

Policy Name: Federal and State False Claims Acts and Protections	
Originating Officer (Title), Council, or Committee: Texas Health Chief Compliance Officer	Effective Date: 03/02/2017
Approved By: System Leadership Council	Last Reviewed Date: 03/02/2017
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1.0 Scope:
1.1 Applicable Entities:

This policy applies to Texas Health Resources and its member entities and excludes the Texas Health joint venture entities.

1.2 Applicable Departments:

This policy applies to all departments.

2.0 Purpose:

- 2.1 To provide information on Federal and State False Claims Acts, consequences of noncompliance, whistleblower protections, the role of such laws in preventing and detecting fraud, waste and abuse in federal and state healthcare programs and to establish Texas Health Resources' (Texas Health) commitment to practices that do not violate the Federal or State False Claims Acts.

3.0 Policy Statement(s):

- 3.1 It is the policy of Texas Health to conduct activities in a manner that does not violate Federal or State False Claims Acts (Acts) and to provide employees, contractors and agents with detailed information designed to prevent and detect fraud, waste and abuse in accordance with these Acts and as required by the Deficit Reduction Act.

4.0 Policy Guidance:
4.1 Federal and State False Claims Act (Acts) and Submission of Claims

- 4.1.1 Texas Health is committed to compliance with all healthcare laws and regulations and employees are expected to carry out job responsibilities in a manner that does not violate regulatory requirements including Federal and State False Claims Acts.
- 4.1.2 All claims must be based upon true and accurate information. Documentation to support the information on the claim must be maintained and be available for review to fully support all claim information submitted to any federally funded program. Federal and State False Claims Acts provide a mechanism for government investigations and prosecution of individuals or companies that submit false or fraudulent claims.

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- 4.1.3 Employees must not knowingly submit, cause to be submitted, induce or plan to submit false or fraudulent claims for payment, reimbursement or approval of a government program. Employees involved in false or fraudulent claims will be subject to disciplinary action including involuntary termination, if warranted. False claims might include anything from documenting false items in the medical record to not coding appropriately or knowingly using the wrong code. It is crucial to understand rules and regulations before submitting a claim for reimbursement. Misrepresentation of a material fact concerning any of the following may result in penalties:
- a. The conditions or operation of a facility in order that the facility may qualify for certification or recertification required by the program.
 - b. Information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the program.
- 4.1.4 Employees must not knowingly solicit, receive, offer or pay (directly or indirectly) any remuneration, including any kickback, bribe, rebate, or inducement, in cash or in kind for:
- a. Referring an individual to any item or service for which payment may be made, in whole or in part under the medical assistance program. Employees must not induce a person to make the referral on his/her behalf.
 - b. Purchasing, leasing or ordering, or arranging for or recommending the purchasing, leasing or ordering of, any good, facility, service or item for which payment may be made in whole or in part under the medical assistance program. Employees must not induce a person to perform these tasks on his/her behalf.
- 4.1.5 Investigations may sometimes be initiated as the result of a Whistleblower allegation that an individual or company has submitted false or misleading information to obtain payment or reimbursement. Compensation is sometimes awarded to whistleblowers assisting the government in discovering and prosecuting fraudulent claims and the compensation may be based upon a percentage of the amount recovered by the government program.
- a. Whistleblowers may remain a party to the action if the Government decides to pursue prosecution.
 - b. Whistleblowers have the right to pursue the action on his or her own if the government elects not to prosecute.

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4.2 Consequences of Non-Compliance: Fines and Penalties

- 4.2.1 Various fines may be imposed on individuals or companies who violate Federal or State False Claims Acts. Penalties may be imposed singly or in combination to prevent future government program violations and/or to verify compliance with government program requirements and include:
- a. Federal fines not less than \$10,957 and not more than \$21,916 may apply for each violation (adjusted for inflation annually).
 - b. State fines not less than \$5,500 or more than \$15,000 may apply for each injury related violation. An injury related violation may occur if the case involves a quality of care issue.
 - c. State fines not less than \$1,000 or more than \$11,000 may apply for each non-injury related violation.
- 4.2.2 Other monetary penalties
- a. Federal penalties of up to three (3) times the amount fraudulently reimbursed to the individual or company may apply plus costs incurred by the government.
 - b. State penalties of up to two times the amount fraudulently reimbursed to the individual or company may apply.
 - c. Restitution of government funds received by the individual or company from submission of the false claims may be required.
- 4.2.3 Criminal penalties may be imposed including prison or probation. The type of criminal offense (misdemeanor or felony) is based on the facts and circumstances of the case.
- 4.2.4 The provider's agreement, contract, license, permit or certification permitting reimbursement from a government funded health care program may be revoked.
- 4.2.5 The provider's professional licensure under applicable licensing law or rules may be suspended, revoked, forfeited or terminated.
- 4.2.6 The government may recover fees, expenses and costs (such as court costs, attorney's fees, witness fees and deposition fees) reasonably incurred in conducting the investigation.
- 4.2.7 The government may obtain a restraining order to immediately stop an activity.

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4.2.8 Reimbursement penalties may be imposed including payments held of future claims submitted for reimbursement, restricted reimbursement or exclusion from participating in the governmental program.

4.2.9 Required attendance at informal or formal education or corrective action meetings.

4.2.10 Claim reviews may occur which might include prior authorization of selected services, prepayment or post payment reviews, submission of additional documentation or justification not normally required.

4.2.11 Referral of the provider for additional review or investigation to others such as peer review, state licensing board, Department of Health and Human Services, fraud investigation, criminal or civil prosecution, collection agency or credit bureaus.

4.3 Protections

4.3.1 Texas Health will not discharge, demote, suspend, threaten, harass or discriminate in other ways against employees, contractors or agents for their involvement in or furtherance of a government action.

4.3.2 Employees, agents or contractors may notify the government if they have actual knowledge of false claims activity. The government will determine if the allegation has merit.

4.4 Employee, Contractor and Agent Responsibilities

4.4.1 Employees, contractors and agents are expected to stay informed of laws and regulations that impact job responsibilities/activities. Ignorance or disregard of a regulatory requirement is not an excuse if the government determines that the employee, contractor, agent or company "knew or should have known" that a violation occurred. Likewise, the government might conclude that the individual or company acted in "reckless disregard" of the requirement. For example, if a regulatory requirement has been published by an agency and the government believes that the individual or company "should have known" about the requirement, the government may allege that the False Claims Act has been violated.

4.4.2 Employees, contractors and agents are expected to ask questions and express concerns about actual or suspected misconduct. The following actions should be taken regarding any question:

- a. Ask and keep asking until you get an answer that makes sense.

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- b. Discuss the question or concern with your supervisor or another member of management. Give your supervisor a chance to resolve the problem.
- c. Contact the Texas Health Chief Compliance Officer directly if your supervisor is unable to find the answer. If you are uncomfortable discussing the issue directly, call the Texas Health Compliance Hotline at 1-800-381-4728. Callers may remain anonymous if desired.
- d. All questions or concerns will be thoroughly researched and resolved with appropriate corrective action, if warranted. Additional information regarding this process is available in the Texas Health Internal Reporting and Investigation Policy.

4.5 Education and Training

- 4.5.1 Texas Health Business Ethics and Compliance policies include provisions designed to prevent and detect fraud, waste and abuse. These policies are updated periodically as needed and are made available to all employees, contractors and agents. All Texas Health policies are posted on the Texas Health intranet and employees, contractors and agent should become familiar with these policies.
- 4.5.2 The Texas Health Code of Business Ethics is a handbook containing information regarding the False Claims Act, as well as other business ethics and compliance topics. This handbook is posted on both the Texas Health intranet and an external website. Employees, contractors and agents should become familiar with the handbook.
- 4.5.3 Texas Health new employee business ethics and compliance training will include mandatory information regarding the False Claims Acts and the provisions of this policy.
- 4.5.4 Texas Health will make materials available to contractors and agents regarding Texas Health's commitment to business ethics and compliance including a commitment to practices that do not violate Federal or State False Claims Acts.

5.0 **Definitions:**

- 5.1 Claim – A document such as a healthcare claim or cost report containing information used to request funds or reimbursement from a government funded program.

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- 5.2 Federal and State False Claims Acts (Acts) – Federal and State statutes designed to ensure federal and state healthcare funds are used appropriately and that impose severe penalties on individuals or companies that knowingly submit a false or fraudulent claim to the federal or state governments for payment or reimbursement.
- 5.3 Knowingly – Doing something when the person has actual knowledge of information; but acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required for something to be considered done knowingly.
- 5.4 Provider – A person who participates in or has applied to participate in a government funded healthcare program as a supplier of a product or service.
- 5.5 Texas Health Business Ethics and Compliance Program – A program consisting of policies, procedures, guidelines and personnel that establish oversight, education, reporting mechanisms and monitoring for compliance with laws and regulations governing Texas Health operations. The program includes functions to prevent and detect violations of federal, state and local laws while fostering an environment in which Texas Health employees, independent contractors and agents are encouraged to report any concern or question regarding laws and regulations.
- 5.6 Whistleblower – An individual or company who brings an allegation that a government funded program has been the victim of false or fraudulent claims.

6.0 Responsible Parties:

- 6.1 Texas Health Chief Compliance Officer
6.1.1 Delegated authority by the Texas Health board of Trustees for the day-to-day operation of the Texas Health Business Ethics and Compliance Program.

7.0 External References:

- 7.1 Administrative Remedies (Chapter 38 of Title 31, U.S.C.).
- 7.2 Bipartisan Balanced Budget Act of 2015.
- 7.3 Federal False Claims Act (31 U.S.C 3729-3733 and Chapter 38) – See Attachment A.
- 7.4 Fraud Enforcement and Recovery Act of 2009 (FERA). Section 4 “Clarifications to the False Claims Act to Reflect the Original Intent of the Law”.

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7.5 Texas Law:

7.5.1 Texas Administrative Code. Title 1, Part 15, Chapter 371, Subchapter G

7.5.2 Texas Human Resources Code. Chapter 36

7.5.3 Texas Penal Code. Section 35A.02

8.0 Related Documentation and/or Attachments:

8.1 [Business Ethics and Compliance - Education and Training - THR System Policy](#)

8.2 [Business Ethics and Compliance Program - THR System Policy](#)

8.3 [Business Ethics and Compliance Program Auditing and Monitoring - THR System Policy](#)

8.4 Code of Business Ethics, handbook

8.5 [Cooperation with Search Warrants Subpoenas and Governmental Investigations - THR System Policy](#)

8.6 [Internal Reporting and Investigation - THR System Policy](#)

8.7 [Non-Retaliation - Good Faith Reports of Suspected Misconduct - THR System Policy](#)

8.8 [Prohibition Against Doing Business - THR System Policy](#)

8.9 [Refund of Overpayments to Federal Healthcare Program Reimbursement and Voluntary Disclosure - THR System Policy](#)

8.10 Reimbursement and Voluntary Disclosure

8.11 Responding to Potential Financial Fraud or Identity Theft

9.0 Required Statements:

Not Applicable

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Attachment A

The Federal False Claims Act ("FCA") provides, in pertinent part, that:

“(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; “(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; “(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);...or “(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than \$10,957 and not more than \$21,916, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410), plus 3 times the amount of damages which the Government sustains because of the act of that person. . . .

(b) For purposes of this section, the terms "knowing" and "knowingly" mean 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.

31 U.S.C. § 3729. While the False Claims Act imposes liability only when the claimant acts “knowingly,” it does not require that the person submitting the claim have actual knowledge that the claim is false. A person who acts in reckless disregard or in deliberate ignorance of the truth or falsity of the information, also can be found liable under the Act. 31 U.S.C. 3729(b).

In sum, the False Claims Act imposes liability on any person who submits a claim to the federal government that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The False Claims Act also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. An example of this may include a government contractor who submits records that he knows (or should know) is false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to which he may not be entitled, and then uses false statements or records in order to retain the

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money. An example of this so-called “reverse false claim” may include a hospital who obtains interim payments from Medicare throughout the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare program.

In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States. 31 U.S.C. 3730 (b). These private parties, known as “*qui tam* relators,” may share in a percentage of the proceeds from an FCA action or settlement.

Section 3730(d)(1) of the FCA provides, with some exceptions, that a *qui tam* relator, when the Government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(d)(2) provides that the relator shall receive an amount that the court decides is reasonable and shall be not less than 25 percent and not more than 30 percent.

The FCA provides protection to *qui tam* relators who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. 31 U.S.C. 3730(h). Remedies include reinstatement with comparable seniority as the *qui tam* relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees.