

Freeman Health System Fraud, Waste and Abuse and Information Concerning False Claims Acts

Policy Number: 250929

Purpose: To educate employees and contractors concerning the provisions of state and federal laws concerning the submission of false claims and to comply with certain requirements contained in the Deficit Reduction Act of 2005.

It is the policy of Freeman Health System to comply with all federal, state and local laws and regulations and federal health program requirements, including federal and state false claims acts. This policy applies to all employees, management, contractors and agents of Freeman Health System. All employees are required to complete fraud, waste and abuse training within 90 days of initial hire and annually thereafter.

This policy and the information contained in it shall be distributed to all current and new employees and to all current and future contractors associated with the provision of health care items or services at Freeman. This policy is included in the employee handbook and administrative policy manual.

This policy includes the following information concerning tools Freeman Health System, Federal and State agencies and individuals use to fight fraud, waste and abuse in the administration of federal health programs and grants:

1. A summary of the Federal False Claims Act
2. A summary of administrative remedies found in the Program Fraud Civil Remedies Act
3. A summary of laws of the states of Missouri, Kansas and Oklahoma that impose civil or criminal penalties for false claims or statements
4. A summary of protections for employees and contractors (whistle-blowers) who report suspected violations of federal and state false claims acts
5. Freeman Health System's existing policies and procedures for detecting and preventing fraud

The Federal False Claims Act

- The federal False Claims Act ("FCA") prohibits:
 - Knowingly presenting or causing to be presented to the federal government a false or fraudulent claim for payment or approval;
 - Knowingly making, using or causing to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the government; and
 - Conspiring to defraud the federal government by getting a false claim allowed or paid.
- "**Knowingly**" means having actual knowledge of the information, acting in deliberate ignorance of the truth or falsity of the information or acting in reckless disregard of the truth or falsity of the information.

- “**Obligation**” is defined as an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation or from retention of any overpayment.
- Persons (including organizations such as hospitals) may be fined a civil penalty of **not less than \$13,946 nor more than \$27,894**, plus three (3) times the amount of damages sustained by the government for each false claim. The amount of damages for health care items or services is the amount paid for each false claim that is filed plus the applicable civil penalty.

FCA Whistleblower Provisions and Protections

Any person may bring an action under the FCA (called a qui tam relator or whistleblower) in federal court. Whistleblowing is defined as making a disclosure that the employee reasonable believes is evidence of any of the following:

- Gross mismanagement of a federal contract or grant
- A gross waste of federal funds
- Receiving federal funds that you may not be entitled to an abuse of authority relating to a federal contract or grant
- A substantial and specific danger to public health or safety; or
- A violation of law, rule, or regulation related to a federal contract or grant (including the competition for, or negation of, a contract or grant).

Freeman must inform employees working on any federal grant or award they are subject to the whistleblower rights and remedies of the pilot program and inform employees in writing of employee whistleblower protections. Freeman must also ensure such requirements are included in any agreement made with subcontractors or sub-grantees. Employees of Freeman or any contractor, subcontractor, grantee or sub-grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for “whistleblowing.” Whistleblower protections cannot be waived by any agreement, policy, form, or condition of employment.

Freeman may not discriminate or retaliate against anyone, including employees or contractors, who file a claim under the FCA. The FCA action is initiated by causing a copy of the complaint and all available relevant evidence to be served on the federal government. The case will remain sealed for at least 60 days and will not be served on the defendant so the government can investigate the complaint. The government may obtain additional time for good cause. The government on its own initiative may also initiate a lawsuit under the FCA. After the 60 day period, or any extension, has expired, the government may pursue the matter in its own name, or decline to proceed. If the government declines to proceed, the person bringing the action has the right to pursue the action on their own.

If the government proceeds with the case, the qui tam relator bringing the action will receive between 15 and 25% of any proceeds, depending upon the contributions of the individual to the success of the case. If the government declines to pursue the case, the qui tam realtor will be entitled to between 25 and 30% of the proceeds of the case, plus reasonable expenses and attorney’s fees and costs awarded against the defendant. Any action must be brought within six years of the filing of the alleged false claim. Examples of FCA claims include billing for items or services not provided, improperly coded claims, overstatement of units of service, failure to refund credit balances arising from government payment errors and filing inaccurate Medicare cost reports.

The Program Fraud Civil Remedies Act (PFCRA) creates administrative remedies for making false claims separate from, and in addition to, the penalties for false claims provided by the FCA. The PFCRA addresses the submission of improper "claims" or "written statements" to a federal agency. Specifically, a person violates PFCRA if they know or have reason to know they are submitting a claim that

- Is false, fictitious or fraudulent;
- Includes or is supported by written statements that are false, fictitious or fraudulent;
- Includes or is supported by a written statement that omits a material fact, the statement is false, fictitious or fraudulent as a result of the omission, and the person submitting the statement has a duty to include the omitted facts; or
- Is for payment for property or services not provided as claimed.

A violation of the PFCRA carries a ***\$5,000 civil penalty for each such wrongfully filed claim***. In addition, an assessment of two times the amount of the claim may be made, unless the claim has not actually been paid. A person also violates PRCRA if they submit a written statement which they know or should know:

- Asserts a material fact which is false, fictitious or fraudulent; or
- Omits a material fact and is false, fictitious or fraudulent as a result of the omission. In this situation, there must be a duty to include the fact and the statement submitted contains a certification of the accuracy or truthfulness of the statement.

A violation of the prohibition for ***submitting an improper statement carries a civil penalty of up to \$5,000***.

State False Claims Acts

The Missouri General Assembly has enacted statutes directed at preventing Medicaid fraud. The statutes carry both civil and criminal penalties. There are no specific qui tam provisions or whistleblower protections contained in these laws. These laws prohibit:

- Knowingly presenting a claim for payment that falsely states the health care provided was medically necessary;
- Knowingly concealing an event affecting initial or continued payments by a medical assistance program for providing care;
- Knowingly concealing or failing to disclose any information in order to obtain a payment from a medical assistance program to which the health care provider is not entitled or improperly increasing the amount of any such payment to which the health care provider is entitled; and
- Knowingly making a claim for payment for health care that was provided that has a lesser value than the amount of the claim.

There are statutes enacted in Kansas that address fraud and abuse in the Kansas Medicaid program. Kansas has not adopted any false claims act or similar statute that contains qui tam or whistleblower provisions similar to the FCA. However, Kansas laws make it unlawful to submit false or fraudulent claims to the Kansas Medicaid

program. Violations of these laws are subject to substantial fines and imprisonment. Violators may also be responsible for full restitution to the State of Kansas plus interest and expenses.

** Oklahoma has enacted a false claims act that contains qui tam and whistleblower protections similar to those found in the FCA. Oklahoma has also adopted a Medicaid anti-fraud statute that makes it unlawful for a person to submit false and fraudulent claims to the Oklahoma Medicaid program. **

Freeman Health System's Policies and Procedures for Detecting and Preventing Fraud

Freeman has implemented a Corporate Compliance Program to address ethical and compliance issues and to emphasize the need to adhere to all federal and state laws governing health care. The Compliance Program is intended to prevent and/or detect violations of the law that pertain to the provision of health care services.

The Corporate Compliance Program outlines the compliance standards and procedures of Freeman Health System, including reporting obligations, investigations, monitoring, auditing and corrective action for violations of compliance policies. The Freeman Code of Conduct and Ethics outlines the expectations of all Freeman Health System employees and agents. Supporting the Corporate Compliance Program and the Code of Conduct and Ethics are various compliance policies.

Freeman Health System employees and agents must immediately report any suspected or actual violations of applicable federal or state law by any Freeman Health System employee or agent to the employee or agent's supervisor or the Freeman Compliance Officer. Confidential reports can be made via the Compliance Hotline (417/347-4424 or 417/206-3286) or at the Compliance Drop Boxes at Freeman West, Freeman East, Freeman Neosho and Freeman Business Center.

As stated in the Corporate Compliance Program, the Compliance Officer shall maintain the confidentiality of the identity of employees who submit reports of violations or suspected violations and retaliation or retribution for reporting such actions or concerns is strictly prohibited. Freeman encourages employees and agents to utilize the available internal mechanisms for reporting potential false claims or other legal noncompliance before seeking the remedies available under federal and state false claims statutes.

Freeman takes issues concerning false claims and fraud and abuse very seriously and encourages all employees and contractors to be aware of the laws and regulations regarding fraud and abuse and false claims and to identify and resolve any issues immediately.