

JHSMH Code of Conduct False Claims Act Policy 2007

False Claims Act

The federal False Claims Act¹ and state laws control third-party billing for patients, residents and others in our care. Congress enacted the federal False Claims Act in March 1863 to control fraud in federal contracts after suppliers jeopardized the Union Army by delivering rifle and ammunition boxes containing only sawdust. The federal False Claims Act helps the federal government combat fraud and recover losses resulting from fraud in Federal programs, such as Medicare and Medicaid. Violations of the False Claims Act can include “knowingly”: (1) submitting a false claim for payment, (2) making or using a false record or statement to obtain payment for a false claim, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the U.S. Government. “Knowingly” means that a person: (1) has actual knowledge that the information is false; (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.

Examples of potential false claims include:

- Billing for services that were not provided at all
- Billing for services that were provided, but were not medically necessary
- Submitting inaccurate or misleading claims about the type of services provided
- Making false statements to obtain payment for products or services

The False Claims Act contains provisions that allow individuals with original information concerning fraud involving government programs to file a lawsuit on behalf of the government. If the lawsuit is successful, the individual may be eligible to receive a portion of the recoveries received by the government.

Penalties for violating the federal False Claims Act are significant. Financial penalties for submitting a false claim can total as much as three times the amount of the claim, plus fines of \$5,500 to \$11,000 per claim.

The federal False Claims Act protects team members from retaliation if they, in good faith, report fraud. Team members are protected against retaliation such as being fired, demoted, threatened or harassed as a result of filing a False Claims Act lawsuit. A team member who suffers retaliation can sue, and may receive up to twice their back pay, plus interest, reinstatement at the seniority level they would have had if not for the retaliation, and compensation for their costs or damages.

In addition to the federal False Claims Act, many states have their own False Claims Acts. Indiana already has a False Claims Act.² Kentucky also has related laws regarding control of fraud and abuse

¹ 31 U.S.C. § 3729-3733, 18 U.S.C § 287, 18 U.S.C. § 1001, 31 U.S.C. § 3801-3812, 42 U.S.C. § 1320a-7b(a)(1), 42 U.S.C. § 1320a-7a

² IC 5-11-5.5

Question: What is the Indiana False Claims and Whistleblower Protection Act?

Answer: The Indiana False Claims and Whistleblower Protection Act (IC 5-11-5.5) is a civil statute that helps the state combat fraud and recover losses resulting from fraud against the Indiana government.

Violations of the Indiana False Claims and Whistleblower Protection Act include:

- (1) presenting a false claim to the state for payment or approval;
- (2) making or using a false record or statement to obtain payment or approval of a false claim from the state;
- (3) with intent to defraud the state, delivers less money or property to the state than the amount recorded on the certificate or receipt the person receives from the state;
- (4) with intent to defraud the state, authorizes issuance of a receipt without knowing that the information on the receipt is true;
- (5) receiving public property as a pledge of an obligation on a debt from an employee who is not lawfully authorized to sell or pledge the property;
- (6) making or using a false record or statement to avoid an obligation to pay or transmit property to the state;
- (7) conspiring with another person to perform an act described in subdivisions (1) through (6); or
- (8) causing or inducing another person to perform an act described in subdivisions (1) through (6)

Question: What are the Qui Tam Provisions and Whistleblower Protections?

Answer: The Indiana False Claims and Whistleblower Protection Act contains provisions that allow individuals (or qui tam plaintiffs) with information concerning fraud to file a lawsuit on behalf of the state. If the Attorney General or Inspector General intervenes, the statute allows individuals who report fraud to receive not more than twenty-five percent (25%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action. If the attorney general or the inspector general did not intervene in the action, the person is entitled to receive at least twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action. The state law protects employees who provide information to the state.

Question: What are the Penalties?

Answer: Civil penalties are at least five thousand dollars (\$5,000) and for up to three (3) times the amount of damages sustained by the state. In addition, a person who violates this law is liable to the state for the costs of a civil action brought to recover a penalty or damages. If the person who violated this section:

- (1) furnished state officials with all information known to the person about the violation not later than thirty (30) days after the date on which the person obtained the information;
- (2) fully cooperated with the investigation of the violation; and
- (3) did not have knowledge of the existence of an investigation, a criminal prosecution, a civil action, or an administrative action concerning the violation at the time the person provided information to state officials; the person is liable for a penalty of not less than two (2) times the amount of damages that the state sustained because of the violation. A person who violates this section is also liable to the state for the costs of a civil action brought to recover a penalty or damages.

Question: What laws in Kentucky address false claims and whistleblower protection?

Answer: Kentucky has several statutes and regulations that help the state combat fraud and abuse and recover losses resulting from fraud against the Commonwealth, including but not limited to KRS 205.8451(8), KRS 205.8461, KRS 205.8463, KRS 205.8465(1)-(4), KRS 205.8472, KRS 205.8475, KRS 205.8467, 907 KAR 1:671.1(20)(a,b), 907 KAR 1:671.1(40) (a,b, c, e, f, h, i, k, m, n, o), 907 KAR 1:671.1(41).

Violations of these laws include, but are not limited to:

- (1) billing separately for each component of a group of procedures for which Medicare and/or Medicaid pay a bundled reimbursement;
- (2) providing substandard care;
- (3) billing for services that are not medically necessary;
- (4) billing for services that were not furnished.

Question: What are the Qui Tam Provisions and Whistleblower Protections?

Answer: Kentucky law prohibits employers from discharging, discriminating or retaliating against any person who in good faith makes a report required or permitted by KRS 205.8451-8483 or any person who testifies or is about to testify in any proceeding with regard to any report or investigation.

Question: What are the Penalties?

Answer: Civil penalties are at least five hundred dollars (\$500) for each false or fraudulent claim submitted and up to three times the amount of excessive payments. Additional penalties include potential exclusion from the Medicaid program, restitution and interest of any wrongful payments and legal fees and costs related to the investigation and enforcement.