



Policy:

False Claims Recoveries

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POLICY

It is the policy of Select Medical to provide information concerning false claims recoveries as required under Section 6033 of the Deficit Reduction Act of 2005, P.L. 109-71 (the "DRA").

GENERAL INFORMATION

1. The Federal False Claims Act and State Laws Pertaining to Penalties for False Claims and Statements

The federal civil False Claims Act, 31 U.S.C. §§ 3729, et seq. ("FCA" or the "Act"), is a civil statute whereby the United States can recover monetary damages from parties who file fraudulent claims for payment of funds by the federal government. Criminal penalties for false claims are also available pursuant to 18 U.S.C. § 287, which allows for punishment of up to five years in prison and a fine calculated under the United States Sentencing Guidelines.

The FCA creates liability for false claims under seven circumstances:

- (1) knowing presentation of a false or fraudulent claim to the federal government for payment or approval (31 U.S.C. § 3729(a)(1));
- (2) knowing use or creation of a false record or statement to get a false or fraudulent claim paid by the federal government (31 U.S.C. § 3729(a)(2));
- (3) conspiring to defraud the federal government to get a false or fraudulent claim paid (31 U.S.C. § 3729(a)(3));
- (4) intentional failure to return all federal government money or property (31 U.S.C. § 3729(a)(4));
- (4) intentional making and issuance of a receipt for more than what the federal government actually received (31 U.S.C. § 3729(a)(5));
- (5) knowing purchase or receipt of property from a federal official who is not authorized to sell or deliver the property (31 U.S.C. § 3729(a)(6)); and
- (6) knowing creation or use of a false record or statement to decrease a monetary obligation to the government (31 U.S.C. § 3729(a)(7)).

Most cases brought under the FCA fall under either sections 3729(a)(1) or (2). In order to establish liability under 31 U.S.C. §§ 3729(a)(1) or (2), a plaintiff bears the burden of showing: a) that the defendant submitted or caused the submission of a claim to the federal government; b) that the claim was false or fraudulent, or the defendant made or used false or fraudulent records or statements to obtain the claim's payment or approval; and c) that the defendant either had actual knowledge of the claim's falsity or acted in reckless disregard of the claim's validity. Because the FCA specifically creates liability for parties who not only directly submit claims to the government, but for parties who cause such submissions to be made as well, it is not necessary for the plaintiff to show that the person actually presenting the claim knew it to be false.

In addition to the federal FCA, some states have enacted false claims statutes. These state law versions are often modeled on the FCA. They may include, among other things, *qui tam* or whistleblower provisions (discussed in Sections 3 below).

2. Federal Administrative Remedies for False Claims and Statements

The FCA calls for civil penalties in the amount of \$ 5,500 to \$ 11,000 per false claim, as well as damages totaling three times the amount of damage sustained by the government as a result of the false claims. 31 U.S.C. § 3729(a); 28 C.F.R. § 85.3. Violation of the FCA also can be grounds for exclusion from participation in federal and state health care programs.

3. Whistleblower Provisions Under the Federal and State Laws

The *qui tam*, or “whistleblower,” provisions of the FCA allow private persons called “relators” to bring civil false claims actions on behalf of the government. 31 U.S.C. § 3730(b)(1). Under these provisions, a relator is required to file its suit under seal and to serve the government with the complaint, along with disclosure of all material evidence and information in the possession of the relator in connection with the alleged false claims. 31 U.S.C. § 3730(b)(2). Once served with the complaint and information, the government has a sixty-day period to investigate the complaint and decide whether it wants to intervene in the action. *Id.* If the government chooses to intervene, it exercises primary responsibility for the case, and the relator has limited control over the action. 31 U.S.C. § 3730(c)(1).¹ If the government declines to participate, the relator may pursue the action without the government's assistance. 31 U.S.C. § 3730(c)(3). The same rules and standards regarding liability and calculation of damages and penalties apply in a *qui tam* action as under a normal FCA action. Upon a successful recovery by the government, a relator is entitled to share in the damages. 31 U.S.C. § 3730(d).

4. Select Medical's Policies and Procedures for Detecting and Preventing Fraud, Waste, and Abuse

Select has a robust program for detecting and preventing fraud, waste, and abuse. We believe that use of Select's internal compliance process may be a better option than the pursuit of *qui tam* actions, which may take years to resolve and where recoveries may be uncertain, because it allows us to more quickly address potential issues. Therefore, Select encourages you to consider first making use of our internal processes for reporting and resolving compliance concerns. There is detailed information about our compliance program and policies and procedures for detecting and preventing fraud, waste, and abuse in the following documents:

- Section I of our Code of Conduct;
- Compliance Program Policy;
- Compliance Education and Training Policy;
- Reporting to Compliance Policy;
- Compliance Hotline Policy;
- Investigating Compliance Reports Policy;
- Prohibition Against Hiring or Contracting with Sanctioned Individuals, Contractors, Vendors or Suppliers Policy;
- Gifts for Physicians, Potential Referral Sources, and Non-Referral Sources Policy;
- Auditing and Monitoring Policy;
- Manager/Supervisor Compliance Responsibilities Policy;
- Compliance Confidentiality Policy; and
- Compliance Department and Legal Counsel Communications Policy

These documents are available on the SMPortal under the Compliance section.

¹ If the government proceeds with the action, it has the right to settle or dismiss the suit over the objections of the relator. 31 U.S.C. § 3730(c)(2). Moreover, the government may limit the participation of the relator in the suit upon a showing that full participation would be detrimental to the government's case. *Id.*