

Issuing Department: Internal Audit, Compliance, and Enterprise Risk Management

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Preventing Fraud, Waste, and Abuse
Federal and State False Claims and False Statements

I. Summary of Policy

NYU Langone Health recognizes the seriousness of health care fraud, waste, and abuse and the importance of the federal and state authorities' efforts in identifying such instances. This Policy provides the NYU Langone Health Community with information relating to preventing and detecting any fraud, waste, or abuse, as it relates to federal and state health care programs.

II. Policy Purpose

The purpose of this Policy is to disseminate information about the following:

- x The Federal False Claims Act;
- x Federal administrative remedies for false claims and statements;
- x New York State laws pertaining to civil or criminal penalties for false statements; and
- x Whistleblower protections under such laws and regulations relating to preventing and detecting health care fraud, waste, and abuse.

III. Applicability of the Policy

This Policy applies to employees, trustees, officers, faculty, medical staff, residents, fellows, students, volunteers, trainees, vendors, contractors, subcontractors, independent contractors, consultants, sponsored individuals, and agents of NYU Langone Health.

IV. Definitions

Claim means any request or demand, whether under contract or otherwise, for money or property and whether or not the United States has title to the money or property that is presented to an officer, employee, or a

NYU Langone Health includes NYU Langone Health System, NYU Langone Hospitals (including all inpatient and ambulatory facilities), NYU School of Medicine, NYU

For example, a physician creates a backdated medical record notes to support a claim that was already submitted without documentation at the time. A person or entity may also be liable under the False Claims Act for a reverse false claim, which involves improper conduct to avoid paying the government or improper retention of an overpayment by the government. For example, a hospital discovers a mistake in coding that resulted in additional reimbursement on every claim of a certain type and fixes the problem going forward, but does not refund the overpayment.

Other provisions of the False Claims Act impose liability for:

- x knowingly and improperly withholding part or all of the government's money or property
- x intending to defraud the government by making or delivering (with the authority to do so) a document certifying receipt of property used, or to be used, by the government without completely knowing if the information on the receipt is true
- x knowingly buying, or receiving 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 is not permitted to sell or pledge the property

Additionally, a person or entity may be liable under the False Claims Act for conspiring to commit a violation of the liability provisions.

The False Claims Act imposes civil penalties of not less than \$5,000 and more than \$10,000, plus three times the amount of damages the government sustains due to the actions of any person liable under the above mentioned provisions.

The U.S. Attorney General, as well as private persons, can bring a civil action under the False Claims Act. An action commenced by a private person, known as the relator or qui tam plaintiff, is in the name of the government. The government uses the information provided by the qui tam plaintiff to investigate the claims and can decide to intervene in the case, usually within 60 days of receiving the complaint. A qui tam plaintiff can recover a percentage of any judgment or settlement regardless of whether government intervenes in the action.

The False Claims Act protects a qui tam plaintiff, also known as a "whistleblower" from retaliation by his or her employer. If a qui tam plaintiff employee is discharged, demoted, suspended, threatened, harassed, or discriminated against in the terms and conditions of employment as a result of bringing a civil action under the False Claims Act, that qui tam plaintiff employee can bring an action in federal court seeking reinstatement, two times the amount of back pay plus interest, and other costs, damages, and fees, including litigation costs and reasonable attorneys' fees.

B. The Federal Program Fraud Civil Remedies Act (31 U.S.C. §§3801-12)

The Program Fraud Civil Remedies Act allows for administrative recoveries by federal agencies for false claims. The act provides that any person who makes, presents, or submits, or causes to be made, presented

Unlike the False Claims Act, a violation of this law occurs when a false claim is submitted, not when it is paid, and the determination of whether a claim is false, and the imposition of fines and penalties is made by the administrative agency, not by prosecution in the federal court system.

C. Civil Monetary Penalties (42 U.S. Code §1320a)

The Civil Monetary Penalties Law imposes fines and penalties on individuals who knowingly present or cause to be presented a false claim for items or services that the person knows or has reason to know are false or inappropriate. The statute prohibits a wide variety of inappropriate conduct, including but not limited to (1) presenting a claim that you know or should have known was false, (2) presenting a claim for an item or service not rendered or for which payment may not otherwise be made, (3) violating the Anti-Kickback Statute, (4) failure to report an overpayment, or (5) providing false or misleading information or (6) if the service was provided by a physician who was not properly licensed at the time, the person who provided the item or service was excluded. The Office of the Inspector General may seek civil monetary penalties and assessments based on the type of violation at issue. Penalties range from \$15,000 to \$100,000 per violation.

D. The Anti-Kickback Statute (42 U.S. Code §1320a(b))

The Anti-Kickback Statute is a criminal law that prohibits the knowing and willful payment of remuneration to induce or otherwise reward the referral of business involving items or services payable by Federal health care programs. Remuneration is broad and includes items of value beyond cash such as rent, hotel stays and meals, etc. Violations of the Anti-Kickback Statute can result in criminal penalties and administrative sanctions, including fines and jail time. Civil penalties can also be imposed in an amount up to \$50,000 per occurrence plus three times the amount of the remuneration. The statute does outline certain "safe harbors" which protect certain payment or business practices that would otherwise incur liability under the Anti-Kickback Statute.

E.

The New York False Claims Act is similar to the federal False Claims Act and imposes fines and penalties on individuals and entities that file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. Specifically, the New York False Claims Act provides that any person who 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, 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, conspires to defraud the state or a local government by getting a false or fraudulent claim allowed or paid, or 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 local government is liable to the State of New York for a civil penalty of not less than \$6,000.

payment 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. For each claim, the NYS DOH may recover any overpayment, unauthorized payment, or otherwise inappropriate payment and 25% or more of those claims which were the subject of an audit by the NYS DOH

5) Voluntary Self Disclosure (Social Services Law § 363d)

Under Social Services Law § 363, providers within the medical assistance program are to

- b. Falsifying business records in the first degree includes the elements of the §175.05 offense plus the additional element of the intent to commit another crime or conceal its commission. This is a Class E felony (§175.10)
- c. Offering a false instrument for filing in the second degree involves presenting a written instrument (including a claim for payment) to a public office knowing that it contains false information. This is a Class A misdemeanor (§175(30))
- d. Offering a false instrument for filing in the first degree includes the elements of the second degree offense plus the additional element of the intent to defraud the state or one of its political subdivision. This is a Class E felony (§175(35))

9)

Notice to Employees Concerning Rights and Remedies Under the Pilot Program for Enhancement
of Employee Whistleblower Protection (41 U.S.C. 4712)
Postdoctoral Handbook
Residency Training Program Contract
Staff Handbook
Student Handbook

IX. Legal Authority/References

Deficit Reduction Act of 2005 §6032

The Social Security Act, 42 U.S.C. §1396a(a)(68)

The False Claims Act (FCA), 31 U.S.C. §§3729 - 3733