

This policy applies to: <input checked="" type="checkbox"/> <i>Stanford Hospital and Clinics</i> <input type="checkbox"/> <i>Lucile Packard Children’s Hospital</i>	Last Approval Date: May 2008
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I. PURPOSE

The purpose of this policy is to comply with the requirements in Section 6032 of the Deficit Reduction Act of 2005 (the “DRA”), which amends Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)). Under the DRA, any entity that receives or pays five million dollars (\$5,000,000) or more in Medicaid payments each year is required to implement specific policies that provide detailed information about the following: (a) the federal False Claims Act; (b) federal administrative remedies for false claims and statements; (c) the California False Claims Act; (d) the civil or criminal penalties for false claims and statements under the California Act; (e) whistleblower protections under the federal False Claims Act and California law; (f) the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs; and (g) detailed provisions regarding the entity’s policies and procedures for detecting and preventing fraud, waste, and abuse. The information in this policy must also be included in entity’s Employee Handbook. Effective January 1, 2007, the existence of such policies will be a condition for any such entity’s participation in the Medicaid program. In addition, the policy must apply to all of the entity’s employees, including management, and any contractors or agents of the entity. Stanford Hospital and Clinics (“SHC”) is subject to these requirements of the DRA and must adopt policies as described above.

II. DEFINITIONS

- A. Under the federal False Claims Act, a “claim” is any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the Government provides any portion of the money or property requested or demanded, or if the Government will reimburse such contractor, grantee or recipient for any portion of the money or property.
- B. Under the California False Claims Act, a “claim” is any request or demand for money, property, or services made to any employee, officer, or agent of the state or of any political subdivision, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, the state or by any political subdivision thereof.
- C. Under both the federal False Claims Act and the California False Claims Act, “knowing” or “knowingly” means that a person, with respect to information, has (1) 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 proof of specific intent to defraud is required.

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- D. Under the California False Claims Act, a “political subdivision” includes any city, city and county, county, tax or assessment district, or other legally authorized local governmental entity with jurisdictional boundaries.
- E. Under the California False Claims Act, a “person” includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business or trust.

III. POLICY STATEMENT

SHC shall provide this policy to all SHC employees, including management, and any contractors or agents of SHC, to educate them about the federal false claims statute, administrative remedies for false claims and statements under federal law, state laws pertaining to civil or criminal penalties for false claims and statements, whistleblower protections under such laws, and the role of such laws in preventing and detecting fraud, waste and abuse in federal health care programs. SHC shall also include detailed provisions regarding any policies and procedures for detecting and preventing fraud, waste and abuse.

IV. PRINCIPLES

A. **OVERVIEW**

False claims statutes play an important role in preventing fraud and abuse in government health care programs by enabling the Government to bring civil actions to recover damages and civil penalties when false claims are submitted to the Government. The federal False Claims Act (the “FCA”) prompted many states to implement similar statutes that address fraud and abuse in state and local government programs. Some false claims statutes, including the FCA, also allow certain individuals, usually employees or former employees, to file a qui tam suit against the entity that submitted the false claims.

B. **FEDERAL FALSE CLAIMS ACT**

1. **Background**

Generally, the FCA applies to any federally funded program with the exception of tax fraud issues. See 31 U.S.C. § 3729. Under the FCA, any person or entity who knowingly submits or causes to be submitted, a false or fraudulent claim for payment of United States Government funds, is liable for the following: (a) three times the Government’s damages, (b) civil penalties ranging from \$5,500 to \$11,000 per false claim, and (c) the costs of the civil action to recover the penalty or damages from the false claims. However, the

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court may assess a minimum of two times the amount of the Government's damages in lieu of the full amount of penalties above if all of the following criteria are satisfied:

- a. the individual provided the Government all information known to the individual within thirty days after he/she first obtained the information;
- b. the individual fully cooperated with any government investigation of the violation; and
- c. when the individual furnished the information, there was no criminal prosecution, civil or administrative action with respect to the violation and the individual did not have actual knowledge of an investigation into the violation.

In this situation, the person would still be responsible for the costs of the civil action brought to recover any penalty or damages.

The FCA is also implicated when a person or entity does any of the following:

- a. knowingly makes, uses, or causes to be used a false record or statement to get a false or fraudulent claim paid by the Government;
- b. conspires to defraud the Government by getting a false claim paid;
- c. has possession, custody, or control of property or money to be used by the Government, and intending to defraud or willfully conceal the property, delivers less property than the amount for which the person receives a receipt;
- d. certifies receipt of property on a document without completely knowing whether the information on the receipt is true;
- e. knowingly buys government property from an unauthorized officer or employee of the Government; or
- f. knowingly makes, uses, or causes to be used or made, a false record or statement to avoid, conceal, or decrease an obligation to pay or transmit money or property to the Government.

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When the Attorney General has reason to believe that a person (or entity) may have material or information related to a false claims investigation, he/she can initiate an investigation. The Attorney General can issue a civil investigative demand, which requires the person (who is the subject of the investigation) to do any of the following: (a) produce the relevant materials for inspection and copying, (b) answer written questions, (c) provide oral testimony regarding the information; or (d) furnish any combination of the information described in (a), (b) and (c). See 31 U.S.C. § 3733.

2. **Qui Tam Suits.**

The “qui tam” provision, more commonly referred to as the whistleblower provision, permits a private person, (the “relator”, also known as a “whistleblower”), to bring a civil action on behalf of the Government, when he or she has information that the defendant knowingly submitted, or caused to be submitted, to the Government false or fraudulent claims. The purpose of a qui tam suit is to recover the funds received as a result of the false claims. If the suit is successful, the relator may receive a percentage of the funds recovered.

Generally, filing a qui tam suit and participating in the corresponding court procedure is a complicated process with many specific requirements. Initially, the relator must provide a copy of the complaint and written disclosure of substantially all material evidence and information in his or her possession to the Government. Once the qui tam suit is filed, the suit remains under seal for a minimum of sixty days, during which time the Department of Justice decides whether to intervene in the relator’s suit.

If the Government joins the suit, the relator may receive between fifteen and twenty-five percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the relator substantially contributed to the prosecution of the action. If the Government declines to intervene in the suit, the relator can proceed on behalf of the Government. Although the Government is not an actual party to the case when the relator proceeds independently, the Government is still entitled to any recovery obtained from the relator’s suit. Generally, the relator may receive between twenty-five and thirty percent of the proceeds, depending

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upon what amount the court determines is reasonable for collecting the civil penalty and damages.

There are two limitations on the relator's recovery of proceeds:

- a. regardless of whether the Government participates in the action, if the relator planned and initiated the false claims violation, the court may reduce the relator's share of the proceeds based on his/her role in advancing the case to litigation and other relevant circumstances; and
- b. if the relator is convicted of criminal conduct related to his/her role in the false claims, the relator will be dismissed from the civil action without receiving any portion of the proceeds. See 31 U.S.C. § 3730.

In addition, the FCA has a statute of limitations that restricts the period of time during which a person can file a qui tam action. A civil action under the FCA must be filed (a) within six years from the date of the false claims violation, or (b) within three years of when the Government knows, or reasonably should have known, about facts material to the illegal conduct, but in no event more than ten years after the violation occurred, whichever occurs last. See 31 U.S.C. § 3731.

3. **Whistleblower Protections**

Under the FCA, a relator/whistleblower is protected from retaliation by his or her employer when he or she files a qui tam case. 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, including, initiation of, investigation for, testimony for, or assistance in an action filed or to be filed, is entitled to all relief necessary to make the employee whole. The employee may bring an action based on the employer's retaliation in the appropriate federal district court. If the action is successful, the employee/whistleblower is entitled to:

- a. reinstatement with the same seniority status the employee would have had without the discrimination,
- b. two times the amount of back pay,
- c. interest on the back pay, and

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- d. compensation for any special damages incurred as a result of the discrimination, including litigation costs and reasonable attorneys' fees. See 31 U.S.C. § 3730(h).

C. ADMINISTRATIVE REMEDIES FOR FALSE CLAIMS AND STATEMENTS

The Program Fraud Civil Remedies Act of 1986 (the "PFCRA") is similar to the FCA and sets forth the administrative remedies for false claims and statements. A person violates the PFCRA by making, presenting or submitting (or causes to be made, presented or submitted), a claim that he or she knows, or has reason to know, is one of the following:

- 1. false, fraudulent, or fictitious (collectively, "false");
- 2. for payment for the provision of property or services that the person did not provide as claimed; or
- 3. includes or is supported by a written statement that either:
 - a. asserts a material fact that is false, or
 - b. omits a material fact, is false as a result of the omission, and is a statement in which the person making, presenting or submitting such statement has a duty to include such material fact.

A violation of this section of the PFCRA results in a maximum civil penalty of \$5,000 for each claim and an assessment of up to twice the amount of each claim (or the relevant portion of the claim.) However, an assessment will not be made on claims that the Government has not paid.

A person also violates the PFCRA by submitting a written statement that he/she knows or has reason to know:

- 1. (a) asserts a material fact that is false, or (b) omits a material fact, is false as a result of the omission, and the person has a duty to include the material fact in the statement; and
- 2. includes or is accompanied by an express certification of affirmation of the truthfulness and accuracy of the statement's contents.

A person is subject to a maximum civil penalty of \$5,000 for each statement that violates this section of the PFCRA. See 31 U.S.C. § 3802.

D. CALIFORNIA FALSE CLAIMS ACT

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1. **Criminal/Civil Penalties**

Under the California False Claims Act (the “CFCA”), any person or entity who knowingly presents, or causes to be presented, a false claim for payment or approval to an officer or employee of the state, or of any political subdivision of the state (hereinafter, the “state”), or knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the state, is liable for (a) three times the amount of the damages to the state, and (b) the costs of the civil action to recover the penalties or damages. In addition to the penalties above, the person or entity may be liable to the state for civil penalties of up to \$10,000 for each false claim. See Ca Govt. Code § 12651(a).

The other actions that result in civil and criminal penalties under the CFCA mirror those of the federal FCA (described above in Section D(1)); however, the CFCA has an additional component under which a person or entity may be liable if (a) he or she is a beneficiary of an inadvertent submission of a false claim to the state, (b) subsequently discovers the falsity of the claim, and (c) fails to disclose the false claim to the state within a reasonable time after discovery of the claim.

A person who violates the CFCA may be liable for a lesser amount, (between two and three times the amount of the state’s damages and no civil penalty), if the court makes the following findings: (a) the person committing the violation provided the state with all information known about the violation within 30 days of when the person first obtained the information; and (b) the person fully cooperated with any state investigation; and (c) when the person furnished the state with information, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the person did not have actual knowledge of an investigation into the violation. See Ca Govt. Code § 12651(b).

The CFCA does not apply to a controversy involving less than \$500 in value, nor does it apply to claims involving workers’ compensation, claims against public entities and employees, or claims, records or statements made under the Revenue and Taxation Code. See Ca Govt. Code § 12651.

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A civil action under the CFCA must be filed within three years from the date of the state's discovery of the violation, or within ten years after the date the violation occurred. However, unlike the federal FCA, the CFCA can be applied retroactively if the limitations period has not lapsed. See Ca Govt. Code § 12654.

2. **Qui Tam Suits**

Under the CFCA, a person (the "qui tam plaintiff") may bring an action for a false claims violation on behalf of either the state or a political subdivision, depending on which funds are involved. Similar to the federal FCA, the complaint may remain under seal for sixty days until the Attorney General decides whether to intervene in the action. On the day the complaint is filed, the qui tam plaintiff must provide (by mail, return receipt requested) to the Attorney General a copy of the complaint and written disclosure of substantially all material evidence and information that the qui tam plaintiff has. Within sixty days of receipt of the complaint and written disclosure, the Attorney General may intervene in the action if the alleged violations involve state funds. See Ca Govt. Code § 12652(c).

Under the CFCA, a qui tam plaintiff is entitled to a greater share of the proceeds from a false claims action than under the federal FCA. If the state proceeds with the action, the qui tam plaintiff receives between fifteen and thirty-three percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action. When the state declines to intervene, the qui tam plaintiff is entitled an amount that the court determines is reasonable for collecting the civil penalty and damages on the Government's behalf, which is at least twenty-five percent, but not more than fifty percent, of the proceeds.

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In the event the qui tam plaintiff actively participated in the fraudulent activity, he or she is not guaranteed any minimum amount of recovery from the proceeds. The court considers the significance of the information, the qui tam plaintiff's role in moving the case to litigation, the scope of the employee's past or present involvement in the fraudulent activity, the employee's attempts to avoid or resist the activity, and any other circumstances surrounding the activity. If the court does allow recovery to the qui tam plaintiff, the amount may not exceed thirty-three percent of the proceeds if the state intervened or fifty percent if the state did not intervene. See Ca Govt. Code § 12652(g).

3. **Whistleblower Protections**

Under the CFCA, an employer is prohibited from making, adopting, or enforcing any rule, regulation or policy that prevents employees from disclosing information to a government/law enforcement agency or from acting in furtherance of a false claims action, including investigating, initiating, testifying, or assisting in an action filed under the CFCA. In addition, an employer may not discharge, demote, suspend, threaten, harass, deny promotion to, or discriminate against an employee in his/her employment because of the employee's lawful actions to further a false claims action. An employer that violates this section is liable for all relief necessary to make the employee whole which includes the following:

- a. reinstatement of the employee with the same seniority status that he or she would have had without the discrimination;
- b. two times the amount of back pay;
- c. interest on the back pay;
- d. compensation for any special damages incurred as a result of the discrimination;
- e. litigation costs and reasonable attorneys' fees; and
- f. punitive damages where appropriate, (a remedy that is not provided under the federal FCA.)

When the employee is discharged, demoted, suspended, harassed, denied promotion or discriminated against by his or her employer because of the employee's participation in conduct that directly or indirectly resulted the submission of a false claim to the state, the employee is entitled the remedies above, only if: (a) the employee

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voluntarily disclosed information to the Government or acted in furtherance of a false claims action; and (b) the employee was harassed, threatened with termination or demotion, or coerced by the employer or its management to engage in the fraudulent activity. See Ca Govt. Code § 12653.

V. PROCEDURES

- A. SHC shall establish a procedure for implementing this policy. Accordingly, SHC shall be responsible for the following:
1. Ensuring that all SHC employees, including management, and any contractors or agents of SHC, are provided with this policy by making the policy available on the SHC Intranet effective January 1, 2007 and including the policy in the SHC Employee Handbook and/or code of conduct, as appropriate.
 2. Implementing training for all SHC employees, management, contractors, and agents regarding the state and federal laws discussed in this policy (including whistleblower protections for employees) and any SHC policies and procedures for detecting and preventing fraud, waste, and abuse.
 3. Confirming that all SHC employee, management, contractor and agents received sufficient training regarding this policy and any SHC policies and procedures for detecting and preventing fraud, waste and abuse.
 4. Revising this policy when necessary to comply with changes in the laws or regulations and documenting and implementing any such changes.
 5. Ensuring that all SHC employees, management, contractors, and agents have access to SHC policies involving the detection and prevention of fraud, waste, and abuse.

VI. PROCEDURES

- A. SHC shall establish a procedure for implementing this policy. Accordingly, SHC shall be responsible for the following:

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1. A copy of this policy will be posted in the SHC Employee Handbook and on the SHC Intranet and referenced in the Code of Conduct training.
2. A copy of the policy will be distributed to employees, agents, and contractors in accordance with the requirements of the DRA.
3. SHC employees, agents, and contractors are aware of their responsibility to report potential or suspected incidents of fraud and/or abuse, and other wrongdoing directly to their supervisor or use one of the reporting methods described in the SHC/LPCH Code of Conduct.
4. The Chief Compliance and Privacy Officer or the Executive Director of Internal Audit, in consultation with the Office of General Counsel, is responsible for receiving and acting upon all information suggesting the existence of possible fraud, abuse, or other wrongdoing; and for directing all investigations arising from this information.
5. This policy will be revised when necessary to comply with changes in the laws or regulations and any such changes will be documented and implemented.

VII. RELATED DOCUMENTS

- A. SHC/LPCH Code of Conduct
- B. SHC/LPCH Employee Handbook

VIII. DOCUMENT INFORMATION

- A. Legal Authority/References
 1. Ca Govt. Code § 12650-12656
 2. 31 U.S.C. § 3801-3812
 3. 31 U.S.C. § 3729-3733
 4. Deficit Reduction Act of 2005, Sections 6031, 6032 (S. 1932, Feb. 8, 2006)
- B. Author/Original Date
November 2006, Erin Leigh, Office of the General Counsel
- C. Gatekeeper of Original Document
Stanford Hospital and Clinics Human Resources Compliance Officer
- D. Distribution and Training Requirements

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1. This policy resides on the Intranet of Stanford Hospital and Clinics
2. New versions of the policy will be posted on the Intranet and communicated to applicable staff.

E. Review and Renewal Requirements

This policy will be reviewed every three (3) years and/or as required by change of law or practice.

F. Review and Revision History

This is a new policy March 2007.

Revised May 2008 by Erin Leigh, Office of the General Counsel

G. Approvals

November 2006, Sarah DiBoise, Chief Hospital Counsel

November 2006, Lori Curry, Vice President of Human Resources

September 2008 by Lori Curry, Vice President of Human Resources – SHC

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