware of the policies and

procedures concerning the provision of healthcare services, submitting accurate claims and the referring of patients. The FCA exists to fight fraud committed against the federal government.

Under the federal FCA, any entity or person who knowingly submits or causes a false claim to be submitted to the government may be liable for damages. Damages can consist of up to three times the payment that was made in error, plus additional penalties of \$5,500 to \$11,000 per false claim.

A person who possesses and comes forward with information regarding false claims is authorized to file a case in federal court and sue, on behalf of the government, those entities that engaged in the fraud. These are called “*qui tam*” suits. The person coming forward is called a “*relator/whistleblower*”. Once the suit is filed by the relator/whistleblower, the Department of Justice then decides on behalf of the government whether to join the relator/whistleblower in prosecuting these cases. If the case is successful, the relator may share in the recovery amount. The amount of the relator’s share in the recovery depends on multiple factors.

In addition, the FCA provides a remedy for relators who are discharged, demoted, suspended, or discriminated against by his or her employer in retaliation for filing an FCA case. In order to receive the benefits of the protections of the FCA, the courts generally require the following of the employee:

- The employee must have been engaged in an activity protected by the FCA in furtherance of a *qui tam* suit;
- The employer must have known of the employee’s protected activity; and
- The employer must have retaliated or discriminated against the employee because of those actions.

If a court determines that a relator was terminated or otherwise retaliated against for filing a *qui tam* lawsuit, the employee is entitled to reinstatement at the same level, two times the back pay owed plus interest, litigation costs and reasonable attorneys’ fees and compensation for any “special damages” sustained as a result of the discrimination.

Texas and New Mexico have statutes similar to the federal FCA which are applicable to CHS ministries and those associated with any CHS ministry.

In addition to similar federal protections, remedies for violations of the Texas equivalent of the FCA include restitution, fines of \$1,000 to \$10,000 for each unlawful act, and two times the value of the false claim. Depending upon the value of the payment made in violation of the Texas False Claims Act,, criminal penalties can range from a misdemeanor to a felony in the first degree when amounts of \$200,000 or more are involved. The Texas equivalent of the FCA does not appear to contain “whistleblower” protections such as those offered by the federal FCA, but there are certain public policy exceptions to termination at will employment recognized in case law which can add a measure of protection.

In addition to similar provisions similar in the federal FCA, the New Mexico equivalent of the FCA provides for penalties of triple the damages resulting from any false claims submitted, in addition to other civil penalties. New Mexico offers “whistleblower” protection similar to the federal FCA, but does not contain a provision for recovery of punitive damages. The New Mexico equivalent of the FCA does not contain specific criminal sanctions in addition to the civil penalties it provides, but does appear to contemplate the possibility of criminal charges based on other theories arising out of the false claim.

Thank you for taking the time to review this important information and for your commitment to staying informed of regulatory changes. We appreciate your support of the Covenant Compliance Program - it's the right thing to do!! Please contact us if you have any questions or concerns.



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DEPARTMENT: General Counsel/Compliance
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REVIEWED BY: CHS Compliance Committee

FALSE CLAIMS ACT INFORMATION

1.0 PURPOSE

The federal False Claims Act exists to fight fraud, or false claims, against the federal government involving any federally funded contract or program, with the exception of tax fraud. Pursuant to Section 6032 of the Federal Deficit Reduction Act of 2005, organizations that make or receive annual Medicaid payments of \$5 million or more are required to provide to employees, agents and contractors detailed information about the False Claims Act and any state laws that pertain to civil or criminal penalties under such laws, including the role of such laws in preventing and detecting fraud, waste and abuse in federal health care programs.

2.0 SCOPE

This policy shall be available and apply to all employees, agents, and contractors of SJHS/CHS.

3.0 POLICY

Detailed information regarding the federal False Claims Act and applicable state false claims acts will be distributed to employees, contractors and agents through this policy and through the SJHS/CHS Corporate Responsibility Program handbook pursuant to the applicable provisions of the Deficit Reduction Act of 2005. Specific information provided consists of the following:

Definition of a "False Claim"

The federal government defines (in part) a false claim as knowingly and willfully offering, paying, soliciting or receiving any money, gifts, kick-backs, rebates or any other type of value, remuneration or services in return for the referral of patients or to induce the purchase, lease or ordering of any item, good or service for which payment may be made by the federal or state government.

Examples of fraud and abuse include:

- Payment of an incentive each time a patient is referred to a St. Joseph Health System (SJHS) ministry;
- Provision or receipt of free or significantly discounted billing, nursing care, rent or other staff services;
- Payment for services in excess of their fair market value; and
- Forgiveness of a debt absent a charitable or risk management purpose.
- Billing for supplies or services not delivered or delivered in less than promised amounts.
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- Accepting money, gifts, or other items of value from a private party.
- Accepting of overpayments from the government.

Damages and Penalties

Under the federal False Claims Act (FCA), any entity or person who knowingly submits or causes a false claim to be submitted to the government may be liable for damages. Damages can consist of up to three times the payment that was made in error, plus additional penalties of \$5,500 to \$11,000 per false claim.

Qui Tam “Whistle-blower” Provisions and Rights of Employees (Agents and Contractors)

A person who possesses and comes forward with information regarding false claims is authorized to file a case in federal court and sue, on behalf of the government, those entities that engaged in the fraud. These are called “*qui tam*” suits. The person coming forward is called a “*relator/whistleblower*”. Once the suit is filed by the relator/whistleblower, the Department of Justice then decides on behalf of the government whether to join the relator/whistleblower in prosecuting these cases. If the case is successful, the relator may share in the recovery amount. The amount of the relator’s share in the recovery depends on multiple factors.

In addition, the FCA provides a remedy for relators who are discharged, demoted, suspended, or discriminated against by his or her employer in retaliation for filing an FCA case. In order to receive the benefits of the protections of the FCA, the courts generally require the following of the employee:

- The employee must have been engaged in an activity protected by the FCA in furtherance of a *qui tam* suit;
- The employer must have known of the employee’s protected activity, and
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If a court determines that a relator was terminated or otherwise retaliated against for filing a *qui tam* lawsuit, the employee is entitled to reinstatement at the same level, two times the back pay



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owed plus interest, litigation costs and reasonable attorneys' fees and compensation for any "special damages" sustained as a result of the discrimination.

Applicable State Law

Texas and New Mexico have statutes similar to the federal FCA which are applicable to SJHS ministries and those associated with any SJHS ministry.

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