


Name of Policy: Detecting and preventing fraud, waste and abuse Policy Number: 3364-15-02 Approving Officer: President Responsible Agent: Director of Internal Audit and Chief Compliance Officer Scope: All University of Toledo Campuses, including vendors and contractors			 Revision date: June 1, 2016 Original effective date: January 1, 2007	
<input type="checkbox"/>	New policy proposal	<input checked="" type="checkbox"/>	Minor/technical revision of existing policy	
<input type="checkbox"/>	Major revision of existing policy	<input type="checkbox"/>	Reaffirmation of existing policy	

(A) Policy statement

The University of Toledo (UT) is committed to following all applicable laws and regulations, including those that address fraud, waste, and abuse. UT has established policies and procedures for ensuring compliance with such laws and for detecting and preventing fraud, waste, and abuse. These policies and procedures apply equally to the academic enterprise, as well as to federal health care programs and the proper billing of Medicare, Medicaid, and other payors.

(B) Purpose of policy

This policy provides information to all UT employees, including vendors and contractors, about pertinent federal and state laws, relevant whistleblower protections, and the university’s policies and procedures for detecting and preventing fraud, waste, and abuse in compliance with the Deficit Reduction Act of 2005 (“DRA”), the Federal False Claims Act, 31 U.S.C. 3729-3733 (“FCA”), and relevant portions of Ohio law, including section 5162.15 of the Ohio Revised Code.

(C) Deficit Reduction Act of 2005 and the Federal False Claims Act

(1) Generally

The DRA was enacted on February 8, 2006, and contained anti-fraud legislation modeled after the FCA. The FCA is a federal statute that covers fraud involving any federally funded contract or program. These contracts/and programs may be academic in nature, but also would include the Medicare and Medicaid programs in its scope. The FCA establishes liability for any person who knowingly presents or causes to be presented a false or fraudulent claim to the United States government for payment.

(2) Violations

Examples of violations against the Federal False Claims Act are:

- (a) Financial False Claim: including but not limited to: waste, fraud, embezzlement, theft of UT assets, and submitting false and incomplete invoices to federal agencies, whether intentionally or unintentionally, may subject UT and/or individuals to substantial fines, penalties, and interest.
- (b) Medical False Claim: including but not limited to: falsifying medical records submitted, billing for services not rendered or goods not provided, duplicating billing to obtain double compensation, billing, certifying, or prescribing services medically unnecessary, and under- or over-coding.

(3) Penalties and fines

Violations of the FCA will result in any or all of the following

- (a) Civil monetary penalties: payment of interest at the maximum rate on the amount of the payments, a fine between five thousand five hundred dollars and eleven thousand dollars for each false filing, and any other reasonable expenses determined by the court.
- (b) Fines: In addition to five thousand five hundred dollars to eleven thousand dollars for each act, an assessment of damages three times the amount of the overpayment may be prescribed.

- (c) Criminal penalties: if convicted, the individual could face jail time and be ordered to pay fines and restitution. Additionally, a licensure could come under review and be suspended or permanently revoked.
- (d) Medicare/Medicaid Exclusion: A conviction under the FCA could lead to exclusion from Medicare, Medicaid and all other Federal health care programs. If excluded, then no payment will be made by any Federal health care program for any items or services furnished, ordered or prescribed by an excluded individual or entity.

Health care providers and suppliers (person and organizations) who violate the FCA are subject to an investigation by the Office of Inspector General (OIG), who may seek to exclude the provider or supplier from participation in federal health care programs.

A financial incentive was created for the states according to §1909 of the FCA added by §6031 of the DRA. This statute permits the state government the ability to recover fifty percent of the funds collected for violation of the FCA.

(4) “Qui Tam” and whistleblower protection provisions

To encourage employees to come forward and report misconduct involving false claims, the FCA includes a “qui tam” or “whistleblower” provision. This provision allows any person with actual knowledge of false claims activity to file a lawsuit on behalf of the federal government. To prevail under a lawsuit

- (a) The whistleblower must file suit in a federal district court under seal.
- (b) The whistleblower must be the “original source” of the information reported to the federal government
- (c) The whistleblower must have direct and independent knowledge of the false claims activities and voluntarily provide this information to the government.

- (d) 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 the federal agency, the whistleblower may be barred from obtaining a recovery under the FCA.
- (e) The whistleblower is entitled to a recovery between fifteen and twenty five percent of state recovery from the federal damages and penalties depending upon the extent to which the whistleblower contributed to the case.

“Rights of Parties to Qui Tam actions” is determined if the federal government decides that the law suit has merit and joins the prosecution of the lawsuit. The United States Department of Justice will direct the prosecution. If the government decides not to intervene, the whistleblower can continue with the lawsuit on his or her own.

(5) Non Retaliation

In accordance with the FCA, any employee who reports in good faith suspected misconduct is protected from retaliation. See Policy 3364-15-04 Non-Retaliation.

In addition to a financial award, the FCA entitles whistleblowers to additional relief: including employment reinstatement, back pay, and any other compensation arising from retaliatory conduct against a whistleblower.

(C) Ohio law information

Ohio law regarding False Claims encourages employees to report in good faith any suspected violation relating to financial or medical irregularities in accordance with the UT’s policy and procedures.

Once notified of a violation a reasonable and good faith effort to correct the violation shall be made and communicated to the employee. If the employee does not receive a communication regarding the plan to resolve the violation within a reasonable time frame, the employee may file a written report of the violation with any of the following:

- (1) The prosecuting attorney,
- (2) Law enforcement,
- (3) Governmental entity that has regulatory authority or
- (4) Inspector general.

Section 124.341 of the Ohio Revised Code permits state employee to file an appeal with the state personnel board of review if retaliatory or disciplinary action is implemented as a result of the employee filing a report. Section 4113.52 of the Ohio Revised Code provides protection for non-state employees.

(E) Detecting and preventing fraud, waste and abuse at The University of Toledo

Policies and procedures have been established to detect and prevent fraud, waste, and abuse at UT. UT employees, including staff, faculty, students, resident, volunteers, vendors, and contractors are encouraged to report in good faith any suspected violations of UT policies and violations of federal or state regulations.

UT engages in specific compliance efforts to detect and prevent fraud, waste, and abuse including but are not limited to:

- (a) The UT Compliance Plan, which provides guidance to ensure compliance with all applicable laws and standards, available at <http://www.utoledo.edu/offices/internalaudit/>.
- (b) Non-Retaliation Policy 3364-15-04, which protects individuals from interference with making a protected disclosure and from retaliation for having made a protected disclosure.
- (c) Protected Disclosures and Anonymous Reporting Line Policy 3364-15-05, which describes the process to anonymously report in good faith any suspected misconduct or violation of any policy, law, rule, or regulation that governs UT.
- (d) The Internal Audit and Compliance department, which investigate any reports of fraud, waste, or abuse of federal and state funds as well as UT property. It also has primary responsibility for implementing and

managing the Compliance Plan, and works with UT administration and departments to develop and monitor compliance programs.

- (e) Specific applicable training programs encompassing various departments offered to all employees. Such as, “A Roadmap for New Physicians,” education material provided by the U.S. Department of Health & Human Services and the Office of Inspector General.
- (f) All of the aforementioned policies, including additional information about the anonymous reporting line, are available at utoledo.edu.

Individuals who know of or suspect a violation of the FCA should report to UT immediately.

UT will investigate any suspected violation and resolve the issues up to and including termination of employees who are found to have violated federal and state laws, as well as UT policy.

(F) Definitions

- (1) Deficit Reduction Act of 2005 is the federal law that was enacted to save money over time from mandatory spending programs through changing student loan formulas, slowing the growth in spending for Medicare and Medicaid, and other measures. The Deficit Reduction Act of 2005 in part requires that state Medicaid Plans be amended to require certain health care organizations to establish written policies that address FCA; applicable state laws pertaining to the FCA; the whistleblower protections provided to employees; and UT’s policies and procedures for detecting and preventing fraud, waste, and abuse.
- (2) Employee means staff, faculty, students, employees, residents, vendors, and contractors.
- (3) Federal False Claims Act means the federal law which prohibits knowingly presenting or causing to be presented to the United States government a false or fraudulent claim for payment or approval; knowingly making, using, or causing to be made or used a false record or statement to get a false or fraudulent claim paid or approved; and conspiring to defraud the government by getting a false or fraudulent claim paid or allowed.

- (4) 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.
- (5) Entity includes a governmental agency, organization, unit, corporation, partnership, or other business arrangement that receives or makes payments, under a state plan approved under Title XIX or under any waiver of such plan, totaling at least five million dollars annually.
- (6) Retaliation means disciplinary or adverse action taken against an individual because she or he has made a protected disclosure or has participated in an investigation, proceeding, or hearing involving a protected disclosure.
- (7) Whistleblower or “Qui Tam” provisions permit a private person to file a lawsuit in Federal court against entities that defraud the federal government. Should the relator file an original claim the relator may be awarded a share of the recoveries.
- (8) Under Seal means the lawsuit is kept confidential while the government reviews and investigates the allegations contained in the lawsuit and decides how to proceed.

<p>Approved by:</p> <p><u>/s/</u> Sharon L. Gaber, Ph.D. President</p> <p><u>May 10, 2016</u> Date</p> <p><i>Review/Revision Completed by:</i> Director of Internal Audit and Chief Compliance Officer, Compliance/Privacy Officer, Assistant Director of Institutional Compliance</p>	<p>Policies Superseded by This Policy:</p> <ul style="list-style-type: none"> • <i>Previous 3364-15-02, effective date July 5, 2011</i> <p>Initial effective date: January 1, 2007 Review/Revision Date: July 5, 2011; June 1, 2016 Next review date: June 1, 2019</p>
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