

SALINA REGIONAL HEALTH CENTER (SRHC)

ADMINISTRATIVE POLICY AND PROCEDURE

BILLING AND CODING COMPLIANCE

NUMBER: 8310.84-P

Revised: October 2018

This policy is intended to be a resource to assist practitioners in the performance of their responsibilities. It is not intended nor may it be used to define the standard of care in any given situation. The standard of care is dependent upon the learning, skill, and conduct of a practitioner in a given circumstance and must be established through expert testimony provided by members of the same profession in the same or similar communities under like circumstances.

POLICY:

To ensure employees and business partners of SRHC comprehend and understand how to perform their duties and responsibilities while adhering to applicable federal and state laws and regulations. Sincere efforts made towards the prevention, detection and correction of any potential fraud, abuse or waste in SRHC is a requirement for all employees, agents and contractors. The Corporate Compliance Program has a process for identifying and reducing risk and improving internal controls. SRHC is committed to full compliance with the Federal and State False Claim Act (FCA) and the Deficit Reduction Act of 2005 (DRA). This policy is intended to provide all employees, management, and contractors or agents of SRHC with detailed information regarding the FCA, Whistleblower protections, and SRHC policies and procedures for detecting and preventing fraud, waste and abuse.

The FCA was first enacted in the wake of Civil War profiteering which imposes civil liability on organizations and individuals that make false claims to the government for payment. The FCA authorizes federal prosecutors to file a civil action against any person or entity that knowingly files a false claim with a federal health care program, including Medicare or Medicaid programs. The FCA applies to providers, beneficiaries, and health plans doing business with the federal government, billing companies, contractors, and other persons or entities connected with the submission of claims to the government. The FCA is set forth in title 31 of United States Code, beginning with section 3729.

Summary of Provisions of the False Claims Act

The False Claims Act prohibits knowingly making a false claim against the government. False claims can take the form of overcharging for a product or service, delivering less than the promised amount or type of goods or service, underpaying money owed to the government and charging for one thing while providing another.

The False Claims Act imposes civil 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.

“Knowingly” means either:

- 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.

Penalties

The False Claims Act is not a criminal statute and thus imposes civil penalties. No proof of specific intent is required. A person or entity, such as a hospital, found liable under the False Claims Act is subject to a civil monetary penalty plus three times the amount of damages that the government sustained because of the illegal act. In health care cases, the amount of damages sustained is the amount paid for each false claim that is filed.

The civil monetary penalty amounts with effective dates are as follows and are updated on annual basis. The civil monetary penalties are published annually with an inflation increase in the Federal Register around the first of the year. The link to the Federal Register home page is <https://www.federalregister.gov/>.

Date of assessment of penalty	Prior to 8/1/16	After 8/1/16
Date of violation	Prior to 11/2/15	After 10/1/18
Civil Monetary Penalty range	\$5,500 to \$11,000	\$11,181 to \$22,363

Qui Tam “Whistleblower” Provision

To encourage individuals to come forward and report misconduct involving false claims, the FCA includes a *qui tam* or whistleblower provision. Anyone may bring a *qui tam* action under the federal False Claims Act in the name of the United States in federal court. A *qui tam* action is defined as a claim brought by an informer/relator under a statute which establishes a penalty for the commission or omission of a certain act. Part of the penalty paid by the wrongdoer is paid to the informer with the remainder going to the government.

Qui Tam Procedure

The case is initiated by an informer filing his or her lawsuit in a federal district court on behalf of the government for false or fraudulent claims submitted by an individual or an entity doing business with, or reimbursed by the United States government. The lawsuit is filed “under seal” and is not served on (presented to) the defendant at this time to enable the government to investigate the claim. The government has 60 days to investigate and decide whether it will pursue the action, in which case the complaint is unsealed and the Department of Justice or a United States Attorney’s office begins prosecuting the claim. If the government decides not to pursue the case, the person who filed the action has the right to continue with the case on his or her own. The government may join the action at a later date if it can demonstrate good cause for doing so. Any case must be brought within six years of the filing of the false claim.

Qui Tam Whistleblower Awards

If the government proceeds with the lawsuit and is successful, the person who filed the action will receive between 15 and 25 percent of any monies recovered for the government plus attorney fees and costs. The amount of the award depends on the contributions of the individual to the success of the case. If the government declines to pursue the case, the *qui tam* whistleblower will be entitled to between 25 and 30 percent of the proceeds of the case, plus reasonable expenses and attorney’s fees and costs awarded against the defendant. The award may be reduced, however, if the court finds that the whistleblower planned and initiated the violation.

Qui Tam Whistleblower Anti-Retaliation Protections

Individuals within an organization who observe activities or behavior that may violate the law in some manner and who report their observations either to management or to governmental agencies are provided protections under the law. Whistleblowers initiating a *qui tam* action may not be discriminated or retaliated against in any manner by their employer. Employees, who are discharged, demoted, harassed, or confront discrimination in furtherance of a *qui tam* action or as a consequence of whistleblowing activity, are entitled to all relief necessary to make the employee whole.

The FCA includes a provision that reduces the penalties for providers who promptly self-disclose a suspected FCA violation. The Office of Inspector General self-disclosure protocol allows providers to conduct their own investigations, take appropriate corrective measures, calculate damages and submit the findings that involve more serious problems than just simple errors to the agency.

As we have discussed, the punishment for filing a False Claim can be severe. SRHC may achieve success with its healthcare billing compliance so long as all employees, agents and contractors perform their duties and responsibilities correctly and take initiative to ensure a culture of compliance.

PROCEDURE:

All employees, agents and contractors of SRHC are required, and responsible, for reporting healthcare billing compliance concerns, including actual or potential violations of law, regulation, policy, procedure. Without help from employees, agents, and contractors, it may be difficult to learn of possible compliance problems and make necessary corrections through prevention, detection and resolution of instances that do not conform to healthcare billing compliance. SRHC Corporate Compliance Program confirms a culture of open lines of communication, problem resolution and a strict non-retaliation policy to protect employees, agents, and contractors that report in good faith a potential compliance issue from any form of retaliation.

All SRHC employees should make sure they are familiar with SRHC Corporate Compliance Policies and Procedures. In the event of a discovery of a potential compliance concern that might lead to a violation of SRHC Policies and Procedures or any federal or state law or regulation, the employee should do the following:

- a. In accordance with Policy #8310.49 "Reporting, Investigating and Disciplinary Process for Compliance and HIPAA" the employee, agent or contractor should report the problem to their immediate supervisor or the Corporate Compliance Officer if they see something that looks suspicious. Issues may also be reported anonymously through the drop boxes or the compliance hotline. This policy prohibits any retaliatory action against an employee for reporting concerns regarding potential violations of SRHC policies and procedures or any federal or state law or regulation;
- b. The Director of Corporate Compliance will investigate all matters referred to determine what, if any, corrective actions are necessary.
- c. It is recognized that detection and timely reporting of misconduct will help maintain the integrity of the organization and reserve its status as a reliable, honest and trustworthy healthcare provider. Furthermore, penalties and sanctions can be materially reduced by voluntary disclosures of violations of civil, criminal or administrative law in a timely manner. All disclosures shall be made in accordance with Policy 8310.29 "Self-Disclosures".

References:

1. Deficit Reduction Act 2005
2. 31 U.S.C. Money and Finance Subchapter III – Claims against the United States; 31 U.S.C. §3729. False Claims,
3. 31 U.S.C. §3730 Civil Actions for False Claims, 31 U.S.C. §3731 False Claims Procedure, 31 U.S.C. §3732 False Claims Jurisdiction, and 31 U.S.C. §3733 Civil investigative demands.
4. 28 U.S.C. §2461 Mode of recovery – Federal Civil Penalties Inflation Adjustment Act of 1990.

REVIEW HISTORY:

- First Effective: 12/06; Reviewed/Revised: 11/09; 11/12; 12/15; 10/16; 12/18 (Becky Grosland; Compliance Committee)

APPROVED:

Micheal Terry, CEO

Becky Grosland, Corporate Compliance Officer

(Original signatures on file)