

 POLICY	
TITLE: Fraud, Waste, and Abuse Policy	NUMBER: OH.POL.A-410.040
ISSUE DATE: 3/1/2007	EFFECTIVE DATE: 8/7/2023
DEVELOPED / REVISED BY: The Office of the General Counsel / The Office of Ethics and Compliance	
REVIEWED BY: The Office of General Counsel Senior Director, Compliance and Chief Privacy Officer Senior V.P. Chief Ethics & Compliance Officer Senior Leadership Council's Ethics & Compliance Committee OhioHealth System Policy & Procedure Management Committee	DATE REVIEWED: 3/28/2023 3/28/2023 4/14/2023 5/2/2023 7/5/2023
APPROVED BY: Senior Leadership Council's Ethics & Compliance Committee	

SCOPE:

This information shall be provided to all associates, agents, and contractors of OhioHealth.

STATEMENT OF PURPOSE:

As required by the Deficit Reduction Act of 2005, OhioHealth has revised its Compliance Program to provide the following detailed information to all associates, agents, and contractors about federal and state False Claims Acts and laws pertaining to civil and criminal penalties for false claims and statements, as well as whistleblower protections under such laws, and OhioHealth's policies and procedures to detect and prevent fraud, waste, and abuse.

POLICY:

I. Protection for "Whistleblowers":

- A. It is the policy of OhioHealth to detect and prevent any activity that may violate the False Claims Act, the Program Fraud Civil Remedies Act of 1986, or the State Medicaid Fraud Laws cited in this policy.
- B. If any associate has knowledge or information that any such activity may have taken place, the associate should notify his or her supervisor or contact the Compliance Officer (614) 544-4200, or report through the Ethics and Compliance Hotline at (866) 411-6181, or www.mycompliancereport.com (enter Access ID: OHH).
 1. Information may be reported to the Hotline anonymously.
- C. With respect to Medicare Advantage Organizations, associates, contractors, and/or other downstream entities may also report compliance concerns and suspected or actual violations related to the Medicare program to the appropriate sponsor.
- D. In addition, federal and state law and OhioHealth policy prohibit any retaliation or retribution against persons who report suspected violations of these laws to law enforcement officials or who file "whistleblower" lawsuits on behalf of the government.
 1. Anyone who believes that he or she has been subject to any such retribution or retaliation should also report this to the Compliance Officer or the Ethics & Compliance Hotline.
- E. For more information about OhioHealth's non-retaliation policy or about how to report concerns, please review OhioHealth's *Non-Retaliation Policy* (OH.POL.A-410.032).

II. Fraud, Waste, and Abuse Prevention and Detection:

- A. OhioHealth has developed, as part of its Compliance Program, detailed written policies for the prevention and detection of fraud, waste, and abuse in government and commercial health care programs, and for the role of associates, contractors and agents in preventing and detecting fraud, waste, and abuse in such programs.

- B. OhioHealth policies and procedures for the prevention and detection of fraud, waste, and abuse have been provided to associates, contractors and agents in the form of the Code of Conduct and may be accessed on the OhioHealth intranet (select "Workplace Tools" and click on "Ethics & Compliance Resources and Hotline"), or additional copies may be obtained from the Compliance Office.
- C. If any associate, contractor, or agent has any questions regarding such policies and procedures, the associate should contact the Compliance Office at (614) 544-4200.

III. Federal False Claims Act:

- A. The federal False Claims Act, 31 USC 3729-3733, among other things, applies to the submission of claims for payment under any federal program, including claims submitted by health care providers for payment by Medicare, Medicaid, and other federal health care programs.
- B. The False Claims Act provides the federal government a civil remedy for fraudulent claims.
- C. The False Claims Act prohibits, among other things:
 - 1. Knowingly presenting or causing to be presented to the federal government a false or fraudulent claim for payment or approval;
 - 2. Knowingly making or using, or causing to be made or used, a false record or statement in order to have a false or fraudulent claim paid or approved by the government; and
 - 3. Conspiring to defraud the government by getting a false or fraudulent claim allowed or paid.
- D. "Knowingly" means acting with actual knowledge or with reckless disregard or deliberate indifference to the truth or falsity of information.
- E. Examples of false claims include falsifying medical records submitted, billing for services not rendered or goods not provided, duplicating billing to obtain double compensation, and billing certifying or prescribing medically unnecessary services.
- F. The United States Attorney General may bring civil actions against individuals and entities for violations of the False Claims Act.
- G. Penalties under the False Claims Act include three times the amount of any overpayment, and civil monetary penalties of between \$11,463 and \$22,927 per claim, plus attorney fees.
- H. The False Claims Act allows private individuals to bring "whistleblower" actions on behalf of the federal government for violations of the Act.
- I. The government may decide to intervene and take over the whistleblower action, or decline to intervene and allow the whistleblower to pursue the action.
- J. The False Claims Act protects whistleblowers by imposing penalties, including two times back pay, interest and attorney fees, upon individuals and entities that retaliate against whistleblowers.

IV. Program Fraud Civil Remedies Act of 1986:

- A. The Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 USC Chapter 38, authorizes federal agencies such as the Department of Health and Human Services ("HHS") to investigate and assess penalties for the submission of false claims or statements to the agency.
- B. The conduct prohibited by the PFCRA is similar to that prohibited by the False Claims Act.
- C. A person may be liable under the PFCRA for making, presenting, or submitting, or causing to be made, presented, or submitted, a claim or statement that the person knows or has reason to know:
 - 1. Is false, fictitious, or fraudulent;

2. Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;
3. Includes or is supported by any written statement that –
 - a. Omits a material fact;
 - b. Is false, fictitious, or fraudulent as a result of such omission; and
 - c. Is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or
 - d. Is for payment for the provision of property or services, which the person has not provided as claimed.
- D. The government agency may assess twice the amount of its damages and a civil penalty of up to \$13,000 for each false or fictitious claim.
 1. The United States Attorney General has exclusive authority to enforce such assessments and penalties in federal court.

V. Ohio Laws - There also may be liability under Ohio laws for false or fraudulent claims with respect to the Medicaid program expenditures, including:

- A. Medicaid Fraud, Ohio Revised Code Sec. 2913.40 - imposes criminal penalties for among other things:
 1. Knowingly making or causing to be made a false or misleading statement or representation for use in obtaining Medicaid reimbursement.
 2. Doing either of the following with the purpose to commit fraud or knowingly facilitating a fraud:
 - a. Charging, soliciting, accepting or receiving any amount in addition to the amount of reimbursement due from Medicaid and any authorized deductibles or co-payments;
 - b. Soliciting, offering or receiving any remuneration other than authorized deductibles and co-payments, in cash or in kind, including kickbacks or rebates, in connection with the furnishing of goods or services for which payment may be made under the Medicaid program.
 3. Knowingly altering, destroying, concealing, or removing any records necessary to support a Medicaid claim or cost report.
- B. Medicaid Eligibility Fraud, Ohio Revised Code Sec. 2913.401 - imposes criminal penalties on persons for knowingly making false or misleading statements, concealing an interest in property, or failing to disclose a transfer of property for purposes of determining eligibility to receive Medicaid benefits.
- C. Falsification, Ohio Revised Code Sec. 2921.13 - Ohio criminal law prohibits persons from knowingly making false statements or swearing or affirming the truth of a false statement for the purpose of securing payment of benefits administered by a governmental agency or paid out of a public treasury, for the purpose of securing a provider agreement with the government, or in connection with any report that is required or authorized by law, such as the Medicaid cost report.
- D. Offenses by Medicaid Providers, Ohio Revised Code Sec. 5164.35 - The Medicaid Provider Offenses Statute prohibits Medicaid providers from acting “by deception” to obtain or receive, or attempt to obtain or receive, payments to which the provider is not entitled, or to falsify any report or document relating to Medicaid.
 1. “Deception” includes acting with reckless disregard or deliberate ignorance of the truth or falsity of information or withholding information.

2. Penalties for violation of the Medicaid Provider Offenses Statute include interest on excess payments, three times the amount of excess payments, civil penalties of \$5,000 to \$10,000 per claim, recovery of the costs of enforcement, and termination of the Medicaid provider agreement.
 3. The Ohio Attorney General may enforce the provisions of this statute in state court.
- E. Any other state law pertaining to civil or criminal penalties for false claims and statements with respect to the Medicaid program, including any law that prohibits:
1. Knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval to the Medicaid program;
 2. Knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Medicaid program;
 3. Conspiring to defraud the Medicaid program by getting a false or fraudulent claim allowed or paid;
 4. Knowingly making, using, or causing to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Medicaid program.

REFERENCES:

1. OH.POL.A-410.032 Non-Retaliation Policy