



Guideline #:	A-G-2.1
Subject:	False Claims Act
Approved:	
Date:	January 1, 2007
Revised:	

PURPOSE

To comply with certain requirements set forth in the Deficit Reduction Act of 2005 with regard to federal and state false claims laws.

Scope

All EMH Associates.

Policy

Ephraim McDowell Health shall ensure that all Associates, including Directors and Officers, and any contractors or agents are educated regarding the federal and state false claims statutes and the role of such laws in preventing and detecting fraud, waste and abuse in federal healthcare programs.

- A. False Claims Laws**—One of the primary purposes of false claims laws is to combat fraud and abuse in government healthcare programs. False claims laws do this by making it possible for the government to bring civil actions to recover damages and penalties when healthcare providers submit false claims. These laws often permit qui tam suits as well, which are lawsuits brought by lay people, typically employees or former employees of healthcare facilities that submit false claims.

There is a federal False Claims Act, and there are also Kentucky laws that address fraud and abuse in the Kentucky Medicaid program. Under the federal False Claims Act, any person or entity that knowingly submits a false or fraudulent claim for payment of United States Government funds is liable for significant penalties and fines. The fines include a penalty of up to three times the Government’s damages, civil penalties ranging from \$5,500 to \$11,000 per false claim, and the costs of the civil action against the entity that submitted the false claims. Generally, the federal False Claims Act applies to any federally funded program. The False Claims Act applies, for example, to claims submitted by healthcare providers to Medicare or Medicaid.

One of the unique aspects of the federal False Claims Act is the qui tam provision, commonly referred to as the “whistleblower” provision. This allows a private person with knowledge of a false claim to bring a civil action on behalf of the United States Government. The purpose of bringing the qui tam suit is to recover the funds paid by the Government as a result of the false claims. Sometimes the United States Government

decides to join the qui tam suit. If the suit is ultimately successful, the whistleblower who initially brought the suit may be awarded a percentage of the funds recovered. Because the Government assumes responsibility for all of the expenses associated with a suit when it joins a false claims action, the percentage is lower when the Government joins a qui tam claim.

However, regardless of whether the Government participates in the lawsuit, the court may reduce the whistleblower's share of the proceeds if the court finds that the whistleblower planned and initiated the false claims violation. Further, if the whistleblower is convicted of criminal conduct related to his role in the preparation or submission of the false claims, the whistleblower will be dismissed from the civil action without receiving any portion of the proceeds.

The federal False Claims Act also contains a provision that protects a whistleblower from retaliation by his employer. This applies to any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in his employment as a result of the employee's lawful acts in furtherance of a false claims action. The whistleblower may bring an action in the appropriate federal district court and is entitled to reinstatement with the same seniority status, two times the amount of back pay, interest on the back pay, and compensation for any special damages as a result of the discrimination, such as litigation costs and reasonable attorneys fees.

A similar federal law is the Program Fraud Civil Remedies Act of 1986 (the "PFCRA"). It provides administrative remedies for knowingly submitting false claims and statements. A false claim or statement includes submitting a claim or making a written statement that is for services that were not provided, or that asserts a material fact that is false, or that omits a material fact. A violation of the PFCRA results in a maximum civil penalty of \$5,000 per claim plus an assessment of up to twice the amount of each false or fraudulent claim.

The Commonwealth of Kentucky has not adopted any false claims acts or statutes that contain qui tam or whistleblower provisions similar to those found in the federal False Claims Act. It has, however, adopted a generally applicable Medicaid anti-fraud statute that makes it unlawful for a person to submit false and fraudulent claims to the Kentucky Medicaid program. The statute also makes it unlawful for any person to present false information regarding an institution or facility so that it may be licensed or recertified as a Medicaid provider. Violations of the statute are both civil and criminal offenses and are punishable by substantial fines and imprisonment.

B. Reporting Concerns Regarding Fraud, Abuse and False Claims—Ephraim McDowell Health takes issues regarding false claims and fraud and abuse seriously. Through its Corporate Compliance Program, Ephraim McDowell Health works to educate Associates to prevent fraud and abuse and to audit and monitor claims to detect any coding or billing errors.

Ephraim McDowell Health encourages all Associates, Directors, Officers, and contractors or agents of Ephraim McDowell Health to be aware of the laws regarding fraud and abuse and false claims and to identify and resolve any issues immediately. Issues are resolved fastest and most effectively when given prompt attention at the local level. Ephraim McDowell Health, therefore, encourages all Associates, Directors, Officers, and contractors or agents to report concerns to their immediate supervisor when appropriate. Associates do not have to follow any chain of command, however. If the supervisor is not deemed to be the appropriate contact or if the supervisor fails to respond quickly and appropriately to the concern, then the individual with the concern should be encouraged to report the concern to the Corporate Compliance Officer, Administration or another Department Director or to call Ephraim McDowell Health's Corporate Compliance Hotline (1-800-266-4121 x2402).

Associates, Directors, Officers, and any contractors or agents of Ephraim McDowell Health should be aware of our Code of Conduct and related Ephraim McDowell Health policies regarding detection and prevention of health care fraud and abuse.

References

KRS §§ 205.8451, .8463, .8465, & 8467; 31 U.S.C. §§ 3801-3812; 31 U.S.C. §§ 3729-3733; Deficit Reduction Act of 2005, Sections 6031, 6032.

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