





## COMMUNITY HEALTH CENTER NETWORK COMPLIANCE MANUAL – DUTY TO REPORT WRONGDOING; WHISTLEBLOWER PROTECTION

Applicable to:	All Health Centers	Departmental Authorizing Agents:
Subject:	Duty to Report Wrongdoing; Whistleblower Protection	 , DC, MPH Deputy Health Officer
Category:	Corporate Compliance	 , MA, Chief Operating Officer
Distribute to:	Compliance Manual	Policy Effective: November 1, 2008
CHC Board:	October 22, 2008	Policy Revised:

### PURPOSE:

To advise employees, contractors, and volunteers when and how to report wrongdoing and of their protection against reprisal or retaliation for reporting.

### POLICY:

Any person who has knowledge of or, in good faith, suspects any wrongdoing in the documenting, coding, or billing for services, equipment, or supplies, in the Ingham County Health Department's financial practices, or violation of the Standards of Conduct should report it internally so that an investigation can be conducted and appropriate action taken. Retaliation or reprisal against anyone for such a report is strictly prohibited.

### DEFINITIONS:

**Wrongdoing:** In addition to a violation of Federal or state law, wrongdoing includes violation of Ingham County Health Department's Community Health Center Standards of Conduct and impermissible billing practices (such as billing for services not performed at all or not performed as described; submission of claims for unnecessary or undocumented services, equipment, or supplies; double billing; upcoding; unbundling; misuse of coding modifiers; false cost reports; billing for services by an unlicensed or excluded provider; paying or accepting money, gifts, or favors in return for referrals).

### IMPLEMENTATION:

1. Anyone who becomes aware of or in good faith suspects wrongdoing by another employee, a board member, a vendor, a contractor, or a volunteer should report it to his or her immediate supervisor and the Department's Compliance Officer.
2. The individual making the report may do so by reporting the concern in writing and submitting it to both his/her immediate supervisor and the Compliance Officer. Alternatively a message may be left on the Department's hotline – (866) 551-0525. Anyone making an anonymous report must realize that the Compliance Officer will not be able to ask additional questions of the person reporting nor advise the person of the outcome. The Department's Compliance Officer will attempt to maintain the confidentiality of the person reporting the concern.
3. Self-reporting is also encouraged. Anyone who self-reports wrongdoing or a violation of law will be given due consideration in mitigation of any disciplinary action that may be taken.
4. Upon a report of wrongdoing, the Compliance Officer will then conduct an investigation into the allegations to determine the nature, scope, and duration of wrongdoing, if any shall follow the steps set forth in Policy "Responding to Detected Offenses and Developing Appropriate Corrective Action".
5. If the charges are substantiated, then the Compliance Officer will develop a plan for corrective action and will notify the Deputy Health Officer for Community Health Care Services and the Ingham County Community Health Center Board pursuant to Policy "Responding to Detected Offenses and Developing Appropriate Corrective Action".
6. Retaliation or reprisal in any form against anyone who makes a report of wrongdoing, cooperates in an investigation, or participates in the compliance program is strictly prohibited. If an employee or a contractor believes that an adverse action in the form of reprisal or retaliation has been taken against him or her as the result of making a report or cooperating in an investigation pursuant to this or any other compliance policy, he or she should report it to the Compliance Officer.
7. The Compliance Officer shall maintain a confidential log in a secure place of all reports of compliance

concerns and shall update the Ingham County Community Health Center Board twice a year.

8. Anyone who makes a report of wrongdoing maliciously, frivolously, or in bad faith will be subject to disciplinary action.
9. The Department's Health Center operation seeks to investigate all non-frivolous claims of wrongdoing internally so that corrective action can be instituted.
10. The Department's Health Center operation encourages the reporting to the Compliance Officer so that appropriate corrective action can be instituted. However, any person who discovers wrongdoing that is a false claim or statement may report that information to the Department of Justice or the U.S. Attorney by filing a complaint under seal in the court pursuant to the False Claims Act (see Appendix).

## APPENDIX

### FEDERAL AND STATE LAWS

**Civil False Claims Act (31 U.S.C. ' 3729 et seq.):** The False Claims Act is a statute that imposes civil liability (between \$5,500 and \$11,000 a claim and three times the total damages) on any person or entity who

- knowingly submits a false claim to the Federal government for payment
- knowingly makes or uses a false record or statement to obtain payment or approval of a claim by the Federal government
- uses a false statement to decrease an obligation to the government.

#### DEFINITIONS:

##### Knowingly:

- actual knowledge of the truth or falsity of a claim or statement
- acting recklessly, or
- acting with deliberate ignorance of the truth or falsity of the claim.

**Claim:** The definition of claim includes a claim submitted to Medicaid, Medicare or Tricare.

##### Bringing an Action under the False Claims Act:

A private person can bring an action under the False Claims Act in the name of the United States

- The person can file a complaint “under seal” or confidentially on the court docket. “Under seal” means that the records are kept secret on the docket of the court.
- The U.S. Attorney has sixty days, or more if an extension is requested of the court, to review the complaint and consider the allegations and whether the U.S., through the Department of Justice, will join in and take over the complaint.
- The Department of Justice then investigates the allegations of violations of the False Claims Act and may involve the FBI or the Office of the Inspector General of the Department of Health and Human Services and may issue subpoenas for documents or electronic records, may interview witnesses, and may compel testimony from certain individuals within the organization.
- After the investigation is complete, the Department of Justice decides whether it will intervene in the action filed by the employee, decline to intervene, or dismiss the complaint.
- If the action is pursued and is successful, the employee is entitled to part of the recovery, from 15 to 30%, depending on whether the Justice Department, becomes involved in the case.

##### Civil Monetary Penalties:

These statutes provide administrative remedies and penalties against those who submit false claims or make false statements to Federal agencies.

- The Program Fraud and Civil Remedies Act (“PFCRA”) (31 U.S.C. 3801-3812) is another tool the Federal government can use to penalize false claims involving Federal agencies and is designed to provide them with an administrative remedy for losses resulting from false claims. The PFCRA provides for civil penalties of \$5,000 per claim for each false claim submitted to a Federal agency and an assessment of twice the amount of the claim against anyone who submits a false, fictitious or fraudulent claim, includes a false statement of material fact or omits a material fact, or makes claims for property or services that were not provided as claimed.
- The Civil Monetary Penalties Law “CMPL” (42 U.S.C. Sec. 1320a-7a) provides for penalties against anyone who presents a claim to a Federal or state officer, employee or agency he knows or should know was not provided as claimed or is based on upcoding. CMPL can also be assessed against a provider who:
  - submits a bill for the services of someone who is not licensed or is excluded from Federal or state health care programs or
  - violates the anti-kickback statute or
  - is in violation of the Stark self-referral law.

**Criminal Penalties for Acts Involving Federal Health Care Programs (42 U.S.C. ' 1320a7b):**

Anyone who makes a false statement in any application for a benefit or payment under a federal or state health care program or solicits or receives any payment for referring someone for a service or item reimbursable by a Federal or state health care program can be fined up to \$25,000 and imprisoned.

**Anti-kickback Statute:**

The Federal anti-kickback statute was passed to prevent fraud and abuse in Federal health care programs by making it a crime for anyone to knowingly and willfully receive or pay anything of value to influence the referral of Federal health care program business, such as Medicare and Medicaid.

- Since it is a criminal law, the intent of the wrongdoer to violate the law has to be shown.
- The punishment for violations of the law is up to five years in jail, criminal fines up to \$25,000, administrative civil monetary penalties up to \$50,000, and exclusion from Federal health care programs.
- There are 23 anti-kickback safe harbors that provide protection from prosecution for certain payment and business practices implicated by the anti-kickback statute.
- Safe harbors include personal services and management contracts, lease agreements for space or equipment, joint ventures in and recruitment to medically underserved areas, but anyone who is trying to fit within a safe harbor should consult with an attorney.

**Stark Law (I and II):**

The Stark law prohibits a physician from referring Medicare and Medicaid health care program patients for certain "designated health services" to an entity with which the physician or an immediate family member has a financial relationship.

Designated health services include:

- clinical laboratory services
- physical and occupational therapy and speech language pathology services
- radiology and other imaging services
- radiation therapy
- durable medical equipment and supplies
- parenteral and enteral nutrients
- equipment and supplies
- prosthetics, orthotics, and prosthetic devices and supplies
- home health services
- outpatient prescription drugs, inpatient outpatient hospital services, and nuclear medicine

A financial relationship can be direct or indirect ownership or compensation arrangement. There are a number of very specific exceptions relating to:

- ownership or investment interest or
- compensation arrangements

Common exceptions include:

- bona fide employment relationships
- in-office ancillary services

Physicians should consult counsel before deciding whether their financial arrangement fits within one of the exceptions. Under the Stark law, liability can be found regardless of whether a person intends to violate the law.