



Stony Brook Medicine Administrative Policy and Procedures

Subject: LD0070 Responsibilities for Preventing and Detecting Fraud, Waste and Abuse Related to Federal and State Funded Health Care Programs	Published Date: 04/04/2017
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Responsible Department/Division/Committee:

Office of Compliance and Audit Services

Policy:

Stony Brook University Hospital and its campuses (collectively "SBUH") are committed to complying with the requirements of Section 6032 of the Federal Deficit Reduction Act of 2005 and all applicable federal and state false claims laws and regulations in preventing and detecting any fraud, waste, or abuse in the organization. Such conduct may violate the Federal False Claims Act, the New York State False Claims Act, as well as other various federal and state laws, and may result in significant civil and/or criminal penalties.

Definitions:

Fraud - An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person.

Waste - Is generally understood to encompass the overutilization of services and misuse of resources, and typically is not a criminal or intentional act.

Abuse - Behavior that is inconsistent with sound fiscal, business, or medical practices and results in unnecessary cost or reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care.

Hospital Representative - Employees; volunteers; trainees; medical staff members, including state, research foundation, professional employer organization, personnel employed through contracted agencies; the governing body; contracted or subcontracted agents; vendors or consultants who furnish

products or services on behalf of SBUH; and other individuals affiliated with SBUH regardless of whether the individual is paid by SBUH.

Procedures:

- A. In compliance with the federal and state false claims provisions, SBUH prohibits any Hospital Representative from (1) knowingly submitting to any federal or state funded program a claim for payment that includes fraudulent information or is based on fraudulent documentation; or from (2) knowingly making, using, or causing 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 Government.
- B. All levels of Management are responsible for encouraging a culture of compliance by reiterating the importance of compliance, developing procedures specific to their area that assist in the prevention of fraud, waste, and abuse and responding to staff who come forward with suspicions of fraud, waste, or abuse. Management must communicate any reported suspicions to the Chief Compliance Officer.
- C. In accordance with the SBUH Corporate Compliance Code of Conduct ("Code") any Hospital Representative who is aware of or suspects fraud, waste, or abuse related to a federal or state funded health care program must promptly notify their Supervisor, the Chief Compliance Officer or the Office of Compliance and Audit Services (OCAS) in order to afford SBUH reasonable time to investigate and respond to such allegations.
- D. If the Hospital Representative feels that Management is not responding or that management may be involved, the Hospital Representative may report his/her concern directly to the Chief Compliance Officer or OCAS.
- E. All Hospital Representatives have the right and opportunity to report suspicions of fraud, waste or abuse anonymously through the Corporate Compliance Helpline. SBUH immediately investigates and takes appropriate action with respect to all suspected acts of intimidation or retaliation. However, if a Hospital Representative participates in a violation of federal or state laws, rules or regulations, or SBUH Policy, SBUH retains the right to take appropriate action against that Hospital Representative.
- F. SBUH commits itself to investigate any suspicions of fraud, waste, or abuse swiftly and thoroughly and requires all Hospital Representatives to cooperate with such investigations. If a Hospital Representative believes that SBUH is not responding to his/her report within a reasonable period of

time, they may bring their concern(s) about perceived inaction to the Chief Compliance Officer. In accordance with the Corporate Compliance Code of Conduct, failure to report and disclose or assist in an investigation is a breach of the Hospital Representative's obligations to SBUH and may result in disciplinary action, up to and including dismissal.

- G. SBUH provides information and training to all of its Hospital Representatives on the Federal False Claims Act, New York State False Claims provisions, administrative remedies and applicable whistleblower provisions and protections.
- H. The OCAS ensures that all Hospital Representatives receive adequate compliance training on federal and state fraud and abuse laws and the importance of submitting accurate claims and reports to federal and state agencies. Hospital Representatives are provided with information so that they may prevent, detect, and report suspected incidents of fraud, waste, and abuse. Hospital Representatives should direct questions about the application of these laws to the Chief Compliance Officer or the OCAS who may confer with General Counsel, as needed.

Summary of Federal and NY State laws: The following is a summary of the Federal and NY State False Claims Acts, the Program Fraud Civil Remedies Act and certain relevant whistleblower protections and New York State statutes.

Federal Laws:

Federal False Claims Act - allows a civil action to be brought against a person or entity who:

- knowingly presents, or causes to be presented, 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;
- conspires to defraud the 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 the obligation to pay 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 the Federal False Claims Act, a "claim" is any request or demand for money or property, whether or not the United States has title to the money or property that:

- is presented to an officer, employee or agent of the U.S.; 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 the 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 such money or property.

The Federal False Claims Act broadly defines the terms "knowing" and "knowingly." Specifically, knowledge will have been proven for purposes of the Federal False Claims Act if the person or entity:

- 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.

The law specifically provides that a specific intent to defraud is not required in order to prove that the law has been violated.

Examples of false claims include, but are not limited to:

- Submitting a claim for services that were not performed at all or were not performed as described;
- Submitting a claim for services that were performed, but were not medically necessary;
- Submitting a claim containing information (or medical record documentation) you know to be false;
- Submitting a cost report containing unallowable costs.

Remedies: Federal False Claims actions may be brought by the U.S. Department of Justice Civil Division, the United States Attorney. An individual may bring what is called a qui tam action. This means the individual files an action on behalf of the Government. The Government may decide to intervene with the lawsuit, in which case the United States Department of Justice will direct the prosecution. If the Government does not intervene, the individual may still continue the lawsuit independently. If a qui tam action is successful, the individual may receive between 15 to 30% of the recovery, depending on the level of the Government's participation and other factors, as well as reasonable attorneys' fees and costs. At the same time, however, any person who brings a clearly frivolous case can be held liable for the defendant's attorneys' fees and costs.

A person or entity found guilty of violating the Federal False Claims Act is obligated to repay all of the falsely obtained reimbursement and will be liable for a civil penalty of between \$5,500 and \$11,000, adjusted for inflation, plus up to three times the amount of the damages incurred by the Government for each violation of the Act. In addition, the United States Department of Health and

Human Services (HHS) Office of the Inspector General (OIG) may exclude the violator from participation in Federal health care programs, such as Medicare and Medicaid.

Under the Federal False Claims Act, an action may be brought up to six years after the date of violation or three years after the date when material facts are known or should have been known by the Government with respect to the violation, but no later than ten years after the date on which the violation was committed.

Whistleblower Protections: federal law affords an employee, contractor or agent all relief necessary to make such employee, contractor or agent whole, if that employee, contractor or agent is discriminated against in the terms and conditions of his or her employment because of his or her efforts to stop one or more violations of the Federal False Claims Act.

Remedies include reinstatement with comparable seniority as the individual would have had but for the discrimination, two times the amount of any back pay plus interest and compensation for the reasonable damages sustained as a result of such discrimination, including litigation costs and reasonable attorneys' fees.

Federal Program Fraud Civil Remedies Act - establishes an administrative remedy against any person or entity who makes, presents or submits (or causes to be made, presented or submitted) a claim for property, services or money to certain federal agencies, including Medicaid and Medicare, that the person or entity "knows or has reason to know" is (i) false, fictitious, or fraudulent, (ii) includes or is supported by any written statement which asserts a material fact that is false, fictitious or fraudulent, (iii) includes or is supported by any written statement which omits a material fact, is false, fictitious or fraudulent because of the omission and is a statement which the person or entity has a duty to include as a material fact or (iv) is for the provision of items or services which the person or entity has not provided as claimed.

In addition, it is illegal to make or submit (or cause to be made, presented or submitted) a written statement with respect to a claim or to obtain the approval or payment of a claim if the person or entity "knows or has reason to know" such statement: (i) asserts a material fact which is false, fictitious or fraudulent or (ii) omits a material fact which makes the statement false, fictitious or fraudulent.

Similar to the Federal False Claims Act, a person who "knows or has reason to know" is defined as one who:

- 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.

The law specifically provides that a specific intent to defraud is not required in

order to prove a violation.

Remedies: a violation of the Federal Program Fraud Civil Remedies Act can result in a civil monetary penalty of up to \$5,000 per false claim and, in certain circumstances, an assessment of twice the amount of each false claim. In addition, under certain circumstances, a penalty of \$5,000 per false statement may be imposed.

Unlike the Federal False Claims Act, a violation of this law occurs when a false claim is submitted, not when it is paid. Also unlike the Federal False Claims Act, 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.

New York State Laws

New York State False Claims Act - allows a civil action to be brought against a person or entity who:

- knowingly presents, or causes to be presented, 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;
- conspires to defraud the state or a local government by getting a false or fraudulent claim allowed or paid;
- has possession, custody or control of property or money used or to be used by the state or a local government and, intending to defraud the state or a local government or willfully to conceal the property or money, delivers less property or money than the amount for which the person receives a receipt;
- is authorized to make or deliver a receipt for property used or to be used by the state or a local government and, intending to defraud the state or a local government, makes or delivers a receipt without completely knowing the information on the receipt is true;
- knowingly buys or receives as a pledge of an obligation or debt public property from an officer or employee of the state or a local government knowing that the officer or employee may not lawfully sell or pledge such property; 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 a local government.

Under the New York State False Claims Act, a "claim" is any request or demand for money or property which is made to the state or a local government or to any contractor, grantee or other recipient, if the state or a local government provides

any portion of the money or property in question.

The terms “knowing” and “knowingly” have the same definition as that under the Federal False Claims Act. Also like the federal law, the state law specifically provides that a specific intent to defraud is not required in order to prove that the law has been violated. It also excludes acts arising out of mistake or mere negligence.

Remedies: the New York Attorney General has the authority to investigate claims and to bring an action on behalf of the State or a local government. A local government may also investigate claims and bring an action on its behalf. The Attorney General must consult with the Office of Medicaid Inspector General before bringing a claim related to the Medicaid program.

Any individual may bring what is called a qui tam action. This means the individual files an action on behalf of the person and the people of the state of New York or a local government. In a qui tam action, an individual must file his or her complaint and written disclosure of substantially all material evidence and information he or she possesses in State Supreme Court, where it remains under seal for at least 60 days. The state may decide to intervene or to authorize a local government to intervene with the lawsuit. If neither the state nor a local government intervenes, the individual may still continue the lawsuit independently.

If a qui tam lawsuit is successful, the individual may receive between 15 to 30% of the recovery, depending on the level of the state’s or local government’s participation and other factors, as well as reasonable attorneys’ fees and costs. The individual’s share may be reduced to no more than 10% if the court finds that the action was based primarily on disclosure of specific information (not provided by such individual) relating to allegations or transactions in a criminal, civil or administrative hearing. An individual’s share of any recovery may also be reduced if the individual planned or initiated the violation in question. If an individual is convicted of criminal conduct arising from his or her role in the violation, he or she is not entitled to any portion of the recovery.

No action may be filed against the federal, state or local governments or any officer or employee thereof acting in his or her official capacity.

A person or entity found guilty of violating the State False Claims Act is obligated to repay all of the falsely obtained reimbursement and will be liable for a civil penalty of between \$6,000 and \$12,000, plus up to three times the amount of damages incurred by the state or a local government for each violation of the Act. If the person committing the violation furnished information regarding such violation to the appropriate State or local government official within 30 days of

obtaining such information and cooperates fully in the investigation, additional damages are capped at twice the amount.

The time periods for bringing a claim under the State False Claims Act are the same as under the Federal False Claims Act.

Whistleblower Protections: the State False Claims Act prohibits an employer from discriminating against an employee in the terms or conditions of his or her employment because the employee initiated or otherwise assisted in a false claims action. The employee is entitled to all relief necessary to make the employee whole. Remedies include reinstatement with comparable seniority as the individual would have had but for the discrimination, two times the amount of any back pay plus interest and compensation for the reasonable damages sustained as a result of such discrimination, including litigation costs and reasonable attorneys' fees.

Other New York State Laws

Various New York State laws also prohibit false claims. Certain relevant portions of the New York State Code are summarized as follows:

New York Social Services Law §145-b - it is unlawful for a person or entity knowingly to make a false statement or representation, or 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.

A "statement or representation" includes a claim for payment, an acknowledgment or certification or report of data which serves as a basis for a claim or rate of payment.

The law also empowers the New York State Department of Health to impose a monetary penalty on any person or entity that, among other actions, causes Medicaid payments to be made if the person or entity 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 New York State Department of Health may impose a civil penalty of up to \$10,000 per violation. If repeat violations occur within 5 years, a penalty of up to \$30,000 per violation may be imposed if the repeat violations involve more serious violations.

New York Social Services Law §145-c - if a person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, his/her needs or those of his/her family will not be considered for 6 months, if a first offense, for 12 months, if a second offense (or if the benefits wrongfully received are at least \$1,000 but not more than \$3,900), for 18 months, if a third offense (or the benefits wrongfully received are in excess of \$3,900) and for the 5 years for any subsequent violation.

New York Social Services Law §366b(1) - any person who knowingly makes a false statement or representation, or who by deliberate concealment of any material fact, or by impersonation or other fraudulent device, obtains or attempts to obtain or aids or abets any person to obtain medical assistance to which he is not entitled, shall be guilty of a class A misdemeanor. If 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.

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, 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 or knowingly submits false information for the purposes of obtaining authorization 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.

New York Penal Law §155 - a person who, with intent to deprive another of his property, obtains, takes or withholds such property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior, is guilty of larceny. Larceny is a felony, with the applicable class being based on the value of the property involved.

New York Penal Law §175 - specifies four crimes which relate to filing false information or claims. Under §175.05, it is a Class A misdemeanor to falsify

business records, which includes entering false information, omitting material information or altering an enterprise's business records with the intent to defraud. Under §175.10, falsifying business records as provided in §175.05 with the intent to commit another crime or conceal its commission is a Class E felony. Under §175.30, it is a Class A misdemeanor to present a written instrument (including a claim for payment) to a public office knowing that it contains false information. Under §175.35, it is a Class E felony to submit a claim as provided in §175.30 with the intent to defraud the State or a political subdivision.

New York Penal Law §176 - applies to intentionally filing a health insurance claim knowing that it is false. Violation of this law is either a misdemeanor or felony, with the applicable class being based on the value of the claim involved.

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 materially 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, s/he or another person receives 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 received 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.

Additional Whistleblower Protections:

New York law also affords protections to employees who may notice and report inappropriate activities. Under New York Labor Law §740, an employer may not take any retaliatory 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.

In order to be protected when disclosing information to a public body, an

employee must first bring the alleged violation to the attention of a supervisor 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. If a court finds that a health care employer's retaliatory action was in bad faith, it may impose a civil penalty of up to \$10,000 on the employer. 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 attorneys' fees and costs.

Under certain circumstances, New York law provides additional protections to employees of health care service providers, which include the Hospital. Under New York Labor Law §741, a health care service provider may not take any retaliatory 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 or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care; or
- Objects to or refuses to participate in any such activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care.

In order to claim this protection, the employee must first bring the issue to the attention of a supervisor of the employer and give the employer a reasonable opportunity to correct the allegedly improper activity or practice. However, this 'notice and opportunity to correct' requirement does not apply to an employee's may disclosure to a supervisor or to a public body where the improper quality of patient care presents an imminent threat to public health or safety or to the health of a specific patient and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

Forms: (Ctrl-Click form name to view)

None

Policy Cross Reference: (Ctrl-Click policy name to view)

[LD0039 Corporate Compliance Code of Conduct](#)

[LD0071 Reporting of Compliance Violations or Suspected Violations and Non-Intimidation/Non-Retaliation](#)

Relevant Standards/Codes/Rules/Regulations/Statutes:

OIG Model Compliance Program Guidance for Hospitals, 63 FR §8987-8998

(2/23/98); OIG Supplemental Compliance Program Guidance for Hospitals, 70 FR§4858-4875 (1/31/05); Deficit Reduction Act of 2005, S. 1932 Sec. 6032; Social Security Act, 42 U.S.C. §1396a(a)(68); False Claims Act, 31 U.S.C. §3729-3733; Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §3801; NYS False Claims Provision, Social Services Law Article 5 Title 1 §145b; NYS Social Services Law §366-b (2); NYS Penal Law §155, §175-177; and NYS Labor Law §740 and §741; and NYS Public Officer's Law, §73 and §74

References and Resources:

None