

**Compliance:
Federal and state false claims acts policy**

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COMPLIANCE: FEDERAL AND STATE FALSE CLAIMS ACTS POLICY

Policy

Purpose:	<p>This Policy sets forth the manner in which FCHP complies with the requirements of the Deficit Reduction Act of 2005 (“DRA”), provides an overview of the federal and the Commonwealth of Massachusetts false claims acts, the federal Program Fraud Civil Remedies Act of 1986 and FCHP’s internal mechanisms to help prevent and detect fraud, waste and abuse in the federal and Massachusetts health care programs.</p> <p>Under the DRA, any entity who receives or makes annual Medicaid payments of more than \$5 million is required to provide information to its employees, contractors and agents about the federal and applicable state false claims acts, the rights of employees to be protected as whistleblowers, and the organization’s policies and procedures for detecting and preventing fraud, waste and abuse. This Policy covers both FCHP’s PACE Program and FCHP’s Medicaid managed care program, which are subject to these DRA requirements.</p>
Policy:	FCHP is committed to complying with all applicable laws, including, but not limited to, the federal and Commonwealth of Massachusetts false claims acts and the federal Program Fraud Civil Remedies Act of 1986 described in this Policy and Attachments 1 and 2.
Compliance Checklist:	DRA, P.L. 109-171, § 6031 (Feb. 8, 2006); federal False Claims Act, 31 U.S.C. § 3729 <i>et seq.</i> ; federal Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 <i>et seq.</i> ; Massachusetts False Claims Act, M.G.L. c. 12, §§ 5B-5O.
Application:	All FCHP Employees, Contractors and Agents
Approvals:	<p>Approved by:</p> <p>Signed: _____ Date: _____ Anne Doyle, Senior Vice President and Chief Compliance Officer, FCHP</p> <p>Signed: _____ Date: _____ Eric H. Schultz, President, FCHP</p> <p>Effective Date: June 1, 2007 Revision Date(s): Review Date(s):</p>

Overview

This Policy summarizes the procedures and mechanisms FCHP has implemented to comply with the DRA and to prevent violations of the federal False Claims Act, 31 U.S.C. § 3729 et seq., and the federal Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., federal laws designed to prevent fraud, waste and abuse, which are summarized in [Attachment 1](#), and the Commonwealth of Massachusetts False Claims Act, M.G.L. c. 12, §§5B-5O, a state law designed in a similar manner as the federal False Claims Act, which is summarized in [Attachment 2](#).

Definitions

1. "Employee" includes an officer or employee of FCHP.
2. A "Contractor" or "Agent" includes any contractor, subcontractor, agent or other person which or who, on behalf of the entity, furnishes or otherwise authorizes the furnishing of Medicaid health care items or services, performs billing or coding functions or is involved in monitoring of health care provided by FCHP.
3. A "Relator" is an individual who files an action under the federal False Claims Act or a state false claims act (including the Massachusetts False Claims Act) on behalf of the government and him or herself based on knowledge of wrongdoing, and, in return, he or she is entitled to a percentage of any damages awarded to the federal or state government.
4. "Knowingly" means that a person (1) has actual knowledge of the false claim; (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.

Procedures

Accurate Billing

FCHP is committed to ensuring accurate billing and coding of all services. Physicians, healthcare facilities and all health care providers and subcontracted providers that are contracted with FCHP who participate in FCHP's Medicaid HMO or Summit ElderCare PACE program are expected to submit claims appropriately and to bill as required by FCHP, all applicable statutes, regulations and program instructions and consistent with industry standards for services rendered.

FCHP and its Employees, Contractors and Agents shall not knowingly make or submit any false or misleading entries or statements on any bills, claim forms or other requests for reimbursement. No FCHP Employee, Contractor or Agent shall engage or participate in such an arrangement at the direction of another person, including any supervisor or manager, that results in such prohibited acts.

Reporting Non-Compliance

If a FCHP Employee, Contractor or Agent has any reason to believe that anyone is engaging in practices that could lead to a false or misleading request for reimbursement, that individual shall immediately report the practice to his/her supervisor or manager, the Corporate Compliance Officer, any member of the Corporate Compliance department, or the Compliance Hotline in accordance with FCHP's Compliance Program. The Compliance Hotline telephone number is 888-203-5285.

If an Employee, Contractor or Agent does not believe that FCHP responds appropriately when given notification of a potential violation, that individual may have rights as a Relator under the federal and state false claims acts, as described in more detail in Attachment 1 and Attachment 2.

Internal Reporting Mechanisms

To assist in its efforts to detect and prevent fraud, waste and abuse, FCHP has a compliance program that includes the following internal reporting mechanisms: open door policy and anonymous hotline.

Auditing & Monitoring Procedures

FCHP conducts regular and periodic audit and monitoring procedures as determined by FCHP's Internal Audit department to ensure that compliant procedures are being followed and to ensure that if such procedures were not followed, proper steps are taken.

Non-Retaliation

As described in FCHP's Corporate Compliance Policy Reporting of Potential Issues or Areas of Noncompliance, it is FCHP's policy to protect its Employees from retaliation of any kind for, among other things, reporting in good faith any concerns regarding fraud, waste and abuse. Retaliation against such Employees will result in disciplinary action.

Contractors and Agents

FCHP shall provide a copy of this Policy to its Contractors and Agents, as defined above.

Questions

If you have any questions regarding this policy, please contact Anne Doyle, Senior Vice President and Chief Compliance Officer, at ext. 69433 or the FCHP Compliance Department at ext. 69414.

Attachment 1 - Summary of Federal False Claims Act and Federal Program Fraud Civil Remedies Act Provisions

I. FEDERAL FALSE CLAIMS ACT

A. Overview

The federal False Claims Act is one of the laws the Government uses to prevent and detect fraud, waste and abuse in federal health care programs. The federal False Claims Act provides that anyone who “knowingly” submits false claims to the Government is liable for damages up to three times the amount of the erroneous payment, mandatory penalties between \$5,500 and \$11,000 for each false claim submitted, and potential administrative remedies, such as exclusion from future participation in government health care programs.

The federal False Claims Act defines “knowingly” to mean that a person (1) has actual knowledge of the false claim; (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.

Specifically, there are seven (7) actions that may form the basis for liability under the federal False Claims Act including, by way of example:

- Knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval by the federal Government;
- Knowingly making or using, or causing to be made or used, a false record or statement to get a false claim paid or approved;
- Conspiring to defraud the Government by getting a false or fraudulent claim allowed or paid; or
- Knowingly making, using, or causing to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay money or transmit property to the Government.

B. Applicability

Among other things, the federal False Claims Act applies to claims submitted for payment by federal health care programs, including Medicare and Medicaid.

C. Methods of Enforcement/Whistleblower Provisions

The Government or a Whistleblower/Relator can bring actions under the

Federal False Claims Act. If a Relator brings an action under the Federal False Claims Act, the Government has a period of time to investigate the allegations and decide whether to join the lawsuit. If the Government elects to join the lawsuit, the Relator is entitled to 15-25% of any recovery. If the Government declines to join the lawsuit, the Relator may still proceed with the action and is entitled to 25-30% of any recovery.

D. Employee Protection

The federal False Claims Act prohibits discrimination by FCHP against an employee for taking lawful actions in furtherance of an action under the Federal False Claims Act. Under the Federal False Claims Act, any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in furtherance of an action under the federal False Claims Act is entitled to all relief necessary to make the employee whole. Such relief may include reinstatement, double back pay, and compensation for any special damages, including litigation costs and reasonable attorneys' fees.

E. Procedural & Other Requirements

The federal False Claims Act contains a number of procedural and other requirements. For example, in order to be a Relator, the person must be the "original source" of the information reported to the government. Specifically, the Relator must have direct and independent knowledge of the false claims activities and voluntarily provide this information to the government. If the matter disclosed is already the subject of a federal investigation, or if the health care provider or supplier has previously disclosed the problem to a federal agency, the Relator may be barred from obtaining recovery under the Federal False Claims Act.

II. FEDERAL PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

A. Overview.

The Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq. is similar to the Federal False Claims Act, establishing an administrative remedy against any person who present or causes to be presented a claim or written statement that the person knows or has reason to know is false, fictitious or fraudulent to certain Federal agencies, including the Department of Health and Human Services ("DHHS"), which includes Medicare and Medicaid claims.

Similar to the Federal False Claims Act, a person who "knows or has reason to

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know” is defined as one who (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.

B. Applicability

The Federal Program Fraud Civil Remedies Act applies to claims submitted to certain Federal agencies, including DHHS, which would include Medicare and Medicaid claims.

C. Penalties

A violation of the Federal Program Fraud Civil Remedies Act can result in a civil monetary penalty of up to \$5,500 per false claim and an assessment of twice the amount of the false claim. The penalty can be imposed through an administrative hearing after investigation by DHHS and approval by the U.S. Attorney General.

Attachment 2 - Summary of Massachusetts False Claims Act Provisions

A. Overview

The Massachusetts False Claims Act ("Massachusetts FCA") defines, "knowing and knowingly," as "possessing actual knowledge of relevant information, acting with deliberate ignorance of the truth or falsity of the information or acting in reckless disregard of the truth or falsity of the information and no proof of specific intent to defraud is required." M.G.L. c. 12, § 5A.

The Massachusetts FCA provides for liability when a person:

1. Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
2. Knowingly makes, uses, or causes to be made or used, a false record or statement to obtain payment or approval of a claim by the commonwealth or any political subdivision thereof;
3. Conspires to defraud the commonwealth or any political subdivision thereof through the allowance or payment of a fraudulent claim;
4. Has possession, custody, or control of property or money used, or to be used, by the commonwealth or any political subdivision thereof and knowingly delivers, or causes to be delivered to the commonwealth, less property than the amount for which the person receives a certificate or receipt with the intent to willfully conceal the property;
5. Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the commonwealth or any political subdivision thereof and with the intent of defrauding the commonwealth or any political subdivision thereof, makes or delivers the receipt without completely knowing that the information on the receipt is true;
6. Buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the commonwealth or any political subdivision thereof, knowing that said officer or employee may not lawfully sell or pledge the property;
7. Enters into an agreement, contract or understanding with one or more officials of the commonwealth or any political subdivision thereof knowing the information contained therein is false;

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8. Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or to transmit money or property to the commonwealth or political subdivision thereof; or
9. Is a beneficiary of an inadvertent submission of a false claim to the commonwealth or political subdivision thereof, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the commonwealth or political subdivision within a reasonable time after discovery of the false claim...

M.G.L. c. 12, § 5B.

A person who violates the Massachusetts FCA is liable for a civil penalty of not less than \$5,000 and not more than \$10,000 per violation. M.G.L. c. 12, § 5B(10). The Massachusetts FCA provides for treble damages, including consequential damages, that the Commonwealth or political subdivision sustains because of the act of that person. M.G.L. c. 12, § 5B(9).

Voluntary Disclosure

However, damages may be reduced to the amount of damages sustained where the court finds that the person committing the Massachusetts FCA violation:

- Informed the attorney general with all information known to the person within 30 days after discovering the information;
- Fully cooperated with any commonwealth investigation of such violation; and
- No criminal prosecution, civil or administrative action had commenced with respect to the violation, and person did not have actual knowledge of an investigation into such violation.

M.G.L. c. 12, § 5B(10).

B. Applicability

The Massachusetts FCA defines "Claim," as "any request or demand, whether pursuant to a contract or otherwise, for money or property which is made to an officer, employee, agent or other representative of the commonwealth, political subdivision thereof or to a contractor, subcontractor, grantee, or other person if the commonwealth or any political subdivision thereof provides any portion of the money or property which is requested or demanded, or if the commonwealth or any political subdivision thereof will reimburse directly or indirectly such contractor, subcontractor, grantee, or other person for any portion of the money

or property which is requested or demanded.” M.G.L. c. 12, § 5A. Thus, the Massachusetts FCA applies to the Medicaid program.

The Massachusetts FCA defines “political subdivision” as “any city, town, county or other governmental entity authorized or created by state law, including public corporations and authorities.” M.G.L. c. 12, § 5A.

The Massachusetts FCA defines “person” as “any natural person, corporation, partnership, association, trust or other business or legal entity.” M.G.L. c. 12, § 5A.

C. Methods of Enforcement/Whistleblower Provisions.

a. Responsibilities of the Attorney General

The attorney general is required to investigate violations of the Massachusetts FCA, and if a violation has occurred, may bring a civil action in superior court. M.G.L. c. 12, § 5C(1).

b. Scope of who can be a Relator

When a Relator brings an FCA action, only the attorney general may intervene or bring a related action based on the underlying pending action. M.G.L. c. 12, § 5C(6).

An individual who is or was employed by the Commonwealth or any political subdivision as an auditor, investigator, attorney, financial officer, or contracting officer, who otherwise performed such functions for the Commonwealth or who discovered or learned of the allegations or the underlying facts from such persons, may not bring an action based upon allegations or transactions that the Relator discovered or learned of within the scope of such person's duties or job description. M.G.L. c. 12, § 5G(4).

c. Standing for Relators

An individual may bring a civil action in superior court for a violation of the Massachusetts FCA. The action shall be brought in the name of the Commonwealth or the political subdivision thereof. M.G.L. c. 12, § 5C(2).

d. Relator’s Rights if Government Intervenes

If the attorney general proceeds with the action, he shall have primary responsibility for prosecuting the action and is not be bound by any act of the Relator; however, Relator continues as a party to the action, subject to certain limitations. M.G.L. c. 12, § 5D(1). The attorney general may dismiss the action

notwithstanding Relator's objections, provided Relator has an opportunity for a hearing on the motion to dismiss. M.G.L. c. 12, § 5D(2). The attorney general may settle the case notwithstanding Relator's objections if the court determines, after a hearing, that the proposed settlement is fair, adequate and reasonable. M.G.L. c. 12, § 5D(3).

e. Limiting Relator's Role

If unrestricted participation by the Relator would interfere with or unduly delay the state attorney general's prosecution, or would be repetitious or irrelevant or for purposes of harassment, the court may impose limitations on the Relator's participation in the case, such as limiting the number of witnesses, limiting the length of testimony, limiting the person's cross-examination, or otherwise limiting the person's participation in the litigation. M.G.L. c. 12, § 5D(4).

If the defendant shows that unrestricted participation by the Relator would be for harassment or would be an undue burden to the defendant or would cause unnecessary expense, the court may limit the Relator's participation in the litigation. M.G.L. c. 12, § 5D(5).

Whether or not the attorney general proceeds with the action, upon a showing by the attorney general that certain acts of discovery by the Relator initiating the action would interfere with the attorney general's investigation or prosecution of a criminal or civil matter arising out of the same or similar facts, the court may stay such discovery. M.G.L. c. 12, § 5D(7).

f. Relator's Rights if Government Declines

If the attorney general elects not to proceed with the action, the Relator has the right to conduct the action. M.G.L. c. 12, § 5D(6). The court may permit the attorney general to intervene at a later date upon showing of good cause. M.G.L. c. 12, § 5D(6).

g. Government's Election of Other Proceeding

The attorney general may elect to pursue its claim through any alternative remedy available to it, including any administrative proceeding to determine a civil penalty. M.G.L. c. 12, § 5E. During such proceeding, the Relator has the same rights in the proceeding as such person would have had if the original action had continued. Any finding of fact or conclusion of law made in such other proceeding that has become final is conclusive on all parties to the Massachusetts FCA. M.G.L. c. 12, § 5E.

h. Relator's Share of Recovery

Successful Relators entitled to 15-25% of the judgment when the attorney general intervenes; 25-30% if the attorney general does not intervene. M.G.L. c. 12, §5F. Also, Relator is entitled to reasonable expenses necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees and costs shall be awarded against the defendant.

Where action is based on certain disclosures of specific information in a criminal, civil or administrative hearing, or legislative, administrative, auditor or inspector general hearing, audit, investigation or from the news media, the court may award sums it finds appropriate up to 10% of the proceeds. M.G.L. c. 12, § 5F(2). If a court finds that Relator planned and initiated the FCA violation, the court may reduce or eliminate the Relator's share of proceeds. If a Relator is convicted of criminal conduct arising from his/her role in the violation, the Relator shall be dismissed from the civil action and not receive any share of proceeds. M.G.L. c. 12, § 5F(5).

C. Employee Protection

The Massachusetts FCA prohibits employers from making, adopting or enforcing "any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency or from acting to further a false claims action." It further indicates that any such agreement that limits or denies the employee's right to bring an action is void. M.G.L. c. 12, § 5J(1).

In addition, the Massachusetts FCA prohibits an employer from discharging, demoting, suspending, threatening, harassing, denying promotion to, or in any other manner discriminating against an employee for disclosing information to a government or law enforcement agency or in furthering a false claims action, including investigation, initiation of, testimony for or assistance in the action filed or to be filed under the Massachusetts FCA. M.G.L. c. 12, § 5J(2). Any employer who violates Section 5J(2) shall be liable for such damages or equitable relief as a court shall deem appropriate, including reinstatement with same seniority status, two (2) times the amount of back pay, interest on the back pay, and compensation for any special damage sustained as a result of the employer's violation plus litigation costs and reasonable attorney's fees. M.G.L. c. 12, § 5J(3).

In order for an employee to be entitled to damages or equitable relief under § 5J(3) (described above), both of the following must have occurred:

- i. the employee has been harassed, threatened with termination or demotion, or otherwise coerced by the employer or its management into engaging in the fraudulent activity in the first place; and
- ii. the employee voluntarily disclosed information prior to being dismissed to a government or law enforcement agency or acts in furtherance of a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed. M.G.L. c. 12, § 5J(4).

D. Procedural & Other Requirements

a. Burden of Proof

Under the Massachusetts FCA, all essential elements including damages must be proved by a preponderance of the evidence. M.G.L. c. 12, § 5L.

b. Public Disclosure/Original Source

No court jurisdiction over Massachusetts FCA actions based on public disclosure of the allegations or transactions in a criminal, civil or administrative hearing; in a legislative, administrative, auditor's or inspector general's report, hearing, audit or investigation; or from the news media, unless the action is brought by the attorney general, or by the Relator who is an "original source" of the information. M.G.L. c. 12, § 5G(3). "Original source" means an "individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the state attorney general, without public disclosure, before the filing of an action under this section which is based on such information." M.G.L. c. 12, § 5A.

c. Statute of Limitations

A civil action may not be brought under the Massachusetts FCA (1) more than six years after the date on which the violation occurred, or (2) more than three years after the date when material facts are known or should have been known by the attorney general, but in no event more than ten years after the date on which the violation is committed, whichever occurs last. M.G.L. c. 12, § 5K(1).

d. Collateral Estoppel

A final judgment rendered in favor of the Commonwealth in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same act, transaction or occurrence which is brought under the Massachusetts FCA. M.G.L. c. 12, § 5K.