



Subject: Fraud and Abuse: Federal and Florida False Claims Act	Policy #: CC-041
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Approved By: John Falcetano Director, Corporate Compliance	Effective Date: 1/10/2018

POLICY AND PROCEDURE

SCOPE

This policy applies to all Brooks' workforce members which for the purposes of this policy refers to all directors, officers, managers, employees, medical staff, contractors, volunteers, students and others associated or affiliated with Brooks. Brooks includes the following entities: Brooks Rehabilitation; Brooks Rehabilitation Hospital; Brooks Health Foundation; Brooks Health Development; Brooks Rehabilitation Home Health; Bartram Crossing Skilled Nursing; The Green House Residences; Bartram Lakes Assisted Living; University Crossing Skilled Nursing; Brooks Rehabilitation Clinical Research Center; Brooks Rehabilitation Medical Group; HB Rehabilitative Services; and HB Outpatient Rehabilitative Services.

Any workforce member found to have violated this policy may be subject to disciplinary action up to and including termination of employment or termination of services agreement/contract as may be applicable.

PURPOSE

The purpose of this policy is to inform all workforce members regarding the Federal and Florida False Claims Acts and Brooks' policy as it relates to preventing and detecting fraud and abuse.

POLICY

It is the policy of Brooks to maintain compliance with the provisions set forth under Section 6032 of the Deficit Reduction Act of 2005 (Pub. L. No. 190-171, Feb. 8, 2006).

- I. Program Goals
 - a. Zero tolerance for fraud.
 - b. Prevent, detect and respond to unacceptable legal risk and its financial implications.
 - c. Route non-compliance issues to appropriate areas for resolution.

- II. Code of Conduct
 - a. Workforce members are expected to abide by a high standard of ethical behavior at all times.
 - b. Workforce members must obey the laws and rules that apply to health system operations and their particular duties.
 - c. It is the duty of all workforce members to report any transaction or conduct which they think may be a violation of federal, state, or local law or a violation of any health system policy.

III. Management Responsibility

- a. Management is responsible for the detection and prevention of fraud, misappropriations, and other irregularities.
- b. Fraud is defined as the intentional, false representation or concealment of a material fact for the purpose of inducing another to act upon it to his or her injury.
- c. Each member of the management team will be familiar with the types of improprieties that might occur within his or her area of responsibility, and be alert for any indication of irregularity.
- d. Any irregularity that is detected or suspected must be reported immediately to the Director of Corporate Compliance, who coordinates all investigations with Information Technology and other affected areas, both internal and external.
- e. Brooks has a toll free helpline at (866)-TELL-BHS or online reporting at <https://www.tnwgrc.com/brooksrehab/>. Employees can report issues anonymously.

IV. General Compliance Policy Statements

- a. Brooks Rehabilitation will not take any adverse action or retribution against any workforce member due to the good faith reporting of a suspected violation or irregularity.
- b. Workforce members are expected to obey the law and report any suspected violations of the following:
 - i. Federal, state, and local laws and government regulations
 - ii. Corporate policies and procedures
 - iii. Organizational rules and regulations
 - iv. Corporate Compliance Program
 - v. Code of Conduct
- c. All clinical professional services will be documented in the medical record, and such documentation will comply with applicable payer regulations.
- d. All clinical professional services will be coded to accurately reflect the documentation in the medical record.
- e. All claims will be submitted in compliance with applicable payer regulations or requirements.
- f. Workforce members will not knowingly and willfully solicit, receive, offer, or pay any remuneration directly or indirectly, in cash or in kind, in exchange for Medicare and/or Medicaid referrals.
- g. Workforce members will not knowingly and willfully:
 - i. Falsify, conceal or cover up a material fact;
 - ii. Make any false, fictitious or fraudulent statement or representation; or
 - iii. Make or use false writing or document known to contain false, fictitious, or fraudulent statement in information submitted to the government.
- h. Workforce members will not conceal or fail to disclose knowledge of an event affecting an initial or continued right to any benefit or payment with intent to secure such benefit or payment fraudulently.
- i. Workforce members will not knowingly present or cause to be presented false or fraudulent claims, including situations where the service was not provided as claimed; the service was provided during a period in which the provider was excluded from participating in Federal healthcare programs; and the service was provided due to false or misleading information on coverage in order to influence a decision regarding when to discharge a person from inpatient services.
- j. Workforce members will not knowingly make or present a false, fictitious, or fraudulent claim to a Federal agency.

- k. Workforce members will not use the U.S. Postal Service or electronic submission processes as part of a scheme to defraud the government or obtain money by false or fraudulent pretenses.
 - l. Workforce members will not embezzle, steal, or otherwise convert to the benefit of another person or intentionally misapply money, funds, securities, premiums, credits, property, or other assets of a health care benefit program.
 - m. Workforce members will not willfully prevent, obstruct, mislead, delay, or attempt to prevent, obstruct, mislead, or delay communication to a criminal investigator of the information or records relating to a Federal health care violation or offense.
 - n. Workforce members will not conspire to defraud any government agency or health care benefit program in any manner for any purpose.
- V. False Claims Act
- a. The False Claims Act prohibits the submission of "knowingly" false or fraudulent claims to the United States.
 - b. The law is not limited to claims submitted with fraudulent intent or actual knowledge of their falsity.
- VI. False Claims Act Liability
- a. The False Claims Act (FCA), 31 U.S.C. §§ 3729-3733 provides for liability of not less than \$5,500 up to \$11,000 per claim for violations that occurred prior to November 2, 2015 and penalties were assessed prior to August 1, 2016; and not less than \$10,957 up to \$21,916 per claim for claims that occurred after November 2, 2015 and penalties were assessed after August 1, 2016 plus three times the amount of damages which the Government sustains because of the act of that person. (The amount is adjusted for inflation).
 - b. A person violating the False Claims Act will also be liable to the United States Government for the costs of a civil action brought to recover any penalties or damages.
- VII. Qui Tam
- a. Under the Federal False Claims Act, any individual who has knowledge of a fraud against the United States Government (the so-called "qui tam plaintiff") may file a lawsuit on behalf of the United States against the person or entity that committed the fraud and if successful, will be rewarded with a percentage of the amount recovered.
 - b. The Federal False Claims Act provides protections to workforce members who are subjected to retaliation by an employer because of the employee's participation in a qui tam action. These protections include reinstatement and damages equal to double the amount of lost wages if the employee had been fired and/or suffered any other damages as a result of the employer's reprisal.
- VIII. Florida Whistleblower Law/The Florida False Claims Act
- a. The Florida False Claims Act provides the opportunity for individuals to sue on behalf of the state of Florida.
 - b. A Qui Tam relator can receive from fifteen to twenty-five percent (15%-25%) of a recovery when the state intervenes in a case; and from twenty-five to thirty percent (25%-30%) of a recovery when the state does not intervene.
 - c. Florida's law imposes treble (triple) damages as well as civil fines on a defendant.
 - d. The Florida False Claims Act provides that private persons may bring an action but bars actions brought by government employees, including attorneys for the state;

current or former state employees who discovered the information through their employment with the state; or relators who received their information from state government employees. State employees are not precluded from filing under the Federal False Claims Act where Federal allegations are involved.

- e. The statute of limitations is the same as the Federal False Claims Act and requires an action be brought no more than six years after the violation occurred and no more than three years after material facts were or should have been known as long as this is no more than ten years after the violation occurred.
- f. The Florida False Claims Act prohibits an individual from bringing suit against a member of the legislative, judicial, and executive branches of the State of Florida.
- g. In 2013, Florida amended the Florida False Claims Act as follows:
 - i. Expanding the scope to include false claims made to state subdivisions and instrumentalities. The Florida False Claims Act previously covered only false claims made to an “agency,” defined, in essence, as an official or subset of the executive branch. The amendments entirely removed “agency” from the statute, and in the context of the law’s scope, replaced “agency” with “state,” defined as “the government of the state or any department, division, bureau, commission, regional planning board, district authority, or other instrumentality of the state.”
 - ii. Establishing the Department of Legal Affairs (DLA) and the Department of Financial Services (DFS), rather than the DLA or any “agency,” as the only state entities that can pursue Florida False Claims Act actions.
 - iii. Granting the DLA broad new subpoena powers, including requiring subpoena recipients to produce documents, answer interrogatories under oath, and give sworn testimony.
 - iv. Providing that any person who alters, destroys, or conceals evidence, or makes or uses a false record or document, while having reason to believe that a subpoena is pending pursuant to *Florida Statutes* section 68.0831, is subject to penalties of up to \$100,000 for any natural person, and up to \$1,000,000 for any other person, plus attorneys’ fees and costs.
 - v. Adding a subsection establishing that (with some limitations) both the complaint and the information the DLA or DFS hold pursuant to a Florida False Claims Act investigation are confidential and exempt from public records disclosure laws.

RELATED POLICIES

CT-001: Brooks Contracting Policy

REFERENCES

Section 6032 of the Deficit Reduction Act of 2005 (Pub. L. No. 190-171, Feb. 8, 2006)
31 U.S.C. §§ 3729-3733
FLA. STAT. § 68.081 *et seq.*