

**DETECTION AND PREVENTION OF FRAUD, WASTE AND ABUSE
The Federal Deficit Reduction Act of 2005:**

Effective Date: December 11, 2007

Policy Statement

This policy outlines the University's protocols for preventing and detecting any clinical billing fraud, waste or abuse in its organization, consistent with the requirements of the Federal Deficit Reduction Act of 2005.

Reasons(s) for the Policy

Columbia University is committed to complying with the requirements of Federal and State law, including Section 6302 of the Federal Deficit Reduction Act of 2005, and to preventing and detecting any fraud, waste, or abuse in its organization in connection with government health care programs. Columbia University maintains a compliance program and strives to educate its employees, contractors and agents on fraud and abuse laws, including the importance of submitting accurate claims and reports to the Federal and State governments.

Primary Guidance to Which This Policy Responds

There is not a primary policy to which this policy responds. It is consistent with applicable law and best practices.

Responsible University Office & Officer

The Columbia University Medical Center Office for Billing Compliance is responsible for the maintenance of this policy, and for responding to questions posed regarding this policy. The CUMC Chief Compliance Officer is the Responsible Officer.

Revision History

This policy was established in November 2007.

Who Is Governed By This Policy

All staff and faculty at Columbia University Medical Center -- or anyone working on behalf of Columbia University -- involved with the submission of accurate claims and reports to the Federal and State healthcare programs are governed by this policy.

Who Should Know This Policy

All staff and faculty at Columbia University Medical Center, as well as any business partners, agents and vendors, involved with the submission of claims and reports to the Federal and State governments.

Exclusions & Special Situations

None.

Policy Text

Columbia University prohibits the knowing submission of a false or fraudulent claim for payment from a Federal or State funded health care program. Such a submission is a violation of Federal and State law and can result in significant administrative and civil penalties under the Federal False Claims Act, a Federal statute that allows private persons to help reduce fraud against the United States Government.

To assist Columbia University in meeting its legal and ethical obligations, any employee who reasonably suspects or is aware of the preparation or submission of a false claim or report or any other potential fraud, waste, or abuse related to a Federal or State funded health care program is required to report such information promptly. Reports may be directed to:

- (i) the employee's supervisor or vendor's business partner;
- (ii) Chief Compliance Officer;
- (iii) **Compliance Hotline at 866-627-3768 or 212-305-7739** (physician billing); or
- (iv) online at <https://www.submitreport.com/columbiauniversity.jsp?langRequested=0> .

Any employee or vendor of Columbia University who reports such information will have the right and opportunity to do so anonymously and will be protected against retaliation for coming forward with such information both under Columbia University's internal compliance policies and procedures and Federal and State law. However, Columbia University retains the right to take appropriate action against any such individual(s) who has/have participated in a violation of Federal or State law or University policy.

As an organization, Columbia University commits itself to investigate any suspicions of fraud, waste or abuse swiftly and thoroughly and requires all employees to assist in such investigations. If an employee believes that his/her Supervisor is not responding to his or her report within a reasonable period of time, the employee shall bring these concerns to the Chief Compliance Officer, or call the **Compliance Hotline at 866-627-3768 or 212-305-7739** (physician billing). Failure to report and disclose or assist in an investigation of fraud and abuse is a breach of the employee's obligations to Columbia University and may result in disciplinary action.

A Summary of Federal and State Laws regarding Fraud and Abuse follows this policy. Notably, certain laws enable individuals to bring their concerns of fraud and abuse directly to the government. Columbia University urges all employees and business partners to bring their concerns to the University first so that it can redress and correct any potentially fraudulent activity. Further information relating to Columbia University's policies for detecting and preventing fraud are available online at:

Columbia University Administrative Policy Library:
http://www.columbia.edu/cu/administration/policylibrary/az_index/index.html#C

Physician billing at Columbia University Medical Center:
<http://www.cumc.columbia.edu/dept/compliance/index.html>

The physician billing compliance manual is also available online
http://vesta.cumc.columbia.edu/compliance/Compliance_Manual_3_1_07.pdf

Federal and State Statutes

I. Federal Civil False Claims Act (“FCA”)

The FCA was originally enacted in 1863 after a series of Congressional inquiries disclosed instances of fraud among defense contractors during the Civil War. The current FCA, amended in 1986, is designed to enhance the government’s ability to identify and recover losses it suffers due to fraud. Since the FCA’s enactment, the government has recovered billions of dollars through litigation or settlement of allegations that corporations and individuals violated the statute and improperly obtained federal health care program funds. Congress and the government believe that the FCA is a very effective means to detect fraud, by encouraging individuals, often called “whistleblowers” or “relators,” to uncover and report fraud, and to prevent fraud, by creating strong incentives for companies and individuals to be vigilant in their pursuit of compliance and avoid liability for multiple damages and penalties under the statute.

1. FCA Prohibitions

The federal civil FCA prohibits any individual or company from knowingly submitting false or fraudulent claims, causing such claims to be submitted, making a false record or statement in order to secure payment from the federal government for such a claim, or conspiring to get such a claim allowed or paid. Under the statute the terms “knowing” and “knowingly” mean that a person (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. Thus, specific intent to defraud is not required for there to be a violation of the law. Examples of the types of activity prohibited by the FCA include billing for services that were not actually rendered and upcoding, the practice of billing for a more highly reimbursed service or product than the one provided.

The FCA is enforced by the filing and prosecution of a civil complaint. Under the Act, civil actions must be brought within six years of a violation, or, if brought by the government, within three years of the date when material facts are known or should have been known to the government, but in no event more than ten years after the date on which the violation was committed.

2. Penalties and Damages

Individuals or companies found to have violated the statute are liable for a civil penalty for each claim of not less than \$5,500 and not more than \$11,000, plus up to three times the amount of damages sustained by the federal government.

3. Qui Tam and Whistleblower Protection Provisions

The FCA authorizes the Attorney General to bring actions alleging violations of the statute. The statute also authorizes private citizens to file a lawsuit in the name of the United States for false or fraudulent claims submitted by individuals or companies that do business with, or are reimbursed by, the United States. Commonly known as a *qui tam* action, a lawsuit brought under the FCA by a private citizen commences upon the filing of a civil complaint in federal court, under seal, and service of a disclosure of material evidence on the Attorney General. The government has sixty days to investigate the allegations in the complaint and decide whether it will join the action, in which case the complaint is unsealed, and the Department of Justice or a United States Attorney's Office takes the lead role in prosecuting the claim. If the government decides not to join, the whistleblower may pursue the action alone, but the government may still join at a later date if it demonstrates good cause for doing so. As an incentive to bring these cases, the Act provides that whistleblowers who file a *qui tam* action may receive a reward of 15-30% of the monies recovered for the government plus attorneys' fees and costs. This award may be reduced if, for example, the court finds the whistleblower planned and initiated the violation. The FCA also provides that putative whistleblowers who prosecute clearly frivolous *qui tam* claims can be held liable to a defendant for its attorneys' fees and costs.

Whistleblowers are also offered certain protections against retaliation for bringing an action under the Act. Employees who are discharged, demoted, harassed, or otherwise confront discrimination in furtherance of such an action or as a consequence of whistle-blowing activity are entitled to all relief necessary to make the employee whole. Such relief may include reinstatement, double back pay, and compensation for any special damages including litigation costs and reasonable attorneys' fees.

II. Program Fraud Civil Remedies Act

The Program Fraud Civil Remedies Act of 1986 (PFCRA),¹ provides for administrative remedies against persons who make, or cause to be made, a false claim or written statement to certain federal agencies, including the Department of Health and Human Services. PFCRA was enacted as a means to address lower dollar frauds, and generally applies to claims of \$150,000 or less. PFCRA provides that any person who makes, presents, or submits, or causes to be made, presented or submitted a claim that the person knows or has reason to know is false, fictitious, or fraudulent is subject to civil money penalties of up to \$5,000 per false claim or statement and up to twice the amount claimed in lieu of damages. Violations are investigated by the Inspector General and enforcement actions must be approved by the Attorney General. PFCRA enforcement can begin with a hearing before an administrative law judge. Penalties may be

¹ 31 U.S.C. §§ 3801 – 3812.

recovered through a civil action brought by the Attorney General or through an administrative offset against “clean” claims. Because of the availability of other criminal, civil and administrative remedies, cases are not routinely prosecuted under PFCRA; however, the OIG has asserted its administrative authority under PFCRA in settlement agreements that resolve cases arising under the federal FCA or other federal fraud and abuse statutes.

New York State Laws

III. State False Claims Acts

The New York State False Claims Act (NY SFCA) provides, in pertinent part, that:

Any person who:

- a. knowingly presents, or causes to be presented, to any employee, officer, or agent of the State or a local government 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 to get a false or fraudulent claim paid or approved by the State or a local government;
- c. conspires to defraud the State or a local government by getting a false or fraudulent claim allowed or paid; ...or
- d. knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State or a local government...

is liable (1) to the State of New York for a civil penalty of not less than six thousand dollars and not more than twelve thousand dollars, plus three times the amount of damages that the State sustains because of the act of that person; and (2) to any local government for three times the amount of damages sustained by such local government because of the act of that person. For purposes of this section, the terms “knowing” and “knowingly” mean that with respect to a claim, or information relating to a claim, a person

- a. has actual knowledge of such claim or information;
- b. acts in deliberate ignorance of the truth or falsity of such claim or information; or
- c. acts in reckless disregard of the truth or falsity of such a claim or information.

Proof of specific intent to defraud is not required, but acts occurring by mistake or due to merge negligence are not covered by this law.

Under the NY SFCA, a “claim” means any request or demand for money or property that is made to any employee, officer, or agent of the State or a local government. This includes requests or demands submitted to a contractor of the government and includes Medicaid claims, among other items.

The NY SFCA also provides that private parties may bring an action on behalf of the State or a local government. These private parties, known as “*qui tam* relators,” may share in a percentage of the proceeds from a NY SFCA action or settlement. The law provides, with some exceptions, that a *qui tam* relator shall be entitled to receive between 15–25% of the proceeds recovered if the State Attorney General or a local government converts the action into an enforcement action or intervenes in the *qui tam* lawsuit. The relator shall be entitled to receive between 25–30% of the proceeds recovered if the State or local government does not intervene or convert the action, and the action is successful.

The NY SFCA provides protection to an employee of any private or public employer who is discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against in the terms and conditions of employment by his or her employer because of lawful acts taken by the employee in furtherance of an action under the NY SFCA. Remedies for such discrimination include reinstatement, two times back pay, and compensation for any special damages sustained as a result of the discrimination.

Under New York Social Services Law §145-b, it is unlawful to knowingly make a false statement or representation, or to deliberately conceal any material fact, or engage in any other fraudulent scheme or device, to obtain or attempt to obtain payments under the New York State Medicaid program. For a violation of this law, the local Social services district or the State has a right to recover civil damages equal to three times the amount by which any figure is falsely overstated. In the case of non-monetary false statements, the local Social Service district or State may recover three times the damages (or \$5,000, whichever is greater) sustained by the government due to the violation.

The law also empowers the New York State Department of Health to impose a monetary penalty on any person who, among other actions, causes Medicaid payments to be made if the person knew or had reason to know that:

- the payment involved care, services, or supplies that were medically improper, unnecessary, or excessive;
- the care, services or supplies were not provided as claimed;
- the person who ordered or prescribed the improper, unnecessary, or excessive care, services, or supplies was suspended or excluded from the Medicaid program at the time the care, services, or supplies were furnished; or
- the services or supplies were not in fact provided.

The monetary penalty shall not exceed \$2,000 for each item or service in question, unless a penalty under the section has been imposed within the previous five years, in which case the penalty shall not exceed \$7500 per item or service.

Under New York Social Services Law §366-b (2), any person who, with intent to defraud, presents for allowance or payment any false or fraudulent claim for furnishing services or merchandise, or knowingly submits false information for the purpose of obtaining compensation greater than that to which s/he is legally entitled for furnishing services or merchandise shall be guilty of a class A misdemeanor. If such an act constitutes a violation of a provision of the penal

law of the state of New York, the person committing the act shall be punished in accordance with the penalties fixed by such law.

In addition, New York Penal Law §177 establishes the crime of Health Care Fraud. A person commits such a crime when, with the intent to defraud Medicaid (or other health plans, including non-governmental plans), s/he knowingly and willfully provides false information or omits material information for the purpose of requesting payment for a health care item or service and, as a result of the false information or omission, receives such a payment in an amount to which s/he is not entitled. Health Care Fraud is punished with fines and jail time based on the amount of payment inappropriately received due to the commission of the crime; the higher the payments in a one year period, the more severe the punishments, which currently range up to 25 years if more than \$1 million in improper payments are involved.

New York law also affords protections to employees who may notice and report inappropriate activities. Under New York Labor Law §740, an employer shall not take any retaliatory personnel action against an employee because the employee:

- discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud;
- provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or
- objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

To bring an action under this provision, the employee must first bring the alleged violation to the attention of the employer and give the employer a reasonable opportunity to correct the allegedly unlawful practice. The law allows employees who are the subject of a retaliatory action to bring a civil action in court and seek relief such as injunctive relief to restrain continued retaliation; reinstatement, back-pay and compensation of reasonable costs. The law also provides that employees who bring an action without basis in law or fact may be held liable to the employer for its attorney's fees and costs.

In addition, New York City has enacted the New York City False Claims Act, a statute that provides a civil remedy for, among other things, the presentment of false or fraudulent claims to New York City. The New York City False Claims Act includes whistleblower provisions that allow enforcement through *qui tam* actions, and protect whistleblowers from retaliation.

Contacts

Responsible Officer - Chief Compliance Officer:

Diane Yaeger, Associate Vice President (billing compliance) at 212-305-4794

Cross References to Related Policies

[will be provided upon completion of policy library]

Web Address for Policy

[will be provided upon completion of policy library]