3.102 Detecting and Responding to Fraud, Waste and Abuse

Policy Statement

UNTHSC developed and implemented a Compliance Program in an effort to ensure our business is conducted in accordance with the highest standards of ethics and integrity made effective by internal controls that promote adherence to applicable federal and state laws and the program requirements of federal and state health plans. The Deficit Reduction Act of 2005 (DRA) requires that any entity receiving or making annual Medicaid payments exceeding $5 million establish and disseminate to all of its employees, volunteers, contractors and agents written policies that set forth the entity’s policies and procedures for preventing and detecting fraud, waste, and abuse in federal health care programs and that describe the federal and state false claims acts.

The federal government and State of Texas have enacted criminal, civil, and administrative laws that prohibit submission of false or fraudulent claims and the making of false statements to the federal and state governments. These laws, including the False Claims Act (FCA), the Texas Medicaid Fraud Prevention Act (FPL), and the Federal Program Fraud Civil Remedies Act, contain various criminal, civil, and administrative penalties and provide governmental authorities with broad authority to investigate allegations of fraud, waste, and abuse and to enforce compliance with federal and state health care program requirements. Additionally, these laws provide for actions by private persons, or *qui tam* lawsuits, where an individual can bring a civil action in the name of the government for a false claim act violation. Attachment A to this policy provides a more detailed overview of the applicable federal and state laws.

UNTHSC supports the efforts of federal and state authorities in identifying incidents of fraud, waste, and abuse. UNTHSC is committed to educating our employees, volunteers, contractors and agents about the federal False Claims Act, administrative remedies for false claims and statements, state laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws. UNTHSC’s Code of Conduct sets forth the values and standards of conduct that govern the behavior of everyone associated with UNTHSC, including our employees, volunteers, agents and contractors.

Application of Policy

This policy applies to UNTHSC employees, volunteers, contractors and agents.
Definitions

1. **Deficit Reduction Act**: The Deficit Reduction Act (DRA) of 2005 requires entities who receive $5,000,000 in Medicaid revenue to establish written policies that include detailed information regarding the federal False Claims Act, administrative remedies for false claims and statements, any State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste and abuse for the entities employees, (including management) and any contractor or agent of the contractor.

2. **False Claim Act**: The federal False Claims Act (FCA) imposes civil penalties on individuals and companies who:
   - Knowingly present, or cause 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;
   - 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;
   - Knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government; or
   - Conspires to commit a violation of the above.

   The term ‘knowingly’ is defined as a person, with respect to information, who has actual knowledge, deliberately ignores the truth or falsity of the information, or recklessly disregards the truth or falsity of the information. The Texas state laws similarly define ‘knowingly’.

3. **Qui Tam Relators**: A private party may initiate a formal complaint or ‘qui tam’ lawsuit on behalf of the United States and may share in a percentage of the proceeds from a FCA action or settlement.

4. **Federal Program Fraud Civil Remedies Act**: This statute provides for an administrative remedy (monetary penalties) against any person who presents or causes to be presented a claim or written statement that the person knows or has reason to know is false, fictitious or fraudulent due to an assertion or omission to certain federal agencies, including the US Department of Health and Human Services.

5. **Texas Medicaid Fraud Prevention Act (FPL)**: The FPL is substantially similar to the federal False Claims Act. The actions that trigger civil and criminal penalties under the Texas FPL generally mirror those of the federal FCA, and include making a false statement or concealing information that affects the right to a Medicaid benefit or payment and
conspiring to defraud the state by obtaining an unauthorized payment from the Medicaid program or its fiscal agent. In addition, under the FPL, a person may also be liable if he presents a claim for payment under the Medicaid program for a product or service that was rendered by an unlicensed provider or that has not been approved by the patient’s treating healthcare practitioner. Like the federal FCA, the FPL has a provision that permits private individuals (“whistleblowers”) to bring an action on behalf of the state and receive a portion of the recovery if the case is successful. Like the FCA, the FPL includes provisions to prevent employers from retaliating against employees for their involvement in FPL actions.

**Procedures and Responsibilities**

The following procedures summarize UNTHSC’s existing policies and associated procedures for detecting and preventing fraud, waste, and abuse, including how to report concerns internally.

1. **UNTHSC** employees, volunteers, contractors and agents will abide by UNTHSC Code of Ethics which sets forth the values and standards of conduct that govern their behavior.

   **Responsible Party:** UNTHSC employees, volunteers, contractors and agents

2. UNTHSC will ensure that its employee policies and/or handbook include a detailed summary of this policy in accordance with DRA requirements.

   **Responsible Parties:** UNTHSC Institutional Compliance Officer and UNTHSC Chief Human Resources Officer

3. All UNTHSC employees, including management, and any contractors or agents shall be educated regarding the federal and state false claims statutes and the role of such laws in preventing and detecting fraud, waste and abuse in federal health care programs. UNTHSC employees will undergo mandatory annual training on detecting and preventing fraud, waste and abuse. UNTHSC contractors and agents will receive a summary document, Attachment A, outlining federal and state false claims laws and the role of such laws in preventing and detecting fraud, waste, and abuse.

   **Responsible Party:** UNTHSC employees, volunteers, contractors and agents

UNTHSC employees are encouraged to report suspected violations of fraud, waste and abuse to their supervisors, confidentially to a compliance officer or to the Internal Audit Office, or anonymously using either of the two following mechanisms: (1) UNTHSC hotline: 877-606-9187; and (2) online reporting at [www.reportlineweb/unthsc.com](http://www.reportlineweb/unthsc.com). Employees are not required to report a possible false claims act action to UNTHSC first, however, but may report directly to the federal Department of Justice or the Health and
Human Services Office of Inspector General Hotline (1-800-HHS-TIPS) or to the State Auditors Office Fraud Hotline (1-800-TX-AUDIT).

**Responsible Party:** UNTHSC Institutional Compliance Officer

4. UNTHSC employees, volunteers, contractors and agents, in exercising their right to report compliance issues in good faith, are protected by the UNTHSC Non-Retaliation Policy. Attachment A to this policy provides a more detailed overview of the applicable federal and state whistleblower protection laws.

**Responsible Party:** UNTHSC employees, volunteers, contractors and agents

5. In addition to the non-retaliation policy, UNTHSC has the following policies and procedures to support the UNTHSC Compliance Program:

   a. **Fraud Policy:** It is the policy of UNTHSC to identify and promptly investigate any possibility of fraudulent or related dishonest activities against the health science center and, when appropriate, to pursue legal remedies available under the law. When fraud or other dishonest activities are discovered, the health science center will take appropriate disciplinary and legal actions against employees and/or entities to include the possibility of termination of employment, restitution, and forwarding information to the appropriate authorities for criminal prosecution.

   b. **Whistle Blower Act Policy:** State law prohibits state and local government employers from discriminating against an employee in the terms or conditions of his or her employment because the employee initiated or otherwise assisted in a false claims act action. An employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts conducted in furtherance of a false claims act action may bring an action to seek reinstatement, back pay, and other costs, damages and fees.

   c. **Compliance Refunds from Routine Audits Policy:** UNTHSC will promptly identify, report and refund all overpayments from Medicare, Medicaid and all other federal health care programs. Once identified, overpayments must be reported and returned within 60 days.

   d. **Government Investigation Policy:** The faculty practice plan (UNT Health) of UNT Health Science Center is subject to announced and unannounced audits, surveys, and investigations by government agencies. UNT Health employees will abide by such investigations as outlined in the procedure and responsibilities section of the policy.
e. Compliance Training Policy: UNTHSC is committed to maintaining an effective Compliance program and all UNTHSC employees receive mandatory education and training on federal and state regulations and statutes, including reporting fraud, waste and abuse.

f. Monitoring and Auditing procedures: The Compliance Office performs routine audits for each clinical department. Each clinical department is reviewed twice a year. Each clinical department receives a report of findings and if applicable, a corrective action plan to mitigate associated findings.

Responsible Party: UNT Health Compliance and Privacy Officer, UNTHSC Chief Compliance Officer

References and Cross-references

Public Law 109-171; Section 6032, Deficit Reduction Act of 2005 (DRA)

03.101 Institutional Compliance

03.302 Compliance Program Non-Retaliation Policy

05.519 Fraud Policy

05.206 Whistle Blower Act

14.515 Compliance Refunds from Routine Audits

14.514 Government Investigations

14.240 Compliance Training

UNT System Regent’s Rules 10.702

Forms and Tools

Attachment A: Federal and Texas State Laws

Approved: April 2012
Effective: April 2012
Revised:
ATTACHMENT A

Federal Laws

The federal False Claims Act and the federal Program Fraud Civil Remedies Act of 1986 are the primary federal laws used by the federal government to enforce compliance with federal health care program requirements. Generally, the False Claims Act applies to any federally funded program. The False Claims Act applies, for example, to claims submitted by healthcare providers to Medicare or Medicaid.

The False Claims Act (FCA)
The False Claims Act provides, in pertinent part, that:

Any person who
(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
(C) conspires to commit a violation of subparagraph (A), (B) or (G); or
(G) 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
is liable to the United States Government for a civil penalty of not less than $5,500 and not more than $11,000 per false claim, plus 3 times the amount of damages which the Government sustains because of the act of that person. 31 U.S.C. § 3729 et seq.

For purposes of this section, the following definitions apply:

- The terms “knowing” and “knowingly” mean that a person, with respect to information (1) has 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.
- The term “material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.
- The term “obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.

While the False Claims Act imposes liability only when the claimant acts “knowingly”, it does not require that the person submitting the claim have actual knowledge that the claim is false. A person who acts in reckless disregard or in deliberate ignorance of the truth or falsity of the information, also can be found liable. The False Claims Act imposes liability on any person who submits a claim to the federal government that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The False Claims Act also imposes liability on an individual who knowingly makes a false record material to a false or

---

1 Pursuant to the Patient Protection and Affordable Care Act, any identified overpayment retained by a person after the 60 day reporting period would be an “obligation” for purposes of the FCA’s “knowing and improper retention” liability.
fraudulent claim. For example, knowingly creating a false record in a patient’s chart that causes a false claim to be submitted. The third area of liability includes those instances in which someone obtains money from the federal government to which he may not be entitled, and then improperly retains the money. An example of this so-called “reverse false claim” may include not returning an identified overpayment to a federal healthcare program within 60 days.

In addition to its substantive provisions, the FCA provides that private parties, or whistleblowers, with knowledge of past or present fraud on the government may bring an action on behalf of the United States to recover civil penalties. These private parties, known as “qui tam relators”, may share in a percentage of the proceeds from an FCA action or settlement.

Section 3730(d)(1) of the FCA provides, with some exceptions, that a qui tam relator, when the Government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(d)(2) provides that the relator shall receive an amount that the court decides is reasonable and shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement.

The FCA provides protection to qui tam relators who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. 31 U.S.C. 3730(h). Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees.

The Federal Program Fraud Civil Remedies Act of 1986
The federal Program Fraud Civil Remedies Act of 1986 is a statute that establishes an administrative remedy against any person who submits a claim to certain federal agencies that the person knows or has reason to know is false, fictitious, or fraudulent, or is supported by a false, fictitious or fraudulent written statement. The person can be assessed administrative money penalties in addition to the penalties of the FCA. Specifically, the Act imposes monetary penalties if a person or company submits a claim to the federal government that the person or company knows or has reason to know:

- is false, fictitious, or fraudulent;
- includes or is supported by any written statement that asserts a material fact which is false, fictitious, or fraudulent;
- includes or is supported by any written statement that omits a material fact which causes the statement to be false, fictitious, or fraudulent, and is a statement in which the person submitting the statement has a duty to include the omitted fact; or
- is for payment of property or services that are not provided as claimed.


The Act also prohibits a person or company from presenting a written statement that the person knows or has reason to know asserts a material fact that is false, fictitious or fraudulent, or has a duty to include a material fact that is omitted and the omission causes the statement to be false, fictitious, or fraudulent, and the statement contains a certification of accuracy.

---

2 “knows or has reason to know” is defined substantially the same as “knowingly” under the False Claims Act.
The Program Fraud Civil Remedies Act allows for penalties of $5,000 per claim and an assessment of up to twice the amount of the original claim.

State Laws

The Texas Medicaid Fraud Prevention Act

The Texas Medicaid Fraud Prevention Act (FPL) is substantially similar to the federal False Claims Act. Tex. Hum. Res. Code §§ 36.001-36.008. The actions that trigger civil penalties under the Texas FPL generally mirror those of the federal FCA, and include making a false statement or concealing information that affects the right to a Medicaid benefit or payment and conspiring to defraud the state by obtaining an unauthorized payment from the Medicaid program or its fiscal agent. In addition, under the FPL, a person may also be liable if he presents a claim for payment under the Medicaid program for a product or service that was rendered by an unlicensed provider or that has not been approved by the patient’s treating healthcare practitioner. Additional state law allows state officials to seek criminal penalties against any person who knowingly defrauds the state Medicaid program by submitting false claims or making false representations.

Like the federal FCA, the FPL has a provision that permits private individuals (“whistleblowers”) to bring an action on behalf of the state and receive a portion of the recovery if the case is successful. The private individual’s share could be reduced or eliminated altogether, however, if the individual planned and initiated the activity upon which the lawsuit was based or if the individual is convicted of criminal conduct arising from his role in the illegal activity. Like the FCA, the FPL includes provisions to prevent employers from retaliating against employees for their involvement in the FPL actions.

The Texas Whistleblower Act

State employees who in good faith report violations of state or federal law or regulation are protected against retaliation or disciplinary action related to the report pursuant to the Texas Whistleblower Act. Tex. Gov’t Code §554.001 et seq. The Texas Whistleblower Act prohibits a state or local governmental entity from suspending or terminating the employment of, or taking other adverse personnel action against, a public employee who in good faith reports a violation of law to an appropriate law enforcement authority. A report is made to an appropriate law enforcement authority if the authority is part of a state or local governmental entity or of the federal government that the employee in good faith believes is authorized to:

- regulate under or enforce the law alleged to be violated in the report; or
- investigate or prosecute a violation of criminal law.

A public employee whose employment is suspended or terminated is entitled to sue for injunctive relief, actual damages, court costs and reasonable attorneys’ fees. A public employee whose employment is suspended or terminated is also entitled to reinstatement to the employee’s former position or an equivalent position, compensation for lost wages, and reinstatement of lost fringe benefits and seniority rights.

A supervisor who suspends or terminates a public employee or takes an adverse personnel action against the employee in violation of the Texas Whistleblower Act is liable for a civil penalty not to exceed $15,000.