

St. Luke's Episcopal Health System Policy & Procedure

No.
1.01.40.20.009

Subject/Title: False Claim Statutes Policy

Effective Date: October 2009

Next Review Date: October 2012

Maintained By: Coordinator Corporate Integrity

Reviewed By: Corporate Integrity Steering Committee

Approved By: Vice President Audit and Compliance, Chief Compliance Officer, and
Chair Corporate Integrity Steering Committee

This policy/procedure rescinds all other policies/procedures and memoranda relating to this subject issued prior to October 2009. St. Luke's Episcopal Health System and pertinent St. Luke's subsidiaries are included and referred to collectively in this policy/procedure as "St. Luke's."

PURPOSE

This policy defines St. Luke's position regarding the reporting of alleged false claims, fraud, waste and/or abuse in order to comply with legal or regulatory requirements, including those set forth in the Deficit Reduction Act of 2005.

STATEMENT OF POLICY

St. Luke's will provide information to employees, contractors, volunteers and agents ("Associates") regarding the Federal False Claims Act and the Texas False Claims Act. This information will include their responsibility in preventing and detecting fraud, waste, and/or abuse and remedies available under applicable statutes including protections available to those making a good faith report. St. Luke's will advise its Associates of St. Luke's procedures designed to detect health care fraud, waste and/or abuse.

DEFINITION(S)

Associate - Means an employee, physician, contractor or other agent of St. Luke's.

Claim - Means a request or demand, whether under a contract or otherwise, for money or property and whether or not the United States Government ("Government") has title to the money or property, that is presented to an officer, employee, or agent of the Government; or is made to a contractor, grantee, or other recipient if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the Government provides or has provided any portion of the money or property requested or demanded, or will reimburse such contractor, grantee, or

other recipient for any portion of the money or property which is requested or demanded. It does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property.

Federal False Claims Act

The Federal False Claims Act is a statute that covers fraud involving Federally-funded contracts or programs, including Medicare and Medicaid. It broadly defines liability for certain acts including any person who:

- A. *Knowingly presenting, or causing to be presented a false or fraudulent claim for payment;*
- B. *Knowingly making, using, or causing to be made or used, a false record or statement material to a false or fraudulent claim;*
- C. *Conspiring to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G) as noted within this section;*
- D. *Having possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;*
- E. *Authorizes to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;*
- F. *Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property 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.*

Violations of the statute can result in:

- A Federal False Claims action by the U.S Department of Justice Civil Division.
- A *qui tam* action, which allows an individual with knowledge of a potentially false claim(s) to bring a civil action on behalf of the Government.
- Civil monetary penalties per false claim of up to \$11,000 but not less than \$5,500, plus three times the amount of the damages incurred.
- Exclusion of the provider or supplier from participation in Federal health care programs (i.e., Medicare).

The statute of limitations is six (6) years after the date of violation or three (3) years after the date when material facts are known or should have been known by the government, but no later than ten (10) years after the date on which the violation was committed.

Knowing and Knowingly - Means that a person, with respect to information, has actual knowledge of the information and acts in deliberate ignorance of the truth or falsity of the information or acts in reckless disregard of the truth or falsity of the information. Knowing or knowingly requires no specific intent to defraud.

Material - Means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

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.

Program Fraud Civil Remedies Act of 1986

The Program Fraud Civil Remedies Act of 1986 (PFCRA) authorizes Federal agencies such as the Department of Health and Human Services ("HHS") to investigate and assess penalties for false claims. Conduct prohibited by PFCRA is similar to that prohibited by the Federal False Claims Act including making, presenting, causing to be made, presented, or submitted, and a claim that the person knows or has reason to know:

- *Is false, fictitious, or fraudulent;*
- *Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;*
- *Includes or is supported by a written statement which is false, fictitious or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement; or*
- *Is for payment for the provision of property or services which the person has not provided as claimed.*

Penalties under PFCRA can include a \$5,000 civil penalty for each wrongfully filed claim, plus an assessment of twice the amount of any unlawful claim paid.

Texas False Claims Act

The State of Texas has enacted a parallel statute to the Federal False Claims Act that provides a civil remedy for the submission of false and fraudulent claims to health care programs paid for by the State of Texas. The statute includes provisions about the submission of claims for payment to which a provider is not entitled.

Under the Texas Medicaid Fraud Prevention Law (FPL), a person may also be liable if he/she 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. The damages and penalties for violating the FPL include:

- Payback to the State with interest; and
- Civil penalties of:
 - (a) Not less than \$5,000 or more than \$15,000 per violation if the unlawful act results in injury to an elderly person, a disabled person, or a person younger than 18 years of age, or

- (b) Not less than \$5,000 or more than \$10,000 for each violation that does not result in injury to a person, plus two times the amount of the payment or the value of benefit received.

Similar to the Federal False Claims Act, 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/her role in the illegal activity.

Whistleblower Protections

Federal law prohibits an employer from discharging, demoting, suspending, or harassing an employee in the terms or conditions of employment because of his/her initiation or assistance in a false claims action. The party is entitled to all relief necessary to make them whole (i.e., seniority status, twice the amount of back pay with interest and reasonable attorneys' fees).

Texas law also contains several provisions that prohibit retaliatory action by an employer against an employee who in good faith brings evidence of unlawful practices to the attention of the proper authority.

PROCEDURES

1.00 Reporting Alleged *Illegal Activity*

- 1.01 Any Associate who reasonably believes that St. Luke’s or any member of its workforce is involved in an activity prohibited by the Federal False Claims Act, the Texas False Claims Act, or any other fraud and abuse law is required to immediately report the matter using any of the established St. Luke’s reporting procedures including the St. Luke’s hotline at 1-800-826-6762 or direct contact with the Corporate Compliance Officer.
- 1.02 No Associate is required to report a potential false claim to St. Luke’s. An allegation may be reported directly to the United States Department of Justice.
- 1.03 No Associate shall be retaliated against based on their provision of information in good faith to either St. Luke’s or regulatory bodies.
- 1.04 St. Luke’s will investigate allegations received and attempt to correct and otherwise prevent any allegation with merit.

2.00 Detecting Fraud, Waste, and Abuse

- 2.01 St. Luke’s has promulgated policies/procedures to assist in preventing and detecting fraud, waste and/or abuse. In addition, the *Integrity Guidelines* handbook provides specific information for Associates regarding the reporting of compliance issues, whistleblower protection, and relationships with physicians, patients, third-party payers, contractors, and suppliers.

2.02 St. Luke's has also established procedures to monitor coding and billing practices to ensure compliance with the Federal False Claims Act and other related statutes.

2.03 Below are St. Luke's policies/procedures that may provide Associates further information:

Policy	Description/Purpose
Protection of Individuals Reporting Issue(s) of Concern (Whistleblower Policy);	Establishes a process to protect persons who report improper conduct or wrongdoing in order to ensure that such issues are raised without fear of discrimination, retaliation or reprisal.
Receiving and Investigation of Compliance Hotline Calls (Compliance Hotline Calls / Handling)	Establishes a mechanism to collect and a process to investigate reported potential violations of policies and procedures and/or laws and regulations. Suspected violations or questionable conduct may be reported anonymously.
Nonretaliation / Nonretribution Policy	To establish standards for ensuring that actual or potential violations of law, regulation, policy, or procedure are reported, without retribution.
Screening for Excluded Individuals and Entities	Establishes a periodic or episodic process to ensure that, employees, vendors contractors, volunteers and physicians are routinely screened against Federal and State listings of ineligible or excluded individuals/entities.
Correction of Errors Related to Federal and State Healthcare Program Reimbursement	Establishes processes for identifying, confirming, reporting and correcting inadvertent duplicate payments or billing errors in Federal healthcare program reimbursements and provides for the return of such overpayments to the appropriate healthcare program.
Integrity Guidelines Distribution and Acknowledgement Policy	Establish guidelines for requesting, retaining and monitoring the <i>Integrity Guidelines Statement of Acknowledgment</i> forms received from St. Luke's employees, contractors, and physicians.
Compliance Education and Training	Establishes guidelines for providing training and education to employees, physicians, vendors, and board members in order to foster an ethical workplace as well as to comply with applicable Federal and State regulations.
Conflict of Interest	Establishes reporting requirements for St. Luke's employees and medical staff members with administrative responsibilities who have actual or potential conflicts of interest.

3.00 Federal and State False Claim Acts (Detail Language)

St. Luke's makes available the complete text of both the Federal False Claim Acts and Texas False Claim Acts on *The Source*, St. Luke's Intranet. Associates that do not have access to *The Source* may request this information by submitting a request via email to

Compliance@sleh.com, or by calling 832-355-2146 or by visiting www.sleh.com (select “About Us”, then “Departments”, and finally “Corporate Compliance”).

4.00 Training

- 4.01 All new St. Luke’s employees will receive training on false claims during orientation. In addition, employees will be required to participate in annual training, provided via I-Learn (St. Luke’s electronic education tool) and other methods.
- 4.02 All contractors and agents are required to accept educational information disseminated by St. Luke’s or to participate in training as determined by St. Luke’s.

5.00 Responsibilities

- 5.01 Human Resources is responsible for distribution of the *Integrity Guidelines* during new employee orientation. A signed acknowledgment shall be obtained from the employee and retained in the permanent employee file.
- 5.02 Medical Staff Services is responsible for distributing the *Integrity Guidelines* to all physicians at appointment and reappointment and obtaining their signed acknowledgment.
- 5.03 Supply Chain Management is responsible for communication of applicable St. Luke’s policies to vendors providing goods or services to St. Luke’s.
- 5.04 Management (at all levels) is responsible for encouraging a culture of compliance, stressing its importance, developing procedures specific to their scope of responsibility, and responding to staff concerns regarding fraud, waste, and/or abuse.
- 5.05 The Corporate Compliance Department is responsible for implementing St. Luke’s Compliance Program, which includes but is not limited to:
 - a) Developing and maintaining policies/procedures that provide guidance for St. Luke’s Associates in preventing and detecting fraud, waste, and/or abuse;
 - b) Providing compliance training to increase knowledge on the prevention and detection of fraud, waste, and/or abuse; and
 - c) Responding to reports of fraud, waste, and/or abuse in a timely and effective manner.

DOCUMENTATION

- Not applicable.

FORM(S)

- Statement of Acknowledgement

CROSS-REFERENCE(S)

- *Compliance Education and Training*
- *Compliance Hotline Calls / Handling*
- *Conflict of Interest*
- *Correction of Errors Related to Federal and State Healthcare Program Reimbursement*
- *Integrity Guidelines Distribution and Acknowledgement Policy*
- *Screening for Excluded Individuals and Entities*
- *Whistleblower Policy*
- *Integrity Guidelines*