

HERMAN OSTROW SCHOOL OF DENTISTRY OF USC

Policy Title: Deficit Reduction Act Policy		
Policy #:	Effective Date: June 1, 2011	Revision Date:
Functional Area:	Ostrow School of Dentistry and its Affiliated Practices Biokinesiology and Physical Therapy and Occupational Science and Occupational Therapy	
Originating Department:	Compliance and Credentialing Subcommittee	
Approved By:		

PURPOSE

The purpose of this policy is to comply with certain requirements set forth in Sections 6031 and 6032 of the Deficit Reduction Act of 2005 (DRA) with regard to federal and state false claims laws at the Herman Ostrow School of Dentistry and its Affiliated Practices Biokinesiology and Physical Therapy and Occupational Science and Occupational Therapy”(the School”).

POLICY

All employees of the School, including management, and any Contractors or Agents should be educated regarding the federal and state false claims statutes and the role of such laws in preventing and detecting fraud, waste and abuse in federal health care programs. For the purposes of this Policy, “Contractor or Agent” means any contractor, subcontractor, agent, or other person which or who, on behalf of either hospital, 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 the School.

PROCEDURE

1. DRA Information Requirements:
 - a. The DRA includes provisions that require all healthcare providers receiving at least \$5 million in annual Medicaid payments to establish written policies for all employees, contractors and agents that provide detailed information about:
 - i. the federal False Claims Act (31 U.S.C. 3729-3733)
 - ii. applicable state false claims laws
 - iii. administrative remedies for false claims
 - iv. any comparable state laws pertaining to penalties for false claims and statements
 - v. whistleblower protections
2. The following information addresses the DRA requirements:
 - a. **False Claims Laws General Information**
 - i. One of the primary purposes of any false claims laws is to combat fraud and abuse in government programs. False claims laws do this by making it possible for the government to bring civil actions to recover damages and penalties when false claims are submitted. These

laws often permit qui tam suits (whistleblowers suits) as well, which are lawsuits brought by lay people, typically employees or former employees that suspect false claims have been submitted.

- ii. There is a federal False Claims Act and a various states have adopted the False Claims Laws. Under the federal False Claims Act, any person or entity that knowingly submits a false or fraudulent claim for payment or retains an overpayment of United States Government funds is liable for significant penalties and fines. The fines include a penalty of up to three times the Government's damages, civil penalties ranging from \$5,500 to \$11,000 per false claim, and the costs of the civil action against the entity that submitted the false claims. Generally, the federal False Claims Act applies to any federally funded program. The False Claims Act applies, for example, to claims submitted by healthcare providers to Medicare or Medicaid.

b. Qui Tam Provision

- i. One of the unique aspects of the federal False Claims Act is the qui tam provision, commonly referred to as the whistleblower provision. This provision allows a private person with knowledge of a false claim to bring a civil action on behalf of the United States Government ("Government"). The purpose of bringing the qui tam suit is to recover the funds paid as a result of the false claims. If the suit is ultimately successful, the whistleblower that initially brought the suit may be awarded a percentage of the funds recovered. Sometimes the Government decides to join the qui tam suit. In such cases, the Government assumes responsibility for all of the expenses associated with the suit and the percentage received by the whistleblower will be lower than if the Government had not joined the suit.
- ii. Regardless of whether the Government participates in the lawsuit, the court may reduce the whistleblower's share of the proceeds if the court finds that the whistleblower planned and initiated the false claims violation. Further, if the whistleblower is convicted of criminal conduct related to his role in the preparation or submission of the false claims, the whistleblower will be dismissed from the civil action without receiving any portion of the proceeds.

c. Whistleblower Protections

- i. The federal False Claims Act also contains a provision that protects a whistleblower from retaliation by his or her employer. This applies to any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in his or her employment as a result of the employee's lawful acts in furtherance of a false claims action. The whistleblower may bring an action in the appropriate federal district court and is entitled to reinstatement with the same seniority status, two times the amount of back pay, interest on the back pay, and compensation for any special damages as a result of the discrimination, such as litigation costs and reasonable attorney fees.

d. State False Claims Laws.

- i. California law prohibits conduct similar to that addressed under the federal False Claims Act. California Government Code Sections 12650-12656 (commonly known as the California False Claims Act or CFCA), prohibit any person from submitting a false or fraudulent claim over \$500 to the state or local government. The CFCA also makes it illegal for any person who benefits from a false claim, and later discovers the falsity of the claim, to fail to disclose the false claim to the applicable state or local government. The CFCA does not apply to workers' compensation claims, tax claims, or claims against public entities and employees. California officials may file a lawsuit against a suspected violator of the CFCA, or alternatively, a private individual, such as an employee, may file a qui tam lawsuit on behalf of the government. California officials may choose to participate in the qui tam lawsuit or allow the individual to proceed alone on the state or local government's behalf. If the case is successful, the individual is entitled to a portion of the government's monetary recovery. Employees who assist or participate in an action under the CFCA are protected from workplace retaliation. The CFCA imposes a civil penalty of up to \$10,000 for each separate violation of the law. Violators may also need to pay the applicable state or local government an amount equal to two to three times the value of the false claim.

- ii. California Welfare & Institutions Code Section 14107 prohibits fraud involving funds of the state's medical assistance programs, including Medi-Cal. This statute establishes grounds for both criminal and civil actions against any person who knowingly defrauds Medi-Cal or other state medical assistance programs by submitting false claims or making false representations. These actions, however, may only be brought by state officials; private individuals cannot file qui tam lawsuits under this provision. Penalties for a violation of this statute include imprisonment and/or a fine not exceeding three times the amount or value of the fraud.
- iii. Lastly, California Insurance Code Section 1871.7 prohibits a person from knowingly presenting a false claim for a health care benefit to a private insurer. Actions under this statute may be brought by the district attorney or California Insurance Commissioner or alternatively, a qui tam lawsuit may be filed on behalf of the state by a private individual, such as an employee. The state or district officials may choose to participate in the qui tam lawsuit or allow the individual to proceed alone on the state's behalf. If the case is successful, the individual is entitled to a portion of the state's monetary recovery. Employees who assist or participate in an action under this statute are protected from workplace retaliation. Penalties for a violation of this statute include a civil penalty between \$5,000 to \$10,000, plus an assessment not exceeding three times the amount of each fraudulent claim. In addition, there may be a separate criminal prosecution for violations of this statute.

e. Reporting Concerns Regarding Fraud, Abuse and False Claims

- i. The School recognizes that questions, concerns or disputes sometimes arise. The School believes that it is in the best interest of both its employees and the organization to resolve those questions, concerns or disputes in a forum that provides the fastest and fairest method for resolving them. The School's employees, Contractors and Agents are encouraged to contact the School's Compliance Officer, the Director of Compliance, Human Resources or the Help and Hotline (213-740-2500) to report a concern.

3. Information Distribution

- a. All employees of the School, including management, and Contractors or Agents are provided with this Policy within 90 days of commencing employment or contractor status.. In addition, the Policy will be posted on the school's intranet.

4. Other Resources for the School

The school has a number of policies and the USC Code of Ethics which speak to its commitment to comply with state and federal healthcare program requirements. These include policies that may be found on our intranet: <https://dent-web01.usc.edu/intranet/compliance>.

In addition, the School does not tolerate retaliation. This principle is found in a number of USC policies. The applicable policies and the USC Code of Ethics are available to all School employees on the School's intranet and/or the USC website (www.usc.edu). In addition, they will be made available to the School's Contractors and Agents upon request.

REFERENCES

- Deficit Reduction Act of 2005, Sections 6031, 6032
- [False Claims Act](#) (31 U.S.C. 3729-3733)