



False Claims Act Information for Vendors, Contractors, Suppliers and Agents

Universal Health Services (UHS) conducts business with numerous vendors, contractors, suppliers, and agents. This document serves to inform such entities and individuals of the Federal False Claims Act and their various requirements and administrative remedies.

False Claims Act

The False Claims Act (“Act”) is a federal law that covers fraud involving any federally funded contract or program, including Medicare and Medicaid, with the exception of tax fraud. The Act prohibits any person from knowingly submitting or conspiring with others to submit or cause a false or fraudulent claim for payment or approval by the Federal Government.

Healthcare providers can be prosecuted for a wide variety of conduct that leads to the submission of a fraudulent claim, such as falsifying records, double-billing for items or services, submitting bills for services never performed or items never furnished, or knowingly or causing with deliberate disregard up-coding (the practice of billing for a more highly reimbursed service or product than the one provided).

The *Fraud Enforcement and Recovery Act of 2009*, or FERA, contains the first significant expansions to the federal civil False Claims Act affecting hospitals and health care providers that receive funds from the federal government directly or as part of downstream payment in a federal program. The definition of a “claim” in the False Claim Act now includes requests for funds to a contractor, grantee, or other recipient. The claim is no longer just to the government but also to anyone that receives funds from the government that is expected to be “spent or used on the government’s behalf or to advance a Government program interest”. A person is now liable if she/he 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 or conspires with others to commit such acts.

The Patient Protection and Affordable Care Act (PPACA), effective March 23, 2010, modified the “reverse false claims” provision adding new liability and risk related to overpayments from government payors. Overpayments must be reported and returned by 60 days after the date on which the overpayment is identified or by the date any corresponding cost report is due.

Below are the key provisions of the Federal False Claims Act and other associated laws:

- 1) **Penalties:** Healthcare providers and suppliers who violate the Act are liable for civil penalties ranging from \$13,508 to \$27,018 for each false claim (as of January 30, 2023), plus up to three times the amount of damages sustained by the Federal Government. The provider or supplier may also be excluded from participation in federal health care programs.
- 2) **Qui Tam Provisions:** One of the unique aspects of the Act is the qui tam provision, commonly referred to as the whistleblower provision. This provision allows any individual with actual knowledge of the alleged false claims known as a “relator,” to file lawsuit on behalf of the Federal Government as a whistleblower. To qualify as a whistleblower under these provisions, an individual must have direct and independent knowledge of the information on which the allegations are based on must voluntarily provide information to the Federal Government before filing an action under the Act. This is called a *qui tam* action. The individual must file the lawsuit on behalf of the government in federal district court. The lawsuit is kept confidential while the government reviews and investigates the allegations contained in the lawsuit and decides how to proceed. FERA grants greater latitude for the Department of Justice (DOJ) to issue subpoenas and to share information with whistleblowers and state and local government.

If the government decides the lawsuit has merit, the government may intervene or join in on the lawsuit. If the government decides not to join in the lawsuit, the individual may still continue with the lawsuit on his or her own.

If the lawsuit is successful, an individual may receive an award ranging from 15 to 30 percent of the amount recovered by the government and may also be entitled to reasonable expenses, including attorney fees. However, this is reduced or nullified if the individual is found to have planned or initiated the violation. Further, the individual may be held liable for the defendant attorney’s fees if it is a frivolous claim.

- 3) **Non-retaliation for whistleblowers:** An individual bringing a lawsuit under the Act as a whistleblower is offered several protections under federal law. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in furtherance of an action under the Act is entitled to any relief necessary to make the employee whole. FERA extends antiretaliation protection to contractors and agents.
- 4) **Administrative Remedies for False Claims:** The Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. sec 3801, et. seq., provides administrative remedies against persons who make, or cause to be made, a false claim or written statement to certain

federal agencies, including the Department of Health and Human Services. The PFCRA was enacted as a means to address lower dollar frauds, and generally applies to claims of \$150,000 or less. The PFCRA provides that any person who makes, presents, or submits, or causes to be made, presented or submitted a claim that the person knows or has reason to know is false, fictitious, or fraudulent is subject to civil money penalties of up to \$7,000 per false claim or statement and up to twice the amount claimed in lieu of damages. Violations are investigated by the Office of Inspector General and enforcement actions must be approved by the U.S. Attorney General. The PFCRA enforcement can begin with a hearing before an administrative law judge. Penalties may be recovered through a civil action brought by the U.S. Attorney General or through an administrative offset against "clean" claims. Because of the availability of other criminal, civil, and administrative remedies, cases are not routinely prosecuted under these civil remedies act.

State laws: In addition to the Federal False Claims Act, there are numerous state laws that apply to filing fraudulent claims with the government. UHS and its contracts, vendors and suppliers operate in numerous states across the nation. It is incumbent on all parties involved to be familiar with state False Claims Acts in their respective jurisdictions and comply with them accordingly.