

## False Claims Liability, Whistleblowers, Anti-Retaliation Protections, and Detecting and Responding to Fraud, Waste, and Abuse

### 1. SCOPE

- 1.1 System-wide
- 1.2 Facilities and departments included in the scope are further defined in the [Scope Definitions Resource Guide](#) if not specifically outlined above.

### 2. DEFINITIONS & EXPLANATIONS OF TERMS

#### 2.1. Abbreviations:

- CBT: Computer Based Training
- MCHS: Marshfield Clinic Health System
- PFCRA: Program Fraud and Civil Remedies Act
- HIPAA: Health Insurance Portability and Accountability Act
- MCHS: Marshfield Clinic Health System
- PHI: Protected Health Information

#### 2.2. Definitions:

- Knowingly: Having actual knowledge that the information on the claim is false; acting in deliberate ignorance of whether the claim is true or false; or acting in reckless disregard of whether the claim is true or false.
- Patient: All references to the "patient" in this policy mean the patient or her/his Personal Representative as defined in the [Personal Representatives of Patients](#) policy.
- Whistleblower: An informant who exposes misconduct, alleged dishonest or illegal activity occurring in an organization.
- Protected Health Information (PHI): The Privacy Rule protects all "*individually identifiable health information*" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information Protected Health Information.
  - ◇ Individually identifiable health information: information, including demographic data, that relates to:
    - the individual's past, present, or future physical or mental health or condition; **or**
    - the provision of health care to the individual; **or**

- the past, present, or future payment for the provision of health care to the individual; **and**
- that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual (e.g., name, address, birth date, Social Security Number).

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### 3. POLICY BODY

It is the policy of MCHS to provide health care services in a manner that complies with applicable federal and state laws and that meets the high standards of business and professional ethics. To further this policy, and to comply with [Section 6032 of the Deficit Reduction Act of 2005](#), MCHS provides the following information about its policies and procedures and the role of certain federal and state laws in preventing and detecting fraud, waste, and abuse in federal health care programs.

#### 3.1. Summary of Federal and State Laws

##### a. False Claims Act; 31 U.S.C. §§ 3729 – 3733

- The Federal False Claims Act imposes liability on any person or entity who:
  - Knowingly files a false or fraudulent claim for payments to Medicare, Medicaid or other federally funded health care program;
  - Knowingly uses a false record or statement to obtain payment on a false or fraudulent claim from Medicare, Medicaid, or other federally funded health care program; or,
  - Conspires to defraud Medicare, Medicaid, or other federally funded health care program by attempting to have a false or fraudulent claim paid.

A person or entity found liable under the False Claims Act is, generally, subject to civil money penalties plus three times the amount of damages that the government sustained because of the illegal act.

Anyone may bring a qui tam action under the False Claims Act in the name of the United States. The case is initiated by filing the complaint and all available material evidence under seal with a federal court. The complaint remains under seal for at least 60 days and will not be served on the defendant. During this time, the government investigates the complaint. The government may, and often does, obtain additional investigation time by showing good cause. After expiration of the review and investigation period, the government may elect to pursue the case in its own name or decide not to pursue the case. If the government decides not to pursue the case, the person who filed the action often has the right to continue with the case on his or her own.

If the government proceeds with the case, the person who filed the action may receive between 15% and 25% of any recovery, depending upon the contribution of that person to the prosecution of the case and other factors. If the government does not proceed with the case, the person who filed the action may be entitled to between 25% and 30% of any recovery, plus reasonable expenses and attorneys' fees and costs.

b. Program Fraud Civil Remedies Act; 31 U.S.C. §§ 3801 – 3812

- The Program Fraud and Civil Remedies Act ("PFCRA") creates administrative remedies for making false claims and false statements. These penalties are separate from and in addition to any liability that may be imposed under the False Claims Act. The PFCRA imposes liability on people or entities that file a claim that they know or have reason to know:
  - Is false, fictitious, or fraudulent;
  - Includes or is supported by any written statement that contains false, fictitious, or fraudulent information;
  - Includes or is supported by a written statement that omits a material fact, which causes the statement to be false, fictitious, or fraudulent, and the person or entity submitting the statement has a duty to include the omitted fact; or
  - Is for payment for property or services not provided as claimed.
- A violation of this section of the PFCRA is punishable by a civil penalty for each wrongfully filed claim, plus an assessment of twice the amount of any unlawful claim that has been paid. A person or entity violates the PFCRA if they submit a written statement that they know or should know:
  - Asserts a material fact that is false, fictitious or fraudulent; or
  - Omits a material fact that they had a duty to include, the omission caused the statement to be false, fictitious, or fraudulent, and the statement contained a certification of accuracy.

c. Federal Grants – Enhancement of Employee Whistleblower Protection (41 U.S.C. 4712)

- Employees working on a Federal Government contract, subcontract or grant are provided enhanced whistleblower protections.
- Prohibition of Reprisals
  - In general an employee of a contractor, subcontractor, or grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body, described in the next paragraph, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
  - Persons and bodies covered, as follows:
    - A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

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- An employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a federal contract shall be deemed to have made a disclosure.
  - An employee of a contractor, subcontractor, or grantee who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 3.908-2 of this section may submit a complaint with the Inspector General of the agency concerned. Procedures for submitting fraud, waste, abuse, and whistleblower complaints are generally accessible on agency Office of Inspector General Hotline or Whistleblower Internet sites. A complaint by the employee may not be brought under 41 USC 4712 more than three years after the date on which the alleged reprisal took place.
- d. State False Claims Laws/Medicaid Fraud Statute, s. 49.49 (1), Wis. Stats.

- The state Medicaid fraud statute prohibits any person from:
  - Knowingly and willfully making or causing to be made a false statement or misrepresentation of a material fact in a claim for Medicaid benefits or payments.
  - Knowingly and willfully making or causing to be made a false statement or misrepresentation of a material fact for use in determining rights to Medicaid benefits or payments.
  - Having knowledge of an act affecting the initial or continued right to Medicaid benefits or payments or the initial, or continued right to Medicaid benefits or payments of any other individual on whose behalf someone has applied for or is receiving the benefits or payments, concealing or failing to disclose such event with an intent to fraudulently secure Medicaid benefits or payments whether in a greater amount or quantity than is due or when no benefit or payment is authorized.
  - Making a claim for Medicaid benefits or payments for the use or benefit of another, and after receiving the benefit or payment, knowingly and willfully converting it or any part of it to a use other than for the use and benefit of the intended person.
  - Anyone found guilty of the above may be imprisoned for up to six years, and fined, plus civil damages up to three times the amount of excess payments.

### 3.2. MCHS's Policies and Procedures for Detecting Fraud

- a. MCHS is committed to conducting business activities in an ethical and forthright manner and within the letter and spirit of all applicable laws and regulations. On November 9, 1998, the Marshfield Clinic Board of Directors approved its Corporate Compliance Program. The Corporate Compliance Program encompasses a Code of Business Ethics and Conduct ("[the Code](#)") and certain policies and procedures related to MCHS's business(es).

Collectively, the Code of Business Ethics and Conduct, the Compliance Handbook and Corporate Compliance Policies and Procedures are designed to promote ethical behavior and compliance with all applicable laws and regulations. MCHS maintains a [Corporate Compliance Intranet site](#) which includes compliance policies and procedures, the Corporate Compliance Handbook and other materials, references and education on compliance matters. Revenue Integrity department maintains a [Reimbursement Intranet site](#) which includes education on payer reimbursement issues and education on coding, billing and documentation of services. It is MCHS policy that all physicians and staff must document and bill appropriately for the services they provide.

### 3.3. Disclosure by Whistleblower

- a. If a MCHS workforce member or business associate believes in good faith that MCHS has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services or conditions provided by MCHS potentially endangers patients, workers, or the public, then disclosure should be made to:
  - The MCHS Compliance Hotline (877-373-0122), the MCHS Corporate Compliance office (715-221-6044), or by using the anonymous E-hotline on the Corporate Compliance website.
  - A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of MCHS or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by MCHS; or
  - An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate with regard to the conduct defined above.
- b. If required to investigate the allegation, Protected Health Information (PHI) may be disclosed by the whistleblower.

### 3.4. Disclosures by Workforce Members who are Victims of a Crime

- a. If a MCHS workforce member is a victim of a crime, the workforce member should disclose to MCHS Legal Services, to MCHS Corporate Compliance, or to a law enforcement official.
- b. If required to investigate the allegation, Protected Health Information (PHI) may be disclosed if:
  - The PHI disclosed is about the suspected perpetrator of the criminal act; and
  - The PHI disclosed is limited to the following information:
    - Name and address;
    - Date and place of birth;

- Social security number;
- ABO blood type and Rh factor;
- Type of injury;
- Date and time of treatment;
- Date and time of death, if applicable; and
- A description of distinguishing physical characteristics including height, weight, gender, race, hair and eye color, presence or absence of facial hair (i.e, beard or mustache), scars, and tattoos.

### 3.5. Anti-Retaliation Protections

#### a. MCHS Protections

- MCHS requires that all physicians, staff, and employees who in good faith believe someone may be violating the law, the Code of Business Ethics and Conduct, or any of the Compliance Policies or Procedures must report it immediately to MCHS's External Compliance Hotline, E-Hotline, Corporate Compliance Officer, Legal Services, or to another MCHS official (e.g., Executive Director, Chief Medical Officer, or the individual's Service Line Administrator or Manager).
- The Compliance Intranet site includes information on [Reporting Misconduct](#). Reasonable precautions will be taken to maintain the confidentiality of anyone who reports violations even if it turns out that no violation has occurred. No one may punish or seek reprisal against another individual who has conscientiously made a report in good faith. Good faith simply means that the individual honestly had a reasonable belief that there may have been a compliance violation or the individual was not sure but was honestly questioning whether a compliance violation did or would occur. The Intranet Compliance site has information on Confidentiality and Protection Against Reprisal in the [Code of Business Ethics and Conduct](#).

#### b. Federal Law Protections

- The False Claims Act includes protections for people who file qui tam lawsuits as described above. The False Claims Act states that any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful actions taken in furtherance of a qui tam action is entitled to recover damages. He or she is entitled to "all relief necessary to make the employee whole," including reinstatement with the same seniority status, twice the amount of back pay (plus interest), and compensation for any other damages the employee suffered as a result of the discrimination. The employee also can be awarded litigation costs and reasonable attorneys' fees.

#### c. State Law Protections

- Under Wisconsin statute 146.997, Health Care Worker Protection, Wisconsin law also protects health care workers who disclose any of the following to an appropriate individual or agency:
  - Information that a health care facility or provider has violated any state law or rule or federal law or regulation.
  - A situation in which the quality of care provided by, or by an employee of, the health care facility or provider violates established standards and poses a potential risk to public health or safety.

Specifically, a health care facility or provider cannot take disciplinary action against an individual who reports the above in good faith. A health care facility or provider who violates this statute shall be subject to a fine for a first violation.

### 3.6. General Compliance and Fraud, Waste, and Abuse Education

- a. All employees and providers are required to complete computer-based training (CBT) on General Compliance and Fraud, Waste, and Abuse upon hire and annually thereafter. All new hires also attend a one hour orientation session which covers compliance and ethics.
- b. This policy is posted on the MCHS patient portal.

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#### 4. ADDITIONAL RESOURCES

##### 4.1. References:

- False Claims Act; 31 USC §§ 3729 – 3733
- Section 6032 of the Deficit Reduction Act of 2005
- Program Fraud Civil Remedies Act; 31 USC §§ 3801 -3812
- Medicaid Fraud Statute, s. 49.49(1), Wis. Stats.
- Wisconsin Health Care Worker Protection Statute, s. 146.997, Wis. Stats.
- 41 United States Code 4712
- [Corporate Compliance Intranet site](#)
- [Code of Business Ethics and Conduct](#)
- Wisconsin Hospital Association DRA 6032 Model Policy
- [Fraud, Waste, and Abuse \(FWA\) Training](#)
- [Marshfield Clinic Health System General Compliance Training](#)
- [Reporting Misconduct](#)

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**5. DOCUMENT HISTORY**

Version No.	Revision Description
1.0	Policy #2112 converted to the new Document Control System
2.0	Addition of 41 USC 4712, Federal Grants – Enhancement of Employee Whistleblower Protection
3.0	Updated Section 1.1, added Section 3.4, and added CBT links.
4.0	Annual review. Updated Scope and logo.
5.0	Updated Scope Updated setting metadata field, updated scope, added abbreviations, updated formatting Updated links for Corporate Compliance Site, Reporting Misconduct and Code of Business Ethics and Conduct
6.0	Added Whistleblowers information from "Disclosures by Whistleblowers and Workforce Member Crime Victims" policy which will be retired. Updated Sections include 2.1, 2.2, 3.3, and 3.4.
9.0	Added Whistleblower to file name.
10.0	Annual review. Updates made to Sections 3.2, 3.3, 3.4, first paragraph of 3.5, and 3.6. Updated broken links to CBTs under References.

**6. DOCUMENT PROPERTIES**

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