

**Policy and Procedure Manual
Administrative Manual
Administrative Institutional
Department: Compliance**



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**Federal and State
False Claims Act
Compliance**

APPROVALS:

SLT: 11/16/20

Scope: X Medical Center X Beckman Research X Philanthropy X Foundation

I. PURPOSE / BACKGROUND

This document describes City of Hope’s policy on reporting any conduct that may violate the federal or state false claims acts and that no retaliation is permitted against any employee for reporting such conduct. This policy and its protections apply to all members of the City of Hope workforce, including members of the Medical and Allied Health Professional Staff. This policy has been developed to address City of Hope’s compliance with the requirements of the federal Deficit Reduction Act of 2005 and is available to all members of the City of Hope workforce, and contractors or agents that, on behalf of City of Hope, provide or authorize Medicaid items or services, perform billing or coding functions or are involved in monitoring health care provided by City of Hope.

The Federal Deficit Reduction Act (“FCA”) of 2005 requires organizations that receive at least \$5 million annually from the federal Medicaid Program to establish policies and procedures detailing their compliance with the Federal False Claims Act and associated “whistleblower” protections (discussed further below).

A. Federal False Claims Act

1. The Federal False Claims Act (“FCA”) imposes liability on any person who submits a claim to the federal government that he or she knows (or should know) is false. The FCA sets forth penalties for any person who does or conspires to:
 - a. Knowingly present (or cause to be presented) a false or fraudulent claim for payment or approval
 - 1) For example, a physician who submits a bill to Medicare for medical services she knows she has not provided
 - b. Knowingly make, use (or cause to be made or used) a false record or statement material to a false or fraudulent claim
 - 1) For example, a government contractor who submits records that he knows (or should know) are false and that inaccurately indicate compliance with certain contractual or regulatory requirements.
 - c. Knowingly make, use (or cause to be made or used) a false record or statement material to an obligation to pay money to the Government.
 - 1) For example, a provider that conceals the date that it identifies a Medicare overpayment in order to artificially extend the 60-day deadline to repay.

- d. Knowingly conceal or knowingly and improperly avoid or decrease an obligation to pay money to the Government.
 - 1) An example of this “reverse false claim” is when a hospital obtains interim payments from Medicare throughout the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare program.
 2. These penalties include civil penalties ranging from \$5,000 to \$10,000, as well as payments of up to three times the Government’s damages for each false claim.
 3. The False Claims Act does not require that the person submitting the claim have actual knowledge that the claim is false. Under the legal definition of “knowingly” a person who acts in reckless disregard or in deliberate ignorance of the truth or falsity of the information can also be found liable under the Act.
 4. In addition to its substantive provisions, the FCA provides that private parties may bring a False Claims enforcement action on behalf of the United States. These private parties, known as “qui tam relators,” or “whistleblowers,” may share in a percentage of the proceeds from an FCA action or settlement.
 5. In general, when the Government chooses to intervene in the lawsuit, a qui tam relator receives between 15 and 25 percent of the proceeds of the FCA action, depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, the relator typically receives between 25 and 30 percent of the proceeds, as determined by the court. The court may reduce the whistleblower’s percentage of the proceeds if it is determined that the whistleblower planned and initiated the false claims violation.
 6. The FCA provides protection to whistleblowers who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. Remedies include reinstatement with comparable seniority status, two times the amount of back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees.
- B. Federal Program Fraud Civil Remedies Act
1. In addition to the False Claims Act, the Program Fraud Civil Remedies Act of 1986 (“PFRA”) also allows the federal government to pursue civil penalties for the submission of false claims. PFRA makes it unlawful for a person to make, submit or present claims or written statements that he or she has reason to know are false, fictitious or fraudulent to designated federal agencies, including the U.S. Department of Health and Human Services. Penalties are up to \$5,000 plus twice the amount of each false claim.
- C. California Laws Imposing Civil or Criminal Penalties for False Claims and Statements
1. California False Claims Act (“CFCA”):

The State of California has also enacted a false claims law that is modeled after the federal FCA and prohibits, amongst other things, knowingly presenting or causing to be presented a false claim for payment or approval. Similar to the federal FCA, under the CFCA definition of “knowingly,” a person or organization can be held liable not only if he or she acts intentionally, but also if he or she deliberately ignores or acts in reckless disregard of the truth or falsity of the information provided. Any person, under certain

circumstances, can act as a whistleblower and bring a civil action for a violation of the CFCA.

Furthermore, both the CFCA and City of Hope's internal policies prohibit retaliation against employees who engage in lawful acts to disclose information to the government or act in furtherance of a false claims action. Under the CFCA, an employer may not discharge, demote, suspend, threaten, harass, deny promotion to or in any other manner discriminate against such an employee.

The California Labor Code provides additional legal protection for whistleblowers. Under the California Labor Code, an employer may not prevent an employee from lawfully disclosing information regarding something an employee reasonably believes constitutes a legal or regulatory violation to a government or law enforcement agency.

2. Civil Penalties:

In addition to the CFCA, there are other California laws that provide for civil penalties when a provider or person submits certain false claims. These laws set forth civil penalties for the submission of false or certain non-complaint claims for payment under the Medi-Cal program. In addition, the submission of false statements may also violate California laws that prohibit any person or organization from engaging in any unlawful, unfair or fraudulent business act or practice.

3. Criminal Laws:

California has also enacted several criminal laws that prohibit making false claims and statements. Under California law, it is a crime to:

- a. Present a false or fraudulent claim for payment with intent to defraud
- b. Make a false or fraudulent representation to knowingly defraud another
- c. Make a false claim or statement with respect to health care claims
- d. Receive or encourage another person to receive health care for which he or she is not eligible on the basis of false declarations
- e. Knowingly present a false claim for health care goods or services, including Medi-Cal services, with intent to obtain greater compensation than is appropriate
- f. Making (or causing to be made) a false or fraudulent claim for health care benefits

D. Role of False Claims Laws

The false claims laws discussed above are an important part of preventing fraud and abuse in federal and state health care programs by giving the state and federal governments power to investigate and prosecute fraudulent activities civilly, criminally and administratively.

II. POLICY AND PROCEDURE (Policies to Prevent Fraud, Waste and Abuse):

- A. City of Hope requires compliance with the requirements of federal and state laws in connection with federal health care programs, including Medicare and Medicaid. Every City of Hope employee, as well as employees of City of Hope's contractors and agents must receive the information set forth in this policy. Further, a copy of this policy will be made available to City of Hope contractors and agents, who will agree to abide by it insofar as it is relevant and applicable to the contractor or agent's interaction with City of Hope.
- B. The Compliance Office is responsible for coordinating all City of Hope education regarding this policy, federal and state laws prohibiting false claims, and the whistleblower protections

available under these laws. Anyone may contact the Compliance Office for guidance or more information about any of the laws discussed in this policy or to report a concern.

- C. **Employee Responsibilities:** In accordance with City of Hope's Compliance Plan and Code of Conduct, all employees must report any suspected misconduct, including suspected violations of our policies and procedures or federal or state laws. Reports of potentially improper activities can be made to a supervisor, the Compliance Office or through our anonymous Compliance Hotline: (877) COH-COH8 (877-264-2648).
- D. **Manager Responsibilities:** Managers are responsible for:
 - 1. Informing their employees that City of Hope does not tolerate or condone activities that result in or contribute to the submission of false claims to any federal health care programs, including Medicare and Medicaid.
 - 2. Reporting any suspected fraudulent or abusive activities, including any activities reported to them by staff, to a supervisor or the Compliance Office.
 - 3. Coordinating with the Compliance Office to educate and train all employees on City of Hope's policies for reporting fraud and abuse.
- E. City of Hope expressly prohibits retaliation against employees who, in good faith, report or participate in the investigation of compliance concerns, or who, in good faith, investigate, file or participate in a whistleblower action.
- F. Additional information regarding City of Hope's policies for detecting and preventing fraud, waste and abuse can be found in the City of Hope Compliance Plan and Code of Conduct.

Owner: Director, Ethics and Compliance Department

Sponsor: Chief Ethics and Compliance Officer

Policy History:

Reviewed: 03/15/12; 11/26/12

Revised: 06/13/12; 11/26/12

References (Current copies are available upon request from the Corporate Compliance Office):

1. Federal Deficit Reduction Act, § 6032 (Public Law 109-171, § 6032)
2. Federal False Claims Act, 31 U.S.C. §§ 3729 – 3733
3. Federal Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §§ 3801 – 3812
4. California False Claims Act, CAL. GOV'T CODE §§ 12650 – 12656
5. CAL. WELF. & INST. CODE § 14123
6. CAL. BUS. & PROF. CODE §§ 17200-17210
7. CAL. PENAL CODE § 72
8. CAL. PENAL CODE § 484
9. CAL. WELF. & INST. CODE § 14014
10. CAL. WELF. & INST. CODE § 14107
11. CAL. PENAL CODE § 550
12. CAL. INS. CODE § 1871.7
13. CAL. LAB. CODE § 1102.5

Related Policies (Available on the Corporate Compliance Office Website):

1. City of Hope Compliance Plan
2. City of Hope Code of Conduct

Appendix One – Acronyms, Terms and Definitions Applicable to this Policy:

1. **City of Hope (“COH”)** – City of Hope National Medical Center (“COHNMC”), Beckman Research Institute (“BRI”), Philanthropy and City of Hope Medical Foundation (“COHMF”), collectively referred to as City of Hope (“COH”) for purposes of this policy.
2. **Medical Center** – Refers to all facilities covered by City of Hope National Medical Center's hospital license.