

**The Brody School of Medicine
Policy and Procedure Manual**

<u>Topic:</u> Information regarding the Brody School of Medicine Policies and Programs to Prevent and Detect Fraud and Abuse and Information regarding the Federal False Claims Act and the North Carolina Medical Assistance Provider False Claims Act	
Section No.	Section Name: Compliance
Approval Date: 12/08/06	Interim Dean, Brody School of Medicine, Approval: Phyllis N. Horns, RN, DSN, FAAN

I. Purpose

The purpose of this policy is to inform all employees, contractors, and agents of the Brody School of Medicine (“BSOM”) about (i) the federal False Claims Act; (ii) North Carolina Medical Assistance Provider False Claims Act (the “North Carolina False Claims Act”); (iii) whistleblower protections in the federal False Claims Act and the North Carolina False Claims Act; (iv) the roles of such laws in preventing and deterring fraud, waste and abuse; and (v) internal processes at BSOM for the prevention and detection of fraud and abuse. This policy is intended to effect compliance of BSOM with the requirements under Section 6032 of the Deficit Reduction Act of 2005 (Pub. Law. 109-171, Feb. 8, 2006).

II. Policy

Information shall be provided to all BSOM employees, contractors, and agents about (i) the federal False Claims Act; (ii) North Carolina False Claims Act; (iii) whistleblower protections under the federal False Claims Act and the North Carolina False Claims Act; (iv) the roles of such laws in preventing and deterring fraud, waste and abuse; and (v) internal processes at BSOM for the prevention and detection of fraud and abuse. This information shall also be set forth in applicable BSOM handbooks or other documents as required under the Deficit Reduction Act of 2005.

III. Scope

This policy applies to all employees, contractors, and agents within the BSOM. This policy shall be effective January 1, 2007.

IV. Definitions

Agent: An employee of BSOM who is authorized to act on behalf of BSOM to bind BSOM to certain obligations and liabilities.

Contractor: A person or legal entity that enters into a written contract with BSOM.

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Employee: Employee of the BSOM.

Federal False Claims Act: Title 31 U.S.C. Sections 3729, 3730, 3731, 3732.

North Carolina False Claims Law: North Carolina General Statute Sections 108A-70.10 through 108A-70.13.

V. Procedure

A. Notification of Information.

Every employee and contractor of BSOM shall receive notification of the information set forth below in Sections V(B), (C), and (D) (hereinafter “Deficit Reduction Act Information” or “DRA Information”). New employees shall receive notification of this information within 60 days of hire. New contractors of BSOM shall receive notification of the DRA Information prior to or within 60 days of entering into a contractual arrangement with BSOM. Current employees and contractors shall receive notification of the DRA Information within 60 days of the effective date of this policy.

Notification of DRA Information may be made via (i) posting of this Policy on the BSOM Office of Compliance website; (ii) hard copy or electronic distribution of the DRA Information; (iii) training regarding this Policy either in person or via web-based training; or (iv) or in any other form or manner, including but not limited to a combination of the methods previously described, as determined by the Director as likely to effect notification of DRA Information. The DRA Information shall also be added to relevant BSOM handbooks no later than January 1, 2007.

B. The Federal False Claims Act

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The federal False Claims Act (the “Act”) allows for triple damages and a penalty of \$5,500 to \$11,000 per claim for anyone who “knowingly” submits or causes the submission of a false or fraudulent claim to the United States. The government does not need to prove specific intent to defraud to find liability; rather, liability can be proven by evidence of deliberate ignorance of the falsity of the claim or if the individual acts in “reckless disregard” of the falsity of the information. A “claim” under the Act for health care purposes generally means each claim form submitted for payment but can also result from a false certification of a government required document (e.g., false time and effort reports).

A “false claim” under the Act can result from a number of non-compliant actions; examples of false claims include (but are not limited to) billing for services not performed, upcoding (billing at a higher level when the applicable level of service was not either performed or the documentation does not support the level of service billed), knowing misuse of provider identification numbers, routine waiver of copayments and deductibles, billing more than once for the same service, billing for services that are known to be non-covered services, or false time and effort reports. The Act has also been used to enforce the Federal Anti-Kickback Statute and the Stark law (federal prohibition on physician self-referrals).

The Act contains very detailed provisions for the filing of and prosecution of false claims actions. Under the Act, a private person, known as a “relator,” can bring a lawsuit on behalf of the United States when this private person has information that a false claim has been filed for payment to the United States. The relator does not have to be personally harmed by the submission of the false claim to bring such a lawsuit.

When the complaint is filed, it is shared only with the government (i.e., not the defendant) and it must be filed under seal (in secrecy). After the

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complaint is filed under seal, the government has 60 days to decide whether or not it wants to take over the lawsuit (i.e. “intervene”). Typically, the government requests many extensions to this 60-day time period.

Once the government makes the decision to intervene, the complaint is finally served on the defendant. If the government decides not to intervene, the relator is still entitled to pursue the case on his/her own behalf. If the government intervenes in the lawsuit, a settlement or trial verdict in favor of the relator is obtained, and the relator was not involved in the wrongdoing, the relator can receive between 15 and 25 percent of the settlement or proceeds of the lawsuit. If the government does not intervene and the relator obtains a settlement or trial verdict, the relator will receive between 25 and 30 percent of the proceeds. In general, a lawsuit under the Act must be filed within 6 years of the date of the violation; in some instances it can be brought later than 6 years, but in no case more than 10 years after the violation occurred.

Relators are protected under the Act from any type of retaliation (including but not limited to being discharged, demoted, suspended, threatened, harassed or discriminated against) by his or her employer as a result of providing any assistance or information relating to a lawsuit under the Act. This protection includes reinstatement with same seniority status, 2 times the amount of back pay, and compensation for any special damages (including litigation costs and fees).

C. North Carolina False Claims Act.

The state of North Carolina has a law similar to the federal False Claims Act which also prohibits the knowing submission (or knowingly causing the submission) of false claims to the state’s Medical Assistance Program (i.e. Medicaid). It provides for triple damages and an additional \$5,000 to \$10,000 penalty per claim for knowing submission of a false claim (or knowingly causing the submission of a false claim). In the event the provider discloses all

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information to the state relating to the false claims no later than 30 days after the provider discovered the violations, the provider fully cooperates with the state, and no civil or criminal action had already commenced regarding the false claims at issue, the state may reduce the damages to double damages. This state law does not allow for a private person to bring an action or share in an award like the federal False Claims Act; only the Attorney General is permitted to bring an action under this law.

In general, a civil action under the North Carolina False Claims Act may not be brought more than six years but in no event more than 10 years after the false claim was submitted. The amount of damages and number of violations under the North Carolina False Claims Act must be established by the trial judge or, in the event of a jury trial, by jury verdict. The amount of penalties, treble or double damages, interest, cost of the investigation, and cost of the civil action shall also be determined by the trial judge.

D. Commitment to Compliance: The BSOM Code of Conduct, Compliance Program, and other ECU Policies Prohibiting Fraud and Abuse.

The Brody School of Medicine is strongly committed to upholding the highest ethical and legal standards as they relate to all aspects of patient care, research, education, and all other operations within BSOM. The BSOM Code of Conduct expressly requires all employees and contractors to uphold all laws and regulations applicable to their respective positions and duties. Moreover, the BSOM Code of Conduct also requires that BSOM and its employees and contractors ensure that payment or reimbursement from third party payors is for care that is reasonable, necessary and appropriate, is provided by properly qualified persons, and is billed in the correct amount with adequate supporting documentation. Each employee is required to sign an attestation that they have received the Code of Conduct upon commencement of employment with BSOM, and annually thereafter.

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ECU Human Resources Policy Statement 7 provides that “unacceptable personal conduct” is punishable via a spectrum from a written warning up to and including dismissal. “Unacceptable personal conduct” includes job-related conduct which constitutes a violation of State or federal law (e.g., including violation of the federal and North Carolina False Claims Acts).

The Brody School of Medicine has established a compliance program (the “BSOM Compliance Program”) that is designed to promote institutional and individual compliance with applicable laws, regulations, and ECU policies. Among other functions, the BSOM Compliance Program provides education, monitoring, and helps implement controls to prevent, detect, and resolve illegal, unethical or other non-compliant behaviors.

Under the BSOM Code of Conduct and the BSOM Compliance Program, it is the duty of every BSOM employee and contractor to report potential incidences of non-compliance to their applicable supervisors, BSOM Chief Legal Counsel, the BSOM Office of Compliance, or the ECU Office of Internal Audit. In addition, North Carolina state law encourages state employees to report fraud or any violation of state or federal law, rule or regulation. (General Statutes Sections 126.84 and 126.85.)

The Compliance Hotline Policy outlines the various reporting mechanisms available to employees, agents, and contractors for the reporting of potential incidents of noncompliance, and also sets forth the manner in which reports of incidents of non-compliance are investigated by the Office of Compliance. In short, that policy states that the BSOM Office of Compliance has established a Compliance Hotline for the purpose of reporting compliance concerns which may be accessed 24 hours a day, seven days a week at 1-866-515-4587. The Director of Compliance is Joan A.

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Kavuru and may be reached at 744-5200 or kavuruj@ecu.edu for questions or concerns regarding potential incidences of non-compliance. Compliance concerns may also be reported directly to Gregory L. Hassler, BSOM Chief Legal Counsel at 744-3013 or the ECU Office of the Internal Audit at 328-9025.

Both North Carolina state law and ECU policy afford strong protections against retaliation for employees who in good faith report potential incidents of non-compliance. Per North Carolina state law and ECU policy, no employee shall suffer any retaliation from BSOM for the good faith reporting of incidents of non-compliance. This means that no employee can be discharged, demoted, harassed, or discriminated against in any way for the good faith reporting of potential incidents of non-compliance.

The Brody School of Medicine is strongly committed to fostering a culture of compliance as it relates to all of its operations, and each employee and contractor is expected to maintain that culture to preserve the quality and integrity of our patient care, education, and research.

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