

<p>UNIVERSITY HEALTHCARE ALLIANCE</p>	<p>Approval Date: 12/20/2012 Revision Date: 00/00/0000 Approval Signature: _____</p>
<p>Policy Name: False Claims Act Policy Number: CG-02 (Compliance General)</p>	<p>Page 1 of 7</p>

I. PURPOSE

The purpose of this policy is to ensure University HealthCare Alliance (“UHA”) complies with Federal and California False Claims Acts.

II. POLICY STATEMENT

UHA will not knowingly submit or cause to submit, a false or fraudulent claim to the state or federal government.

UHA will not retaliate against any current or past employee or contractor that brings a Qui Tam lawsuit against UHA.

III. DEFINITIONS

A. Claim. The definition of claim varies slightly between the Federal and California False Claims Act. However, for purposes of this policy, “claim” means a request or demand for money made payable to UHA by the state (i.e. MediCal) or federal (i.e. Medicare, TriCare) government for healthcare items and/or services provided.

B. Knowing or knowingly. Under both state and federal law, “knowing” or “knowingly” means that a person or an organization, with respect to information, has either:

1. 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 (no proof of specific intent to defraud is required).

C. Qui Tam Relator/Whistleblower. A private person, usually an employee or former employee, who brings a civil action on behalf of the state or federal government, when he or she has information that another individual or entity has knowingly submitted or caused to be submitted a false claim.

IV. SCOPE

This policy applies to all UHA employees and contracted staff including physicians and non-physician practitioners (e.g. nurse practitioners, physician assistants).

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V. PRINCIPLES

- A. Overview. The Federal and California False Claims Acts play an important role in preventing fraud and abuse in government health care programs by enabling the federal or state government to bring civil actions to recover damages and civil penalties when false claims are submitted to the government. Both the California and federal False Claims Acts allow individuals to file a “qui tam” suit against the entity that submitted the false claims.

- B. Violations of the Federal False Claims Acts. There are a number of ways in which the Federal False Claims Act may be violated. However, as it applies to UHA, the Federal False Claims Act is violated when UHA:
 - 1. Knowingly submits or causes to be submitted, a false or fraudulent claim for payment by the United States or California Government;
 - 2. Knowingly makes, uses, or causes to be used a false record; or statement material to a false claim;
 - 3. Has possession, custody or control of property or money to be used by the Government, and knowingly delivers, or causes to be delivered less than all of that money (e.g. fails to refund an overpayment); or
 - 4. Conspires to commit any of the above.

- C. Violations of the California False Claims Act (CFCA). The California False Claims Act is violated when UHA:
 - 1. Knowingly presents or causes to be presented, a false claim for payment or approval to the State;
 - 2. Knowingly makes, uses or causes to be made or uses a false record or statement to get a false claim paid or approved by the State; or
 - 3. Is the beneficiary of an inadvertent submission of a false claim to the State, *and* subsequently discovers the falsity of the claim and fails to disclose the false claim to the state within a reasonable time after the discovery.

The CFCA does not apply to violations of less than \$500.00 or claims involving worker’s compensation, claims against public entities and employees, or claims, records or statement under the Revenue and Taxation Code.

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D. Violations of the Program Fraud Civil Remedies Act of 1986 (“PFCRA”).
PFCRA is similar to the Federal False Claims Act. A person or entity violates the PFCRA if they:

1. Make, present, or submit a claim that they know, or have reason to know, is one of the following:
 - a. False, fraudulent, or fictitious;
 - b. For payment for the provision of property or services that the person did not provided as claimed; or
 - c. Includes or is supported by a statement that either:
 - i. Asserts a material fact that is false; or
 - ii. Omits a material fact, which results in the statement being false and the person making, presenting or submitting the statement has a duty to include the material fact(s).
2. Submit a written statement that he/she knows or had reason to know:
 - a. Either:
 - i. Asserts a material fact that is false; or
 - ii. Omits a material fact, which results in the statement being false, and the person had a duty to include the material fact in the statement; and
 - b. Includes or is accompanied by an express certification of affirmation of the truthfulness and accuracy of the statement’s contents.

E. Penalties for Violations

1. Penalties. Individuals or entities violating these laws are liable as follows:
 - a. Federal False Claims Act
 - i. Three times the Government’s damages;
 - ii. Civil penalties up to \$10,000 per false claim; and
 - iii. The costs related to the action to recover the penalty or damages.
 - b. California False Claims Act
 - i. Three times the Government’s damages;
 - ii. Civil penalties ranging from \$5,500 to \$11,000 per false claim; and
 - iii. The costs related to the action to recover the penalty or damages.

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- iv. Under the CFCA, a person or entity may receive a lesser penalty (between two and three times the government’s damages, and no civil penalty) if the court finds:
 - 1. The person or entity informed the state within 30 days of learning about the violation;
 - 2. The person or entity fully cooperates with the state and the investigation; and
 - 3. When the person or entity provided the state with information, there was no civil or criminal action commenced with respect to the violation and the person or entity did not have actual knowledge of an investigation into the violation.

- c. PFCRA
 - i. \$5,000.00 for each false claim or statement; and
 - ii. Up to twice the amount of each false claim. An assessment will not be made under this statute on claims that the Government has not paid.

F. Qui Tam Suits. Both the Federal and California False Claims Acts permit individuals (a “relator” or “whistleblower”) to bring a civil action (lawsuit) on behalf of the state or federal government when he or she has information that another person or entity has violated these laws. Filing a Qui Tam lawsuit is a complicated process with a number of requirements that must be met. However, if successful, the relator may receive a portion of the proceeds from the settlement of the claim, depending on the extent to which the relator substantially contributed to the action. The following describes some differences between the Federal False Claims Act and the California False Claims Act.

- 1. FCA
 - a. Percentage of Proceeds. The amount of the proceeds that a relator may be entitled to depends on whether the federal government intervenes (joins in) the law suit.
 - i. Government Intervenes. If the government joins in the lawsuit, the relator may receive between 15-25% of the proceedings.

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- ii. Government does not intervene. If the government does not join in the lawsuit, the relator may receive between 25-33% of the proceedings.
 - b. Limitations to Recovery
 - i. Regardless of whether the government joins in a lawsuit, the court may reduce a relator's share of the proceeding based on his or her role in advancing the case to litigation and other relevant circumstances.
 - ii. If the relator is convicted of criminal conduct related to his or her role in the false claim(s), the relator will be dismissed from the civil action without receiving any portion of the proceeds.
 - c. Statute of Limitations. The FCA restricts the period of time during which a person can file a qui tam action to within:
 - i. Six (6) years from the date of the false claim(s) action; or
 - ii. Three (3) years of when the Government knows, or reasonably should have known, about facts material to the illegal conduct, but in no event more than ten (10) years after the violation occurred, whichever occurs last.
- 2. CFCA.
 - a. Percentage of Proceeds. The amount of the proceeds that a relator may be entitled to depends on whether the federal government intervenes (joins in) the law suit.
 - i. Government Intervenes. If the government joins in the lawsuit, the relator may receive between 15-33% of the proceedings.
 - ii. Government does not intervene. If the government does not join in the lawsuit, the relator may receive between 25-50% of the proceedings.
 - b. Limitations to Recovery. Under the CFCA, the relator is not guaranteed any minimum amount of recovery if he or she actively participated in the fraudulent activity.
 - i. Statute of Limitations. A lawsuit under the CFCA must be filed within three (3) years from the date of the

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- state’s discovery of the violation or within ten (10) years after the date the violation occurred.
- ii. The CFCA can be applied retrospectively if the limitation period has not lapsed.

G. Qui Tam Relator/Whistle Blower Protections. Both the FCA and the CFCA protect relators/whistleblower from retaliation by UHA. UHA is prohibited from discharging, demoting, suspending, threatening, harassing, denying promotion or discriminating against any employer or contractor that may file a qui tam action against it. The employee or contracted health care provider (physician, physician assistant, or nurse practitioner) may bring a lawsuit against UHA if he or she believes they were retaliated. If successful, the employee/contractor is entitled to:

1. Reinstatement with the same seniority status the employee or contractor would have had without the discrimination;
2. Two times the amount of payback;
3. Interest in the payback;
4. Compensation for any special damages incurred as a result of the discrimination; and
5. Costs related to bringing the lawsuit, including reasonable attorney’s fees.

The CFCA also permits the relator to collect punitive damages where appropriate, a remedy not provided under the federal FCA.

Under the CFCA, a relator is only entitled to the above if:

1. The employee/contractor voluntarily disclosed information to the Government or acted in furtherance of a false claims action; and
2. The employee/contractor was harassed, threatened with termination or demotion, or coerced by the employer or its management to engage in the fraudulent activity.

VI. PROCEDURES

A. UHA will provide training on this policy as part of its Compliance training.

VII. RELATED DOCUMENTS/POLICIES

- A. UHA Code of Conduct
- B. Non-Retaliation Policy

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VIII. REFERENCES

- A. 31 U.S.C. § 3801-3812
- B. 31 U.S.C. § 3729-3733
- C. Deficit Reduction Act of 2005, Sections 6031 and 6032)
- D. Fraud Enforcement and Recovery Act (S. 386, May 20, 2009)
- E. Patient Protection and Affordable Care Act, Section 6402 (H.R. 3590, March 23, 2012)
- F. California Govt. Code § 12650-12656