

<i>Title:</i> Policy Regarding False Claims Act Education	
<i>Joint Commission Chapter Section:</i> 1.0 Administrative Policies	<i>Date original policy was created:</i> January 30, 2007
<i>This policy belongs to:</i> Ethics and Compliance	
<i>Committee/Council Approval(s):</i> N/A	<i>Date of Approval(s):</i>

This Policy contains one or more PROCEDURES outlining the methods and applicability of this Policy.

This policy applies to the following Geisinger Entities: (REQUIRED) Please select the box before the entities that apply.

CLINICAL ENTITIES (includes Geisinger entities providing health care services, i.e., hospitals, group practices, clinics)	
<input checked="" type="checkbox"/> Community Medical Center (CMC or GCMC)	<input checked="" type="checkbox"/> Geisinger Jersey Shore Hospital (GJSH)
<input checked="" type="checkbox"/> Endoscopy Center of Geisinger Lewistown Hospital; an entity of GLH	<input checked="" type="checkbox"/> Geisinger Lewistown Hospital (GLH)
<input checked="" type="checkbox"/> Family Health Associates of GLH (FHA)	<input checked="" type="checkbox"/> Geisinger Medical Center (GMC)
<input checked="" type="checkbox"/> Geisinger Bloomsburg Hospital (GBH)	<input checked="" type="checkbox"/> Geisinger Medical Center Muncy (GMCM)
<input checked="" type="checkbox"/> Geisinger Clinic (GC)	<input checked="" type="checkbox"/> Geisinger Pharmacy, LLC
<input checked="" type="checkbox"/> Geisinger Community Health Services (GCHS)	<input checked="" type="checkbox"/> Geisinger Wyoming Valley Medical Center (GWW)
<input checked="" type="checkbox"/> Geisinger Encompass Health, LLC	<input checked="" type="checkbox"/> GMC Outpatient Surgery - Woodbine; an entity of GMC
<input checked="" type="checkbox"/> Geisinger Endoscopy-Montoursville; an entity of G-HM	<input checked="" type="checkbox"/> Lewistown Ambulatory Care Corporation (LACC)
<input checked="" type="checkbox"/> Geisinger Gray's Woods Outpatient Surgery and Endoscopy Center; an entity of GC	<input checked="" type="checkbox"/> Marworth
<input checked="" type="checkbox"/> Geisinger-HM Joint Venture (G-HM) ¹	<input checked="" type="checkbox"/> West Shore Advanced Life Support Services, Inc. (WSALS or Geisinger EMS)

NON-CLINICAL ENTITIES (includes Geisinger business/corporate entities not providing health care services)	
<input checked="" type="checkbox"/> Geisinger Commonwealth School of Medicine (GCSOM)	<input checked="" type="checkbox"/> Geisinger System Services (GSS)
<input checked="" type="checkbox"/> Geisinger Health (GH or GHF)	<input checked="" type="checkbox"/> GNJ Physicians Group (GNJ)
<input checked="" type="checkbox"/> Geisinger Health Plan (GHP)	<input checked="" type="checkbox"/> ISS Solutions, Inc. (ISS)
<input checked="" type="checkbox"/> Geisinger Quality Options, Inc. (GQO)	<input checked="" type="checkbox"/> Keystone Health Information Exchange, Inc. (KeyHIE)

¹ Geisinger-HM Joint Venture is an LLC representing a joint venture between Geisinger Medical Center and Highmark Health.

PURPOSE

Geisinger acknowledges its responsibilities to establish policies and procedures under the Federal Deficit Reduction Act to provide information and education to its employees, agents and contracted work force regarding the federal False Claims Act, the Federal Whistleblower's Act as well Pennsylvania law on these subjects. The following policy is established in order to help our employees, agents and contractors understand the provisions of the federal and state laws regarding submitting false claims for reimbursement, as well as to further inform our employees of their right to report violations at the state and federal levels as well as to their own supervisors or through Geisinger's Compliance structure.

POLICY

Detailed information regarding both state and federal false claims laws and whistleblower laws will be distributed to employees via this policy as well as through the various educational courses and orientation programs ongoing throughout the system. Employees

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are strongly encouraged to report any observations they might make regarding potential violations to their supervisors, the Geisinger Compliance Officer or through the Geisinger confidential Compliance Hotline (**1-800-292-1627**) or make a report online at www.geisinger.org/alertline.

FEDERAL FALSE CLAIMS ACT (See Title 31 of the United States Administrative Code, sections 3729 through sections 3733).

Background and Reason for Implementation of the False Claims Act

The False Claims Act ('FCA') has been in existence since the Civil War and was originally designed to combat fraud and abuse in the military. Over the years, the provision has been used successfully to fight fraud in the defense contracting industry. The law is now being used to deter fraud and abuse in the health care arena. The FCA is being used, among other things, to prevent spiraling health care costs through the prevention of certain revenue enhancing practices such as the over-utilization of services and the submission of false or inaccurate billing statements. Penalties and fees recouped under FCA are hoped to extend the longevity of endangered federal health care programs and benefits as well as deter future fraudulent actions on the part of health care providers.

Civil Liability Under the False Claims Act and Penalties for Violations

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;
3. conspiring to defraud the government by getting a false or fraudulent claim allowed or paid; and
4. knowingly making or 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 government.

'Knowingly' means that a person, with respect to information: (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no specific proof of intent to defraud is required. *See 31 USC Section 3729(a)-(b)*. Mere mistakes are insufficient for purpose of establishing liability under FCA.

Penalties for those who violate the FCA include civil monetary penalties between \$13,508 and \$27,018 plus three times the amount of the government's damages for each false claim submitted. (*See 31 USC 3729(a)*).

What is a Qui Tam Action?

The purpose of the qui tam provisions under the False Claims Act is to give an incentive to whistleblowers to come forward to help the government discover and prosecute fraudulent claims by awarding them a percentage of the amount recovered. There are many different types of health care fraud that can be the basis of a qui tam action. These include, but are not limited to:

- add-on services
- upcoding and unbundling
- kickbacks
- false certification and information
- lack of medical necessity
- fraudulent cost reports
- grant or program fraud
- billing for inadequate patient care

The qui tam provisions allow any person with actual knowledge of false claims activity to file a lawsuit on behalf of the US government. Such persons are referred to as 'relators.' However, in order to meet the criteria to qualify as a relator several criteria

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must be satisfied as follows:

1. **Original Source** - First, to prevail under a lawsuit, the relator must be the 'original source' of the information reported to the federal government. Specifically, the whistleblower must have independent knowledge of the false claims activity and must voluntarily provide this information to the government. If the matter disclosed is already a subject of a federal investigation, or if the health care provider or supplier had previously disclosed the problem to a federal agency, the whistleblower may be barred from obtaining recovery under the False Claims Act.
2. **Qui Tam Procedure** - This whistleblower/relator must file his or her lawsuit in a federal district court 'under seal.' This means that the lawsuit is kept confidential while the government reviews and investigates the allegations and decides how to proceed. If the government determines that the lawsuit has merit and decides to join ('intervene'), the prosecution of the lawsuit will be directed by the US Department of Justice. At this point, the government will be the 'plaintiff' or party suing the health care provider. If the government decides not to intervene, the whistle-blower can continue with the lawsuit on his or her own.
3. **Award to Qui Tam Relators** - If the lawsuit is successful, the qui tam relator may receive an award ranging from 15 to 25 percent of the amount recovered by the government. The relator may also be entitled to reasonable expenses including attorney's fees and costs for bringing the lawsuit. See 31 USC §3730(d).
4. **How long does a Relator have to bring a Qui Tam Action?** - A civil action for false claims cannot be brought more than six years after the date on which the violation was committed or more than three years after the date when the facts material to the right of action are known or reasonably should have been known by the government official charged with responsibility to act in the circumstances (but in no event more than 10 years after the date on which the violation was committed), whichever occurs last. See 31 USC §3731(b).

Protections for the Whistleblower under the Federal False Claims Act

The False Claims Act also contains a cause of action/protections for any employee who is 'discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment by his or her employer as a result of his or her involvement in a qui tam suit.' See 31 USC 3730(h). The statute entitles employees to relief such as reinstatement with the same seniority status they would have had but for the discrimination; twice the amount of back pay; interest on back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. See 31 USC §3730(h).

Geisinger takes its commitment to the prevention of fraud and abuse seriously as well as the protection of its employees who make reports of potential findings. All employees are strongly encouraged that if they have any knowledge or information of any fraudulent activity to notify his or her supervisor or call the Compliance Hotline (**1-800-292-1627**) or make a report online at www.geisinger.org/alertline. Information may be reported to the Hotline anonymously. Geisinger prohibits retaliation against employees who make reports. Anyone who believes that he or she has been subject to any such retaliation should also report to the Compliance Hotline.

FEDERAL PROGRAM FRAUD CIVIL REMEDIES ACT (See Title 31 of the United States Administrative Code, sections 3801 through sections 3812).

Penalties for Violation

If the value of the false claims does not exceed \$150,000, action may be filed under the Program Fraud Civil Remedies Act (PFCRA), against those making false claims or statements. Penalties for those who violate the PFCRA include civil penalty of not more than \$13,508 for each claim or statement plus an assessment of up to two times the amount of the false claims (See 31 USC §3802).

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PENNSYLVANIA'S MEDICAID "FALSE CLAIMS ACT" (Title 62 P.S. 1407, et seq)**What are the prohibitions under Pennsylvania law?**

There can also be liability under the state of Pennsylvania for false or fraudulent claims with respect to Medicaid program expenditures. The statute in question prohibits false claims and statements as follows:

It shall be unlawful for any person to knowingly or intentionally present for allowance or payment any false or fraudulent claim or cost report for furnishing services or merchandise under medical assistance, or to knowingly present for allowance or payment any claim or cost report for medically unnecessary services or merchandise under medical assistance, or to knowingly submit false information, for the purpose of obtaining greater compensation than that to which he is legally entitled for furnishing services or merchandise under medical assistance, or to knowingly submit false information for the purpose of obtaining authorization for furnishing services or merchandise under medical assistance. See 62 P.S.1407(a)(1)

Pennsylvania law also prohibits the following conduct:

- Soliciting or receiving or to offer or pay any remuneration, including any kickback, bribe or rebate, directly or indirectly, in cash or in kind from or to any person in connection with the furnishing of services or merchandise for which payment may be in whole or in part under the medical assistance program or in connection with referring an individual to a person for the furnishing or arranging for the furnishing of any services or merchandise for which payment may be made in whole or in part under the medical assistance program ('Pennsylvania's Anti-Kickback Act').
- Submitting duplicate claims for services, supplies or equipment for which the provider has already received reimbursement.
- Submitting claims for services, supplies or equipment which were never provided;
- Submitting a claim for services, supplies or equipment which includes costs or charges not related to the services provided to the recipient.
- Submitting a claim or referring a recipient to another provider for services, supplies or equipment which are not documented in the record, are of little or no benefit to the recipient, are below the accepted medical treatment standards, or are unneeded by the recipient.
- Submitting a claim which misrepresents the description of services, the dates of services, the identity of the recipient or the attending physician or the identity of the referring or actual provider;
- Submitting a claim for reimbursement for a service or item at a charge higher than the provider's usual and customary charge to the general public for the same;
- Providing a service or item without a practitioner's written order or the consent of the recipient, except in emergency situations.
- Except in emergency situations, providing a service or item to a patient claiming to be a recipient without making a reasonable effort to verify a current medical assistance identification card, that the person is, in fact, a recipient who is eligible.
- Entering into an agreement or conspiracy to obtain reimbursement or payments for which there is not entitlement.
- Making a false statement in the application for enrollment as a provider.
- Violating 62 P.S. Section 1403(d)(1),(2),(4) and (5) with respect to prohibitions regarding shared health facilities by: leasing on percentage of earnings, paying for referrals in lease, providing improper or unwarranted services, referral to another provider in the facility absent medical justification.

What are Penalties for Violating Pennsylvania's Medicaid False Claims Act?

With one exception, violation of the Pennsylvania law constitutes a felony of the third degree. For each violation there is a maximum penalty of \$15,000 and up to seven years imprisonment. If an individual is convicted in any other state court or Federal court for actions that would constitute a violation of Pennsylvania's law, they may be prosecuted under Pennsylvania law for a second degree felony as well as payments of a maximum penalty of \$25,000 and up to 10 years' imprisonment. Individuals convicted under Pennsylvania's law will also be required to repay the excess benefits or payments they received plus interest on the amount at the maximum legal rate from the date the payment was made to the date repayment is made not to exceed three times the amount of excess benefits or payments. Convictions also result in preclusion of a provider from participating in the medical assistance program

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for a period of five (5) years from the date of conviction.

PENNSYLVANIA WHISTLEBLOWERS' PROTECTION LAW (See 43 P.S. Section 1421, et seq)

What does the Statute Protect and Prohibit?

Pennsylvania has enacted state laws protecting employees who make reports of a violation or suspected violation of State, local or Federal law to 'appropriate authorities.' The law itself is designed to provide protection for employees who participate in hearings, investigations, legislative inquiries or court actions. More specifically, under Section 1423 of the Act, no employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee makes a 'good faith' report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste.

What are the Penalties for Violation of the Pennsylvania Whistleblower's Law?

Under Sections 1424 through 1426 of the Pennsylvania Whistleblower's Act, a person who claims violation of the act may bring a civil action in court for appropriate injunctive relief, monetary damages or both within 180 days after the occurrence of the alleged violation.

Actions that can be taken by the court include reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.

Additionally, any person who, under color of an employer's authority, violates the Act can be held liable for a civil fine of not more than \$10,000.00.