

False Claims Act

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Policy: The purpose of this policy is to inform employees, volunteers, contractors, and agents of Children's Hospitals and Clinics of MN (Children's) of the federal and state False Claims Acts and the role of those laws in preventing and detecting fraud in federal and state health care programs.

Key Words: Fraud; abuse; compliance; False Claims Act

Definition(s):

Abuse: The intentional, wrongful, or improper use of Children's or governmental resources that causes the loss or misuse of assets. Abusive practices are inconsistent with sound fiscal, business, or health care practices. Abuse results in unnecessary costs, or in reimbursement for services medically unnecessary, or that fail to meet professionally recognized standards for health care. Abuse may entail a person or corporation exploiting a situation, which then results in that person or corporation receiving a personal advantage of some type, including a financial advantage.

Fraud: Fraud is an intentional deception or misrepresentation by a person or corporation, with the knowledge that the deception could result in an unauthorized benefit to that person or to another. Fraud occurs when someone uses deception to get something that does not belong to him or her or when a claim is filed with the government before confirming that it is correct. It includes any act that constitutes fraud under applicable federal or state law.

Knowingly: The term "knowingly" is defined to mean that a person, with respect to information:

- Has actual knowledge of falsity of information in the claims;
- Acts in deliberate ignorance of the truth or falsity of information in a claim; or
- Acts in reckless disregard of the truth or falsity of the information in a claim.

The term "knowingly" does not require that the individual had any specific intent to defraud the government.

Whistleblower: A general term used to refer to anyone who calls attention to violations of any law by his or her employer. Because the government wants to encourage employees to

come forward with this information, it has created protections for whistleblowers that are designed to prevent retaliation against them by their employers.

Procedure:

False Claims Acts: The purpose of the federal and state False Claims Acts is to combat fraud and abuse with regard to federal and state health care programs. The False Claims Acts do this by making it possible for the federal and state governments to bring legal action against health care providers who submit false claims. The False Claims Acts also permit lawsuits brought by individuals, typically employees or former employees, who have knowledge of fraudulent activities. These individuals are called whistleblowers.

Under the False Claims Acts, any individual or organization that knowingly submits a false or fraudulent claim for payment for services (e.g. health care services) pursuant to health care program funded by the federal government (e.g. Medicare), state government (e.g. Medicaid), or a political subdivision may be liable for significant fines and penalties. Under the statute, the federal government, state government, or political subdivision can assess a fine between \$5,500 and \$11,000 **per claim** *plus* up to three times the total amount of damage sustained by the government depending on the circumstances (e.g. the organization did not properly disclose known violations or did not cooperate with the investigation).

- Knowledge Requirement:**
1. Under the False Claims Acts, “knowing,” “knowingly” or “knowledge” means that the person or organization:
 - Has actual knowledge;
 - 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.
 2. As it applies to Children’s, an organization can be held liable
 - Under the False Claims Act if it knew, should have known, or disregarded information that indicated that a claim for payment of health care services to the federal government was false. Examples include, but are not limited to:
 - Submitting a claim for services that were not provided;
 - Submitting a claim for services that were not “medically necessary” under federal billing rules; and
 - Coding a service or a patient’s diagnosis as “more complex” than documentation supports in order to receive higher reimbursement.
 3. Mistakes – which all individuals and organizations make – generally do not give rise to a False Claims violation, but must be reported to the compliance department in order to be corrected in a timely manner

Whistleblower Protection: The whistleblower provisions under the False Claims Act define the requirements that must be met in order to bring forth a private individual lawsuit. The federal or state government may choose to intervene and direct the lawsuit if it believes there is merit to the case. However, the whistleblower and his/her attorney may proceed with the lawsuit on their own even if the government does not join in the lawsuit. If the lawsuit is successful, whistleblowers may share in a percentage of the total amount of the fines.

The False Claims Act provides statutory protection to employees from retaliation (e.g. being fired, demoted, harassed, or threatened) by an employer because of an employee’s participation in the case.

- Prevention and Detection of Fraud, Abuse and False Claims:** Children’s strives, and expects, that its employees will do everything they can to prevent and detect false claims and potentially fraudulent behavior. Children’s does so by the following:
- Providing staff training
 - Investigating reports of potential violations from staff
 - Investigating complaints regarding potential violations from patients, family members, friends and visitors
 - Internal departmental monitoring process
 - Performing internal audits
 - Performing internal risk assessments
 - Corresponding with state and/or federal agencies regarding potential concerns.

Children’s is committed to providing services with integrity. If you know or suspect any misleading or fraudulent business or billing practices, you are expected to notify:

- Your immediate supervisor/manager, and
- The director of corporate compliance, either directly or by calling the confidential, toll free Hotline, which is answered 24 hours/day, 365 days/year by dialing **1-866-225-3251**

Vendors or contractors of Children’s along with Children’s employees are expected to comply with all applicable laws, regulations, and standards. If they observe any noncompliant or inappropriate activity we expect that they will report it to the director of corporate compliance or the compliance hotline.

All employees are provided education on the False Claims Acts upon hire and periodically thereafter. Contractors are also provided education on the False Claims Acts if they are here over 30 days or work 40 hrs/wk.

Questions: If there are any questions or concerns about this policy, please contact your immediate manager, Children's Hospitals and Clinics’ compliance director (612) 813-7523 or call the compliance hotline at 1-866-225-3251.

References: 31 U.S.C. §§ 3729-3733
 Minnesota Rules 9505.0406, 9505.2160-9505.2245
 Minnesota Statutes Chapter 15C (2010)

Related Policy(s): 1400.00 Detecting, Reporting, and Preventing Fraud and Abuse
 1430.00 Corporate Compliance Audit

Review / Revision Dates: Revision 1: 1/7/09 new policy
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Stakeholders: Employees, contractors, volunteers

Approval Group(s)

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1	Leadership	01/07/09
2	Administrative Policy Committee	08/09/10
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