



Policy Title: False Claims Statutes – Colorado	
Department/Group Initiating: Integrity and Compliance Department	
Effective Date: June 1, 2013	Page 1 of 4
Supersedes Policy Dated: Replaces Local Care Site Policies	
Reference #:	Review Frequency: Annually
Primary Contact: Chief Integrity & Compliance Officer	
Approver: Executive Integrity and Compliance Committee	Approval Date: May 13, 2013

<p><u>Purpose:</u> The purpose of this policy is to comply with certain requirements set forth in the Deficit Reduction Act of 2005 with regard to federal and state false claims laws.</p>
<p><u>Scope:</u> All associates and, as defined below, contractors or agents of SCLHS entities in the State of Colorado, including but not limited to its local care sites and related business lines, SCLHS wholly-owned subsidiaries and affiliates, SCLHS owned or operated physician practices, joint ventures and any other entity or organization in which SCLHS or its local care sites or subsidiaries manages or controls the day-to-day operations of the facility (“SCLHS Entity(ies)”).</p> <p><u>Exceptions:</u> N/A</p>
<p><u>Definitions:</u> Contractor or agent includes any contractor, subcontractor, agent, or other person which or who, on behalf of SCLHS Entities, furnishes, or otherwise authorizes the furnishing of Medicaid health care items or services, performs billing or coding functions, or is involved in monitoring of health care provided by the care site.</p>
<p><u>Policy:</u> SCLHS Entities in Colorado must ensure that all employees, including management, and any contractors or agents are educated regarding the federal and state false claims statutes and the role of such laws in preventing and detecting fraud, waste and abuse in federal health care programs.</p> <p><u>False Claims Laws:</u> One of the primary purposes of the false claims laws is to combat fraud and abuse in government health care programs. False claims laws do this by making it possible for the government to bring civil actions to recover damages and penalties when healthcare providers submit false claims. These laws often have qui tam provisions that allow private persons, known as relators, to file lawsuits against individuals or entities that defraud the government.</p> <p>The False Claims Act applies to claims submitted by healthcare providers to Medicare or Medicaid. Some examples of false claims include billing for services or goods not provided; falsifying certificates of medical necessity and billing for services that did not meet the Medicare</p>

definition of “medically necessary”; billing separately for services that should be billed together; using unauthorized suppliers for the services that only authorized professional should give and then billing as if the authorized supplier gave the services.

There is a federal False Claims Act and a Colorado version of the False Claims Act that becomes effective in August 2013. Under the federal False Claims Act, any person or entity that knowingly submits a false or fraudulent claim for payment of United States Government funds is liable for significant penalties and fines. The fines include a penalty of up to three times the Government’s damages, civil penalties ranging from \$5,500 to \$11,000 per false claim, and the costs of the civil action against the entity that submitted the false claims. Generally, the federal False Claims Act applies to any federally funded program.

One of the unique aspects of the federal False Claims Act is the “qui tam” provision, commonly referred to as the “whistleblower” provision. This allows a private person with knowledge of a false claim to bring a civil action on behalf of the United States Government. The purpose of bringing the qui tam suit is to recover the funds 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 of 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 that the whistleblower planned and initiated the false claims violation. Further, if the whistleblower is convicted of criminal conduct related to his 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.

The federal False Claims Act also contains a provision that protects a whistleblower from retaliation by his employer. This applies to any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in his employment as a result of the employee’s lawful acts in furtherance of a false claims action. 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 attorneys fees.

A similar federal law is the Program Fraud Civil Remedies Act of 1986 (the “PFCRA”). It provides administrative remedies for knowingly submitting false claims and statements. 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.

The State of Colorado has adopted a generally applicable False Claims Act that becomes effective in August 2013 that allows the State to recover three times the amount of damages, plus

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civil penalties in accordance with the federal False Claims Act. The Colorado Medicaid False Claims Act (CMFCA) contains whistleblower provisions, increased Attorney General investigative powers, entitling employees to all relief necessary to make them whole. Colorado has a more general Medicaid anti-fraud statute that is intended to prevent submission of false and fraudulent claims to the Colorado Medicaid program. The statute makes it unlawful for any person to make false representation of material fact, present a false claim for payment or approval, or present a false cost document in connection with a claim for payment or reimbursement from the Colorado Medicaid program. Violations of the Colorado anti-fraud statute are civil offenses and punishable by monetary penalties.

REPORTING CONCERNS REGARDING FRAUD, ABUSE AND FALSE CLAIMS

SCLHS takes issues regarding false claims and fraud and abuse seriously and encourages all associates, management, and contractors or agents of SCLHS to be aware of the laws regarding fraud and abuse and false claims and to identify and resolve any issues immediately. Issues are resolved fastest and most effectively when given prompt attention at the local level therefore associates, managers, and contractors are encouraged to report concerns to their immediate supervisor when appropriate. If the supervisor is not deemed to be the appropriate contact or if the supervisor fails to respond quickly and appropriately to the concern, then the individual with the concern should be encouraged to discuss the situation with the local human resources manager, the local compliance officer, another member of management, or with the SCLHS Integrity Line (1-800-843-4359 or 1-877-393-6752).

Employees, including management, and any contractors or agents of Company-affiliated facilities should be aware of related policies regarding detection and prevention of health care fraud and abuse. Policies and procedures can be accessed on The Landing, the SCLHS Intranet site, or the SCLHS website at <http://www.sclhealthsystem.org> (click the "For Vendors" link).

Procedure:

Each SCLHS Entity must:

1. Ensure all associates, including management, and any contractors or agents of the care site or entity are provided with this policy within 30 days of commencing employment or contractor status.
2. Ensure that the SCLHS Entity handbook, if one exists, includes a detailed summary of this policy.

References:

1. Colo. Rev. Stat. §§ 25.5-303.5 and 25.5-4-304 to 25.5-4-310 (Colo. 2012)
2. 31 U.S.C. §§ 3801-3812
3. 31 U.S.C. §§ 3729-3733
4. Deficit Reduction Act of 2005, Sections 6031, 6032

Related Policies:

SCLHS Code of Conduct

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<u>Attachments:</u>
N/A
<u>Monitoring:</u> The Care Site Compliance Committee should monitor this policy. For SCLHS Entities without a compliance committee, the designated Compliance Officer should monitor implementation of this policy.