



MONTEFIORE MEDICAL CENTER

The University Hospital for the
Albert Einstein College of Medicine

ADMINISTRATIVE POLICY AND PROCEDURE

SUBJECT: SUMMARY OF FEDERAL AND STATE
FALSE CLAIMS LAWS

NUMBER: JC31.1

OWNER: COMPLIANCE OFFICE

EFFECTIVE
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REFERENCE: 31 USC § 3729 *et seq.*; 42 USC § 1320a-7a(a); 31 USC § 3730 *et seq.*; 31 USC §§ 3801, 3802; NY Finance Law § 39 Article 13 187-194; 2007-2008 NY State Legislature S. 2108-C; NY Social Services Law § 145-b; NY Social Services Law § 366-b; NY Penal Law Article 177; NY Labor Law § 740*et seq.*

CROSS-REFERENCE: Administrative Policy and Procedures, JC30.1, Detection and Prevention of Fraud, Waste and Abuse

Policy:

Montefiore Medical Center (MMC) is committed to complying with the requirements of Section 6032 of the Federal Deficit Reduction Act of 2005 and to preventing and detecting any fraud, waste, or abuse in its organization. It is the policy of Montefiore Medical Center ("MMC") that all associates, including management, physicians, consultants and vendors/agents who provide services, shall comply with all applicable Federal and New York State False Claims Laws and regulations.

In compliance with the federal and state False Claims provisions, MMC prohibits any associates (or contractors or agents acting on its behalf) from knowingly submitting to any federally or state funded program a claim for payment approval that includes fraudulent information or is based on fraudulent documentation. MMC strives to educate our work force on fraud and abuse laws, including the importance of submitting accurate claims and reports to the Federal and State governments, to assist MMC in preventing fraud, waste and abuse in health care programs. As part of MMC's Compliance Program, associates shall receive training on these laws, which are summarized below. MMC's compliance policies and procedures are set forth in detail in our compliance plan, which is available at [MMC Compliance Program Intranet site](#) and is provided to each employee.

All persons covered by this policy have a duty to notify the MMC Department of Compliance of any suspected fraud, waste, or abuse, including giving MMC reasonable time to investigate and to respond to such allegations. Additionally, persons should consult with the Department of Compliance if they have questions related to how these laws apply to their job. The Office of Compliance maintains an anonymous Hotline (1-800-662-8595), which can also be called to report any suspected violations.

This policy is intended to comply with the requirements of the Deficit Reduction Act and will be modified as necessary to do so. Please see more information about these Federal and New York State laws below.

MMC's POLICIES AND PROCEDURES

To assist MMC 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 Federally or State funded health care program is required to report such information to his/her supervisor or MMC's compliance officer. Any employee of MMC 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 MMC's internal compliance policies and procedures and Federal and State law. However, MMC retains the right to take appropriate action against an employee who has participated in a violation of Federal or State law or hospital policy.

As an organization, MMC 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 MMC is not responding to his or her report within a reasonable period of time, the employee shall bring these concerns about MMC's perceived inaction to the MMC Department of Compliance. Failure to report and disclose or assist in an investigation of fraud and abuse is a breach of the employee's obligations to MMC and may result in disciplinary action.

FEDERAL AND STATE STATUTES

The following is a summary of the Federal False Claims Act, the Program Fraud Civil Remedies Act and certain relevant State laws.

FEDERAL LAWS/STATUTES

Federal False Claims Act

The Federal False Claims Act, 31 USC §3279, *et seq*, establishes liability for any person who engages in certain acts, including:

- knowingly presenting or causing to be presented a false or fraudulent claim to the Federal government for payment;
- knowingly making, using, or causing to be made or used, a false statement to get a false or fraudulent claim paid by the Federal government; or
- conspiring to defraud the Federal government by getting a false or fraudulent claim allowed or paid.

Under the Federal False Claims Act, a person acts "knowingly" if s/he:

- 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.

There is no requirement that the person specifically intended to defraud the government through his or her actions.

Under the Federal False Claims Act, a "claim" is any request or demand for money or property if the

Federal government provides any portion of the money or property in question. This includes requests or demands submitted to a contractor of the Government and includes Medicaid and Medicare claims.

A violation of the Federal False Claims Act results in a civil penalty between \$5,500 and \$11,000 for each false claim submitted, plus up to three times the amount of the damages sustained by the Government because of the violation. 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.

Qui Tam/Whistleblower Protections

The False Claims Act allows a private person to file a *qui tam* lawsuit on behalf of the Federal government. This person, also called a relator or whistleblower, must file his or her lawsuit under seal in a federal district court. 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 decide to intervene, the relator may still continue the lawsuit independently.

If a *qui tam* lawsuit is successful, the relator 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 attorney's fees and costs. In addition, there can be no retaliation against the relator for filing or participating in the lawsuit in good faith. At the same time, however, any person who brings a clearly frivolous case can be held liable for the defendant's attorney's fees and costs.

Federal Program Fraud Civil Remedies Act of 1986

The Program Fraud Civil Remedies Act of 1986, 31 USC §§3801, *et seq*, is similar to the False Claims Act, establishing an administrative remedy against any person who presents or causes to be presented a claim or written statement that the person knows or has reason to know is false, fictitious, or fraudulent to certain Federal agencies, including HHS, and again, includes Medicaid and Medicare claims.

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

- 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.

Once again, there is no necessary proof of specific intent to defraud the government.

A violation of the Program Fraud Civil Remedies Act can result in a civil monetary penalty of up to \$5,500 per false claim and an assessment of twice the amount of the false claim. The penalty can be imposed through an administrative hearing after investigation by HHS and approval by the United States Attorney General.

NEW YORK STATE LAWS/STATUTES

New York False Claims Act

The New York False Claims Act closely follows the Federal False Claims Act. Under New York False Claims Act (State Finance Law) §145-194, penalties and fines are imposed on individuals and entities which file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. The penalty for filing a false claim ranges from \$6,000 to \$12,000 per claim, plus between two and three times the value of the amount falsely

received. In addition, the false claim filer may have to pay the government's legal fees.

Qui Tam/Whistleblower Protections

Like the Federal False Claims Act, the New York State Act allows a private person to file a *qui tam* lawsuit on behalf of the state or local government. Also similar to the Federal law, if a *qui tam* lawsuit is successful, the relator may receive between 15% to 30% of the recovery, depending on the level of the state/local government's participation and other factors, as well as reasonable attorney's fees and costs.

The New York State False Claims Act also provides protection to *qui tam* relators who are discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of their employment as a result of their bringing an action under the Act. Remedies include reinstatement with comparable seniority as the *qui tam* relator would have had in absence of action, two times the amount of any back pay, interest on any back pay and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. At the same time, however, any person who brings a clearly frivolous case can be held liable for the defendant's attorney's fees and costs.

New York Social Services Law

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.

New York Penal Law

Under New York Penal Law §155, Larceny, a person who, with intent to deprive another of his

property, obtains, takes or withholds the property by means of trickery, embezzlement, false pretense, false promise, including a scheme to defraud or other similar behavior. It has been applied to Medicaid fraud cases.

Under New York Penal Law §175-177, Health Care Fraud is established as a crime, inclusive of, but not limited to, production of false written statements and insurance 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.

Under the New York State Penal Law, 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 may include up to 25 years of imprisonment if more than \$1 million in improper payments are involved.

New York Labor Law

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.

According to §741 of the New York Labor Law, to bring an action under this article, 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. Furthermore, the relator is afforded certain protections under the law and may not be retaliated against for any good-faith disclosure of information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency/official. 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. At the same time, however, employees who bring an action without basis in law or fact may be held liable to the employer for its attorneys' fees and costs.