



MANUAL: Organizational	FOLDER: Leadership
TITLE: False Claims Act	POLICY OWNER: Chief Compliance Officer
POLICY ADMINISTRATOR: Contract and Policy Administrator	COMPLIANCE REVIEW: Chief Compliance Officer
ORIGINAL DATE: March 2010	REVISION DATE(S): May 2012
KEYWORDS: Compliance; Fraud; Hotline Reporting; Whistleblower	

SCOPE:

The Reading Hospital and its subsidiary entities, including The Reading Hospital and Medical Center (which operates The Reading Hospital and Medical Center and The Reading Hospital for Post-Acute Rehabilitation), The Reading Hospital Medical Group, Reading Professional Services, and The Highlands at Wyomissing.

PURPOSE:

To fully comply with all laws and regulations pertaining to the preparation of, delivery of and billing for services, which apply to The Reading Hospital.

POLICY:

It is the policy of The Reading Hospital (“TRH”) to consistently and fully comply with all laws and regulations pertaining to the preparation of, delivery of and billing for services, which apply to the Hospital. The Hospital will adhere to the compliance procedure which states below the responsibilities and obligations of all employees, contractors, and agents regarding submissions for reimbursement to public health programs for services rendered by TRH and any of its subsidiaries, divisions and contractors. In addition, this policy is intended to apply to the Hospital’s business arrangements with physicians, vendors, contractors and other agents who may be impacted by federal or state laws relating to the preparation, delivery, or filing of public health program claims for hospital services.

DEFINITIONS:

PROCEDURE:

As required by 42 U.S.C. §1396a(a)(68), TRH will provide the following detailed information to all employees about federal and state false claims laws and TRH’s established procedures to detect and prevent fraud, waste and abuse. More detailed information may be found in the TRH Compliance Plan.

This policy applies to and will also be made available to any of the Hospital’s contractors or agents involved in the preparation and filing of public health program claims on behalf of the Hospital.



1. FEDERAL FALSE CLAIMS ACT (31 U.S.C. §3729)

The federal False Claims Act (FCA), among other things, applies to the submission of claims¹ by health care providers for payment of Medicare, Medicaid and other federal and state health care programs. The FCA is the federal Government’s primary civil remedy for improper or fraudulent claims. It applies to all federal programs, from military procurement contracts to welfare benefits to health care benefits. The fines include a penalty of up to three times the Government’s damages, civil penalties ranging from \$5,000 to \$10,000 per false claim, and the costs of the civil action against the entity that submitted the false claims.

2. PROHIBITIONS OF THE FEDERAL FCA

The FCA prohibits, among other things

- (a) Knowingly presenting or causing to be presented to the federal Government a false or fraudulent claim for payment or approval;
- (b) Knowingly making or using, or causing to be made or used, a false record or statement in order to have a false or fraudulent claim paid or approved by the Government;
- (c) Conspiring to defraud the Government by getting a false or fraudulent claim allowed or paid; and
- (d) Knowingly making or 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.

“Knowingly” means that a person, with respect to information: (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, and no proof of specific intent to defraud is required.²

3. ENFORCEMENT

The United States Attorney General may bring civil actions for violations of the FCA. As with most other civil actions, the government must establish its case by presenting a preponderance of the evidence rather than by meeting the higher burden of proof that applies in criminal cases.

4. “WHISTLEBLOWER” PROVISION (QUI TAM PROVISION) OF FCA

Under the FCA, a private person with knowledge of a false claim is allowed to bring a civil action on behalf of the United States Government. The purpose of bringing a qui tam suit is to recover the funds

¹ Claims include (1) requests for payment or reimbursement for goods, services or money (including grants, loans, insurance or benefits); requests for approval or authorization to provide goods, services or money; statements made in support of requests for payment, reimbursement, approval or authorization; statements of income or expense that are used to determine a rate of payment; statements for use in qualifying as a provider; statements identifying an item or service as reimbursable; requests for payment whether made directly to the government or to someone else—a contractor or other recipient—who the government will be paying or reimbursing for all or part of the claim.

² Accuracy of Information and Detection of False Claims: each employee must know or believe the information contained in a claim or statement he or she submits on behalf of the hospital is correct. An employee cannot, either deliberately or carelessly, ignore questionable information. As described in the Hospital’s Compliance Plan, resources will be reasonably committed to ensure that claims that are filed are accurate. The Hospital will designate individuals with appropriate knowledge and training who are either employed by or contracted by the Hospital to perform regular audits to detect and prevent false claims.



paid by the Government as a result of the false claims. Sometimes the United States Government decides to join the qui tam suit. If the suit is ultimately successful, the whistleblower who initially brought the suit may be awarded a percentage of the funds recovered. Because the Government assumes responsibility for all the expenses associated with a suit when it joins a false claims action, the percentage is lower when the Government joins a qui tam claim. However, regardless of whether the Government participates in the lawsuit, the court may reduce the whistleblower's share of the proceeds if the court finds the whistleblower planned and initiated the false claims violation. Further, if the whistleblower is convicted of criminal conduct related to his or her role in the preparation or submission of the false claims, the whistleblower will be dismissed from the civil action without receiving any portion of the proceeds.

5. PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

The Program Fraud Civil Remedies Act of 1986 (PFCRA) authorizes federal agencies such as the Department of Health and Human Services to investigate and assess penalties for the submission of false claims to the agency. The conduct prohibited by PFCRA is similar to that prohibited by the FCA. For example, a person may be liable under the PFCRA for making, presenting, submitting, or causing to be made, presented, or submitted, a claim that the person knows or has reason to know

- (a) Is false, fictitious, or fraudulent;
- (b) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;
- (c) Includes or is supported by any written statement that
 - (aa) Omits a material fact;
 - (bb) Is false, fictitious, or fraudulent as a result of such omission; and
 - (cc) Is a statement in which the person making, presenting or submitting such statement has a duty to include such material fact; or
 - (dd) Is for payment for the provision of property or services that the person has not provided as claimed.

If a Government agency suspects that a false claim has been submitted, it can appoint an investigating official to review the matter. The investigating official may issue a subpoena to further the investigations, or may refer the matter to the Department of Justice ("DOJ") for proceeding under the FCA.

If, based on the investigating official's report, an agency concludes that further action is warranted, it may issue a complaint (following approval from the DOJ) regarding the false claim. A hearing would be held, following the detailed, due process procedures set forth in the regulations implementing the PFCRA. A violation of the PFCRA results in a maximum civil penalty of \$5,000 per claim plus an assessment of up to twice the amount of each false or fraudulent claim.

6. STATE LAW (62 P.S. §1407; 55 Pa. Code §1101.75)

There can also be liability under the state for false or fraudulent claims with respect to Medicaid ("MA") program expenditures, including



- a. Knowingly or intentionally presenting for allowance or payment a false or fraudulent claim or cost report for furnishing services or merchandise under MA, knowingly presenting for allowance or payment a claim or cost report for medically unnecessary services or merchandise under MA, or knowingly submitting false information, for the purpose of obtaining greater compensation than that to which the provider is legally entitled for furnishing services or merchandise under MA;
- b. Submission of a duplicate claim for services or items for which the provider has already received or claimed reimbursement from a source;
- c. Submission of a claim for services or items which were not rendered by the provider or were not rendered to a recipient;
- d. Submission of a claim for services or items which includes costs or charges which are not related to the cost of the services or items;
- e. Submission of a claim or referring a recipient to another provider by referral, order or prescription, for services, supplies or equipment which are not documented in the record in the prescribed manner and are of little or no benefit to the recipient, are below the accepted medical treatment standards, or are not medically necessary;
- f. Submission of a claim which misrepresents the description of the services, supplies or equipment dispensed or provided, the date of service, the identity of the recipient or of the attending, prescribing, referring or actual provider;
- g. Submission of a claim for a service or item at a fee that is greater than the provider's charge to the general public; or
- h. Entering into an agreement, combination or conspiracy to obtain or aid another in obtaining reimbursement for which the provider or other person is not entitled, that is, eligible.

This is a criminal statute, violations of which are punishable by seven years imprisonment and/or a \$15,000 fine. In addition, the sentencing judge is required to order the convicted person to repay the amount of excess benefits or payments plus interest on that amount at the maximum legal rate, plus payment of an amount of up to three times that amount. Furthermore, the convicted person is ineligible to participate in Medicaid for a period of five years from the date of conviction.

7. PROTECTION FOR "WHISTLEBLOWERS"

Federal and state law and TRH policy prohibit any retaliation or retribution against persons who report suspected violations of these laws to law enforcement officials or who file "whistleblower" lawsuits on behalf of the government. Employees who in good faith believe that TRH has violated state or federal laws have the right to contact a regulatory agency directly. This right is protected by federal law and TRH policies. Although employees have the right to contact regulatory agencies directly and are protected from retaliation, TRH's preference is that any employee who believes there has been a compliance violation will first notify TRH in order to provide us with the opportunity to do the right



thing and promptly investigate, verify, and correct the noncompliance. This preference is not motivated by a desire to “cover up” any non-compliance; rather, we believe that it is best to internally correct non-compliance without the expense, delay, adverse publicity, and disruption that can be caused by external investigations and lawsuits. TRH’s Compliance Plan is designed to encourage and allow employees to report issues and concerns regarding any potential or actual violations. Therefore, anyone who in good faith believes that he or she has been subject to any such retribution or retaliation should report this to the Chief Compliance Officer —directly or anonymously—by using the Compliance Hotline, either by phone (**855-261-6653**) or online (<https://readinghospital.alertline.com>).

a. FEDERAL FCA. Under the federal FCA, any employee who is discharged, demoted, suspended, threatened, harassed or discriminated against in his or her employment as a result of the employee’s lawful acts in furtherance of a false claims action is protected from retaliation. The whistleblower may bring an action in the appropriate federal district court and is entitled to reinstatement with the same seniority status, two times the amount of back pay, interest on the back pay, and compensation for any special damages as a result of the discrimination, such as litigation costs and reasonable attorney fees.

b. STATE LAW. In 1986, the Pennsylvania legislature enacted Pennsylvania’s “Whistleblower Law,” declaring it unlawful for any employer to “discharge, threaten or otherwise discriminate or retaliate” against an employee in compensation or in terms of conditions of employment because the employee has made, or is about to make, a good faith report to the employer or to an “appropriate authority” about an instance or “wrongdoing or waste.” The Act, codified at 43 P.S. §1421-1428, also renders it unlawful for an employer to discriminate or retaliate against an employee because he or she has been requested by an appropriate authority to participate in an investigation, hearing or inquiry regarding the employer’s alleged wrongdoing or waste.

(1) Waste. In order to be entitled to whistleblower protection on grounds of a report of waste, it is not enough that the employee has complained of an employer or supervisor’s inefficient business practices. The Whistleblower Law is only concerned with the abuse of government funds. Accordingly, the employee is not entitled to whistleblower protection unless the reported waste involves an abuse, misuse, destruction, or loss of funds or property derived from state or municipal sources.

(2) Wrongdoing. In order for a report of wrongdoing to afford an employee with whistleblower protection, the alleged wrongdoing must be a violation of a federal or state statute, regulation, or a municipal ordinance or code of conduct or ethics “designed to protect the interests of the public or the employer” and which is “not of a merely technical or minimal nature.” Thus, where an employee of a hospital that has contracted with a municipal government reports substantial violations of numerous health and safety requirements, that employee will be entitled to protection under the Whistleblower Law. However, where an employee simply reports violations of a company’s internal policies not embodied within any particular statute or regulation, such a report does not entitle the employee to whistleblower protection. Unless a particular statute or regulation prohibits particular conduct, the Whistleblower Law does not apply.

(3) Good Faith Reporting. To be entitled to whistleblower protection, it is not enough that an employee alleges waste or wrongdoing within the meaning of the statute. The employee must have



reasonable cause to believe the report is true, and must make the report without malice or consideration of personal gain; this is otherwise known as reporting in good faith.

(4) Remedies and Burden of Proof. Any person who has been harmed by a violation of the Whistleblower Law may bring a lawsuit against the employer, but must do so within a 180-day deadline set forth in the Act's statute of limitations. In any civil action under the Act, the employee alleging violation of the Act must show by a preponderance of the evidence that prior to the employer's alleged retaliatory action, the employee, in good faith, had reported or was about to report an instance of wrongdoing or waste to the employer or to an appropriate authority. Once the employee satisfies this rather minimal burden of proof, the burden shifts to the employer to prove by a preponderance of the evidence that the action the employer took against the employee was for separate and legitimate reasons, and not in retaliation for the reported waste or wrongdoing. As a practical matter, a Pennsylvania employer cannot safely fire an employee in the immediate aftermath of a report of waste or wrongdoing unless it can be shown that the employee engaged in some egregious misconduct unrelated to the employee's report.

(5) Enforcement. The Whistleblower Law provides for civil penalties against an employer for having violated the law. The remedies for an employee who sues as a private litigant include reinstatement of employment, the payment of back wages, the reinstatement of fringe benefits and seniority rights, and any other actual damages including reasonable attorney fees.

8. TRH'S METHODS OF PREVENTING FRAUD AND ABUSE

The Hospital has implemented a Compliance Plan to detect and prevent fraud, abuse, and waste with respect to federal and state health care programs. A copy of TRH's Compliance Plan can be accessed through the internal web site. Under the Hospital's compliance policies, all employees have a responsibility to comply with the law and to report in their good faith belief, any violation of compliance policies. Any employee who has a good faith belief, based on objective information, that a false claim will be or has been made, must report the alleged violation to his or her supervisor, the Chief Compliance Officer, Kathleen Wetzel, at 610-988-8685, or to the Compliance Hotline, either by phone (855-261-6653) or online (<https://readinghospital.alertline.com>).

Failure to report based upon a good faith belief that a false claim will be or has been made will result in disciplinary action up to and including termination. Upon receiving a report based upon a good faith belief that a false claim will or has been made, TRH will promptly investigate the complaint and work with all parties involved to correct any non-compliance.

Additionally, as described in TRH's Compliance Plan, resources will be reasonably committed to the detection of false claims and to ensure that filed claims are accurate. The Hospital will designate individuals with appropriate knowledge and training who are either employed by or contracted by TRH to perform regular audits to detect and prevent false claims.

For more detailed information regarding TRH's policies, please refer to the TRH Compliance Plan.



The Reading Hospital

EDUCATION AND TRAINING:

REFERENCES:

COMMITTEE/COUNCIL APPROVALS:

CANCELLATION:

This policy supersedes all previous policies, memoranda, and/or other communications pertaining to this policy.