

**CORPORATE POLICY**

POLICY TITLE: Federal Deficit Reduction Act of 2005: Detection & Prevention of Fraud, Waste, Abuse and Applicable Federal and State Laws	Policy Number: 100.109.02
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Department: Corporate Compliance	Category: Compliance

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AdvantageCare Physicians, P.C. and its affiliated professional corporations.

**POLICY STATEMENT**

To assist ACPNY in meeting its legal and ethical obligations, any employee who reasonably suspects or is aware of the preparation or submission of a false claim or report or any other potential fraud, waste, or abuse related to a federally or state funded health care program is required to report such information to his/her supervisor and the Chief Compliance Officer. Any employee who reports such information will have the right and opportunity to do so anonymously and will be protected against retaliation and intimidation for coming forward with such information both under our internal compliance policies and procedures and federal and state law. However, ACPNY retains the right to take appropriate action against an employee who has participated in a violation of federal or state law or our policy(ies), or who intentionally makes a false claim.

ACPNY is committed to investigate any suspicions of fraud, waste, or abuse swiftly and thoroughly, and require all employees to assist in such investigations. If an employee believes that ACPNY is not responding to his or her report within a reasonable period of time, the employee shall bring these concerns about the perceived inaction to the Chief Compliance Officer. Failure to report and disclose or assist in an investigation of fraud and abuse is a breach of the employee’s obligations and may result in disciplinary action, up to, and including termination.

FEDERAL & NEW YORK STATUTES RELATING TO FILING FALSE CLAIMS

I. Federal Laws

A. The Federal False Claims Act

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

(1) 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 [the above violations]; . . . 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 \$5,000 and not more than \$10,000,<sup>1</sup> plus 3 times the amount of damages which the Government sustains because of the act of that person . . . .

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<sup>1</sup> Although the statutory provisions of the FCA authorizes a range of penalties of from between \$5,000 and \$10,000, those amounts have been adjusted for inflation and increased by regulation to not less than \$5,500 and not more than \$11,000. 28 CFR §85.3(a)(9).



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In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States. 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.

B. The Program Fraud Civil Remedies Act (“PFCRA”)

This statute allows for administrative recoveries by federal agencies. If a person submits a claim that the person knows is false or contains false information, or omits material information, then the agency receiving the claim may impose a penalty of up to \$5,000 for each claim. The agency may also recover twice the amount of the claim.

Unlike the FCA, a violation of this law occurs when a false claim is submitted, not when it is paid. Also unlike the FCA, the determination of whether a claim is false, and the imposition of fines and penalties is made by the administrative agency, not by prosecution in the federal court system.

II. New York State Laws

New York’s false claims laws fall into two categories: civil and administrative and criminal laws. Some apply to recipient false claims and some apply to provider false claims, and while most are specific to healthcare or Medicaid, some of the “common law” crimes apply to areas of interaction with the government.

A. Civil and Administrative Laws

1. NY False Claims Act (State Finance Law, §§187-194)

The NY False Claims Act closely tracks the federal False Claims Act. It imposes penalties and fines on individuals and entities that file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. The penalty for filing a false claim is \$6,000 -\$12,000 per claim and the recoverable damages are between two and three times the value of the amount falsely received. In addition, the false claim filer may have to pay the government’s legal fees.

The Act allows private individuals to file lawsuits in state court, just as if they were state or local government parties. If the suit eventually concludes with payments back to the government, the person who started the case can recover 25-30% of the proceeds if the

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- a. Fourth degree grand larceny involves property valued over \$1,000. It is a Class E felony.
- b. Third degree grand larceny involves property valued over \$3,000. It is a Class D felony.
- c. Second degree grand larceny involves property valued over \$50,000. It is a Class C felony.
- d.

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B. NY False Claim Act (State Finance Law §191)

The False Claim Act also 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 Act. 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.

C. New York Labor Law §740

An employer may not take any retaliatory action against an employee if the employee discloses information about the employer's policies, ACPNYs, or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that the employer is in violation of a law that creates a substantial and specific danger to the public health and safety or which constitutes health care fraud under Penal Law

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