

AVERA QUEEN OF PEACE

FALSE CLAIMS ACT

POLICY:

In accordance with the Deficit Reduction Act of 2005, Avera Queen of Peace has adopted this policy to provide information to employees about the Federal False Claims Act, the rights of employees to be protected as whistleblowers, and the employer's policies and procedures for detecting and preventing fraud, waste, and abuse. The False Claims Act governs against fraud of federally funded contract or program, including the Medicare and Medicaid programs and established liability for any person who knowingly presents or causes a false or fraudulent claim to be submitted to the U.S. government for payment.

PROCEDURE:

1. Avera Queen of Peace establishes systems to assure that claims submitted for services accurately reflect only those services provided.
 - A. Claim. For purposes of the False Claims Act, a "claim" includes any request or demand for money that is submitted to the U.S. government or its contractors.
 - B. No employee will knowingly submit a false claim. The term "knowingly" is defined to mean that a person, with respect to information:
 - Has actual knowledge of falsity of information in the claim;
 - Acts in deliberate ignorance of the truth or falsity of the information in a claim; or
 - Acts in reckless disregard of the truth or falsity of the information in a claim.

The act does not require proof or a specific intent to defraud the United States government. Instead, health care providers can be prosecuted for a wide variety of conduct that leads to the submission of fraudulent claims to the government, such as knowingly making false statements, falsifying records, double-billing for items or services, submitting bills for services never performed or items never furnished, or otherwise causing a false claim to be submitted.

- C. Liability. Health care providers and suppliers (persons and organizations) who violate the False Claims Act can be subject to civil monetary penalties ranging from \$5,500 to \$11,000 for each false claim submitted. In addition to this civil penalty, a provider or supplier convicted of a False Claims Act violation can be required to pay three times the amount of damages sustained by the U.S. government. Additionally, the Office of the Inspector General (OIG) may seek to exclude the provider or supplier from participation in federal care programs.
- D. Qui Tam "Whistle-blower" Provisions. To encourage individuals to come forward and report misconduct involving false claims, the False Claims Act includes a "qui tam" or whistle-blower provision. This provision essentially allows any person with actual knowledge of false claims activity to file a lawsuit on behalf of the U.S. government.

Such persons are referred to as *relators*. However, individuals seeking whistle-blower status must meet several criteria to prevail as outlined below.

1. Original Source. First, to prevail under a lawsuit, the whistleblower (or relator) must be the “original source” of the information reported to the federal government. Specifically, the whistleblower must have direct and independent knowledge of the false claims activities and voluntarily provide this information to the government. If the matter disclosed is already the subject of a federal investigation, or if the health care provider or supplier has previously disclosed the problem to a federal agency, the whistleblower may be barred from obtaining a recovery under the False Claims Act.
 2. Qui Tam Procedure. The whistleblower/relator must file his or her lawsuit in a federal district court. The lawsuit will be filed “under seal,” meaning that the lawsuit is kept confidential while the government reviews and investigates the allegations contained in the lawsuit and decides how to proceed.
- E. Rights of Parties to Qui Tam Actions. If the government determines that the lawsuit has merit and decides to join (“intervene”), the prosecution of the lawsuit will be directed by the U.S. Department of Justice. At this point, the government will be the “plaintiff” or party suing the health care provider. If the government decides not to intervene, the whistleblower can continue with the lawsuit on his or her own.
- F. Award to Qui Tam Whistleblowers. If the lawsuit is successful, the qui tam relator or whistleblower may receive an award ranging from 15 to 30 percent of the amount recovered by the government. The whistleblower may also be entitled to reasonable expenses, including attorney’s fees and costs for bringing the lawsuit.
- G. No Retaliation. In addition to a financial award, the False Claims Act entitles whistleblowers to additional relief, including employment reinstatement, back pay, and any other compensation arising from retaliatory conduct against a whistleblower for filing an action under the False Claims Act or committing other lawful acts, such as investigating a false claim, providing testimony, or assisting in a False Claim Act action.
2. Avera Queen of Peace has developed and implemented policies to detect fraud, waste and abuse. For detailed policies on this facility’s effort to detect fraud, waste and abuse, please refer to the Corporate Compliance program policies and procedures found in the Interdepartmental Manual on AQOP KnowledgeNet.