

# OSF HEALTHCARE

## FALSE CLAIMS PREVENTION AND WHISTLEBLOWER PROTECTIONS

### POLICY: CC-109

It is the policy of OSF HealthCare (OSF) that false, inaccurate or improper claims will not be submitted to any payer. In the event that false, inaccurate or improper claims are nevertheless submitted to any payer, it is the policy of OSF that such payer be informed about such claims and appropriate refunds or adjustments to the payer be made. This policy is in effect for all OSF Facilities and Operating Divisions of the Corporation and all member managed limited liability companies in which the Corporation is the sole member.

All employees are to be provided with policy information about the federal False Claims Act, administrative remedies for false claims and statements established under federal law, any State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under all such laws, including the role of such laws in preventing and detecting fraud, waste, and abuse in Federal and State health care programs. When an employee reports a concern, OSF will not permit retaliation or any form of action adverse to the employee's interest.

### DEFINITIONS

**Knowing and knowingly** - means that a person, with respect to information – has actual knowledge of the information; 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. In demonstrating that a person has knowledge of the information, no proof of specific intent to defraud is required.

**Claim** - means any request or demand, whether under a contract or otherwise, for money or property, that is presented to an officer, employee or agent of the United States; or is made to a contractor, grantee, or other recipient if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government provides or has provided any portion of the money or property requested or demanded; or will reimburse such contractor, grantee or other recipient for any portion of the money or property which is requested or demanded.

**Obligation** – means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor or licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from retention of an overpayment.

**Material** – means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

## **STANDARD**

### ***The False Claims Act – A Federal Law That Protects Whistleblowers***

**The Law** - The federal False Claims Act makes it a crime for any person or organization to knowingly make a false record or file a false claim with the government for payment. Any of the following acts violates the statute:

- (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), (C), (D), (E), (F), or (G)
- (D) has possession, custody, or control of property or money used, or to be used, by the Government and, knowingly delivers, or causes to be delivered, less than all of that money or property;
- (E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- (F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; 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.

Under certain circumstances, an inaccurate Medicare, Medicaid, VA, Federal Employee Health Plan or Workers' Compensation claim could become a false claim. Examples of possible false claims include someone knowingly billing:

1. for services that were not provided;
2. for services that were not ordered by a physician;
3. when the coding does not accurately reflect the service furnished to the patient;

4. when there is inappropriate or untimely documentation by a physician or other professional prior to billing; or
5. for services that were provided at substandard quality. Substandard quality is defined as items or services provided to patients that fail to meet professionally recognized standards of health care.

**Penalties** – With the passage of the Patient Protection and Affordable Care act (the “health reform” law), health care providers are required to report and refund overpayments within sixty days of identifying overpayments, and the legislation treats overpayments that are not repaid within 60 days as false claims. Violations of the False Claims Act can result in civil penalties equal to three times the amount of the false claims plus an amount not less than \$5,500 and not more than \$11,000 per claim, plus three times the amount of damages which the government sustains because of the act of that person. Penalties may be reduced to not less than double the amount of the false claims if:

- the person or organization committing the violation furnishes all information known to such person about the violations to the Government within 30 days after the date on which the person first obtained the information;
  - the person fully cooperated with any government investigation of such violation; and
  - at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than two times the amount of damages which the Government sustains because of the act of that person.
- Private Suits -The False Claims Act authorizes private individuals (known as "Qui Tam relators" or "whistleblowers") to bring civil actions in the name of the United States against persons and organizations who violate the Act. Relators are given from 15% to 30% of the proceeds of the case, depending on the extent of the relator’s contribution and whether or not the government interceded in the case. Changes to the False Claims Act made by the “health care reform” legislation make it easier for “whistleblowers” to maintain lawsuits against healthcare providers. Relators will be considered an original source if they have voluntarily disclosed to the government the information on which allegations or transactions in a claim are based, or has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions. When a relator files a case, the government has 60 days to decide if it wants to take the case over. If the government declines to intercede, the relator may still choose to go forward.

The **Qui Tam** relator may be required to pay the attorneys' fees and expenses of the defendant if the government does not intervene and the court finds that the claim was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

**Whistleblower Protections** -The False Claims Act protects anyone who files a False Claims lawsuit from being fired, demoted, threatened or harassed by his or her employer for filing the suit (also reference OSF Corporate Human Resources Policy, HR-130, *Whistleblower Protection*). An employee who was harmed by his or her employer for filing a False Claims lawsuit may file a lawsuit against the employer in Federal Court. If the employer retaliated, the court can order the employer to re-hire the employee and to pay the employee twice the amount of back pay that is owed plus interest and attorney's fees. OSF provides communication channels for addressing concerns of our employees (reference OSF Corporate Compliance Policy, CC-107, *Integrity Line*).

*The Illinois Whistleblower Reward and Protection Act*

The Illinois Whistleblower Reward and Protection Act closely resembles the federal False Claims Act. It applies to false claims, records or statements submitted to an officer or employee of the State as well as other unlawful acts. The State Police will investigate false claims, and the Attorney General may bring civil actions against persons who violate the Act. Penalties for submitting false claims, records or statements are substantially the same as federal penalties under the False Claims Act.

Private actions may be brought by Qui Tam plaintiffs in much the same manner as under the federal False Claims Act, except that notice is given to the Attorney General rather than the applicable federal agency. Individuals who have direct and independent knowledge of the information on which a civil action complaint is based and voluntarily provide that information to the State before filing an action may receive financial awards similar to those under the federal False Claims Act ranging from 15% to 30% of the amount recovered.

The Qui Tam plaintiff may be required to pay the attorneys' fees and expenses of the defendant if the Attorney General does not intervene and the court finds that the claim was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

State whistleblowers are protected from employer retaliation in much the same way as federal whistleblowers. They may not be discharged, demoted, suspended, threatened, harassed, or in any manner discriminated against in the terms and conditions of employment because of lawful acts done in furtherance of a legal action under the Act.

Michigan Medicaid False Claim Act

The Michigan Medicaid False Claim Act is substantially similar to the Illinois Act and provides for all of the same types of violations, private actions, monetary awards, and protections against employer retaliation.

If a private person proceeds with a civil action after the Michigan Attorney General has declined to intervene and the court finds that the claim is frivolous, the court shall award the provider actual and reasonable attorney fees and expenses and, in addition, impose a civil fine of not more than \$10,000 upon the person who filed the civil action.

**CITATIONS**

Federal False Claims Act – 31 U.S.C. §§3729 – 3733; Administrative Remedies For False Claims and Statements – 31 U.S.C. §§3801 – 3812; Illinois Whistleblower Reward and Protection Act – 740 ILCS 175/1 et. seq.; Michigan Medicaid False Claim Act – MCL 400.611; FERA - Fraud Enforcement and Recovery Act of 2009; Patient Protection and Affordable Care Act (PPACA), Pub. L. 111–148, 124 Stat. 119

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