

**EXCERPT FROM UPMC
POLICY AND PROCEDURE MANUAL**

SUBJECT: False Claims Act

DATE: September 8, 2006

I. POLICY

It is the policy of the University of Pittsburgh Medical Center (UPMC) to adhere to all applicable state and federal laws and regulations regarding the submission of claims to federal health care programs, including the Federal False Claims Act (the "FFCA"). Consistent with this policy, UPMC carefully monitors claims for correctness in order to avoid submission of false or misleading claims. It also fully cooperates with governmental authorities in the investigation of any alleged false claim and adheres fully to the provisions of the FFCA that protect whistle blowers (described below).

II. SCOPE

This policy applies to all UPMC employees and all affiliated or subsidiary organizations involved with the submission of claims to federal health care programs.

III. PURPOSE

The purposes of this policy are to describe the FFCA and its prohibitions and requirements. This policy is based on the requirement in the Deficit Reduction Act that requires UPMC to establish a written policy for all employees that provides detailed information about the False Claims Act.

IV. BACKGROUND SUMMARY OF FEDERAL FALSE CLAIMS ACT

A. Federal False Claims Act

- The FFCA is an anti-fraud law that was enacted in 1863. The FFCA makes an individual or entity who "files a false claim" against the US government liable for up to three times the government's damages plus civil penalties of \$5,000 to \$10,000 per false claim. Individuals and entities who "file a false claim" or conspire to "file a false claim" may also be subject to criminal financial penalties and imprisonment for up to five years or ten years, respectively. The FFCA allows both the government and individuals to file suit against the alleged wrongdoer on behalf to the United States. The FFCA does not apply to claims, records or statements related to the Internal Revenue Code.

- A false claim occurs when a person:

Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval to the US government;

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 by the US government;

Conspires to defraud the US government by getting a false or fraudulent claim allowed or paid;

Knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to transmit money or property of the US government.

- A unique feature of the FFCA is the ability of a private citizen to act on behalf of the US government by bringing a civil action against a person believed to have violated the act. This is called a qui tam action (whistleblower). The government may choose to intervene and proceed with the lawsuit itself. In some instances the person who initiated the lawsuit (the “relator”) will get a portion of the money the government collects from the wrongdoer.
- The act protects employees who are “discharged, demoted, suspended, threatened, harassed or in any manner discriminated against in the terms and conditions of employment” because of lawful acts they take for participation in a lawsuit filed or to be filed under this act. Employees who are treated inappropriately under this law are entitled to all relief necessary to make the employee whole. This could include reinstatement, back pay, interest on the back pay and compensation for damages. UPMC prohibits any retaliation against employees who report wrongdoing, including suspected violations of the FFCA. [Please note that UPMC has a reporting and non-retaliation policy].
- Section 3731 of the FFCA sets forth the procedures that must be followed under the act. Civil actions may not be filed more than six (6) years after the date on which the violation occurred or more than three (3) years after the date when material facts are known or should have been known by the US Government, and in no event more than ten (10) years after the date on which the violation occurred.
- The US Attorney General has the authority to require individuals with information relevant to false claims to produce the evidence or answer questions about the evidence during the course of an investigation. This must be done in the manner set forth in section 3733 of the Act.

B. Administrative Remedies for False Claims and Statements

- Purpose is to provide federal agencies which are victims of false, fictitious and fraudulent claims and statements with an administrative remedy to compensate such agencies for losses resulting from such claims and statements, to permit administrative proceedings to be brought against persons who make, present or submit such claims and statements and to deter the making, presenting and submitting of such claims and statements in the future; and to provide due process protections to all persons who are subject of the administrative adjudication of false, fictitious or fraudulent claims or statements.
- Any person who makes a false claim may be subject to a civil penalty of not more than \$5,000 for each claim except in certain instances when they may be subject to twice the amount of the claim. This penalty may apply to any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know:
 - Is false, fictitious, or fraudulent;
 - Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;
 - Includes or is supported by any written statement that (i) omits a material fact; (ii) is false, fictitious, or fraudulent as a result of such omission; and (iii) is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or
 - Is for payment for the provision of property or services which the person has not provided as claimed.

Furthermore, any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that:

- The person knows or has reason to know (i) asserts a material fact which is false, fictitious, or fraudulent; or (ii) omits a material fact; and
- Is false, fictitious, or fraudulent as a result of such omission;
- In the case of a statement described in (ii) above is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and
- Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

Shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$5,000 for each such statement.

- This law allows various authorities within the federal government to investigate allegations that false or fraudulent claims have been filed. If there is sufficient evidence of liability, the US Attorney General is notified.
- The Attorney General may approve or disapprove the referral to a presiding officer for a hearing.

- The US attorney General is responsible for judicial enforcement of any civil penalties or assessment imposed.
- A hearing must be brought within six (6) years after the date on which such claim or statement is made, presented or submitted.
- A civil action to recover a penalty or assessment under this title must be brought within three (3) years after the date on the determination of liability becomes final.