

Title/Subject: **HIPAA: FALSE CLAIMS ACT**

Applies to: faculty staff students student employees visitors contractors

Effective Date of This Revision: June 1, 2018

Contact for More Information: General Counsel

Board Policy Administrative Policy Procedure Guideline

PURPOSE:

This policy is to ensure that all employees, including management, and any contractors or agents involved in delivering or supporting the delivery of reimbursable healthcare services at Central Michigan University, are educated regarding the Federal and Michigan Medicaid False Claim Acts and related whistleblower protection laws. If necessary, this policy may also serve to comply with certain requirements set forth in the Deficit Reduction Act of 2005 with regard to federal and state false claims laws.

POLICY:

Central Michigan University is committed to following all applicable laws and regulations, in particular those related to health care fraud, waste, and abuse including proper billing of all third party payers of health care related services.

Federal False Claims Act

The Federal False Claims Act (FCA) makes it possible for the government to bring civil and criminal actions to recover damages and penalties when healthcare providers submit false claims. In general, any person who:

- knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- conspires to commit a violation of the Federal False Claims Act;
- knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government

The Michigan Medicaid False Claim Act

Michigan's Medicaid False Claim Act (MMFCA) is an act to prohibit fraud in the obtaining of benefits or payments in connection with the medical assistance program, to prohibit kickbacks or bribes in connection with the program; to prohibit conspiracies in obtaining benefits or payments; to authorize the attorney general to investigate alleged violations of this act; to provide for the appointment of investigators by the attorney general; to ratify prior appointments of attorney general investigators; to provide for civil actions to recover money received by reason of fraudulent conduct; to provide for receiverships of residential health care facilities; to prohibit retaliation; to provide for certain civil fines; and to prescribe remedies and penalties.

Violations of the MMFCA include a person who:

- knowingly makes or causes to be made a false statement or false representation of a material fact in an application for Medicaid benefits;
- knowingly makes or causes to be made a false statement or false representation of a material fact for use in determining rights to a Medicaid benefit;

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- has knowledge of the occurrence of an event affecting his or her initial or continued right to receive a Medicaid benefit or the initial or continued right of any other person on whose behalf he or she has applied for or is receiving a benefit, shall not conceal or fail to disclose that event with intent to obtain a benefit to which the person or any other person is not entitled or in an amount greater than that to which the person or any other person is entitled;
- solicits, offers, or receives kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made in whole or in part pursuant to a program established Act No. 280 of the Public Acts of 1939, as amended, who makes or receives the payment, or who receives a rebate of a fee or charge for referring an individual to another person for the furnishing of the goods and services;
- enters into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another person to obtain the payment or allowance of a false claim under the social welfare act, Act No. 280 of the Public Acts of 1939, as amended, being sections 400.1 to 400.121 of the Michigan Compiled Laws;
- makes or presents or causes to be made or presented to an employee or officer of this state a claim under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, upon or against the state, knowing the claim to be false;
- makes or presents or cause to be made or presented a claim under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, that he or she knows falsely represents that the goods or services for which the claim is made were medically necessary in accordance with professionally accepted standards;
- 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 transmit money or property to the state pertaining to a claim presented under the social welfare act.

Examples of a false claim: (not in any particular order, not all inclusive)

1. Billing for medically unnecessary services
2. Billing for services when none were provided
3. Failing to comply with billing requirements (e.g., billing for the wrong service or wrong level of service and unbundling)
4. Failing to comply with coverage requirements (services performed by non-physician practitioners without the required supervision)
5. Falsifying supporting documents
6. Kickbacks
7. Self-referral law violations
8. Inducements to beneficiaries
9. Employing excluded persons

Penalties

The statutes provide that one who violates the Federal or Michigan Medicaid False Claims Act, must pay significant fines and/or imprisonment.

Whistleblower Protection under the False Claims Act

The Federal and Michigan False Claims Act contain 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 all relief necessary.

PROCEDURE FOR REPORTING CONCERNS:

When suspected fraudulent incidents or practices of false claims are observed by or made known to an employee, one or all of the following procedures must be followed:

1. Report concerns to the immediate supervisor when appropriate;
 - a. If the immediate Supervisor is not deemed to be the appropriate contact, or if the Supervisor fails to respond quickly and appropriately to the concern, the individual with the concern is encouraged to discuss with another member of management; and/or
2. Report concerns through the confidential CMU Ethics Hotline at 1-866-294-9379 or via the link on the CMU Ethics Hotline page; and/or

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3. Follow the procedure outlined in CMU Fraud and Fraudulent Activities Policy # 3-4 located on the General Counsel website.

CMU ensures that all employees who are involved in the delivery of healthcare services at CMU, including employees who administratively support the providers who deliver healthcare services, and any contractors or agents, are provided with this policy within 30 days of commencing employment or contractor status.

Refer to:

[CMU Fraud and Fraudulent Activities Policy 3-4](#)

CMU Ethics Hotline at www.cmich.edu/office_president/IA/Pages/CMU_Ethics_Hotline.aspx

Michigan Medicaid False Claims Act

Federal False Claims Act

Central Michigan University reserves the right to make exceptions to, modify or eliminate this policy and or its content. This document supersedes all previous policies, procedures or guidelines relative to this subject.