



Standard Operating Procedure

Long's Drugs Inc., 111 Executive Center Drive, Suite 228, Columbia, South Carolina 29210

Title of SOP: False Claims Act and Whistleblower Protection Education Policy

Effective Date: September 1, 2017 (Replacing PAAS FCA policy used prior and supplementing the False Claims Act section of the Employee Handbook)

References: Federal False Claims Act 31 U.S. Code Section 3729; Deficit Reduction Act of 2005, State False Claim Acts

Scope: This policy applies to all Pharmacy locations, Company Departments, contractors, and agents.

Responsibility: All employees are required to follow this policy. The Company's Corporate Counsel and Compliance Officer are responsible for administering and amending this policy.

Purpose: The policy of the Company is to require all employees to report all known or suspected violations of the Federal False Claims Act ("FFCA") or any State False Claims Act as described below. It is also the policy of the Company that persons reporting such suspected violations (sometimes referred to as "whistleblowers") will not be retaliated against for making such reports in good faith. This policy is intended as a guideline to assist in the consistent application of Company policies and programs for employees. The Company reserves the right to modify this policy in whole or in part, at any time, at the discretion of the Company.

Training: The Company will ensure that employees are trained on this policy where training is warranted by the employee's job status at the time of hire and whenever deemed necessary thereafter or as required under applicable laws and regulations, or for accreditation requirements. Trainees, volunteers, consultants, vendors, and contractors will be trained on this policy as determined necessary by the Compliance Department. The Compliance Department will be responsible for training on this policy and procedure.

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Definitions:

Centers for Medicare and Medicaid Services (CMS) – The Federal agency responsible for administering Medicare, Medicaid, SCHIP (State Children’s Health Insurance), HIPAA (Health Insurance Portability and Accountability Act), CLIA (Clinical Laboratory Improvement Amendments), and several other health related programs.

Company – As stated within this policy, the term Company shall be defined to mean Long’s Drugs and Avita Pharmacies.

Deficit Reduction Act of 2005 (DRA) – A federal statute that requires employers to establish certain policies and to provide its employees, agents, and contractors information regarding federal and state false claims laws and related statutes, the penalties for wrong doing under these laws, and the protections for whistleblowers who report violations of these provisions.

FFCA – (located at 37 U.S.C. §3729) states, in part, that it is a violation of Federal law for any person to knowingly present, or cause to be presented, to the Federal Government a false or fraudulent claim for payment or approval or who knowingly makes or causes to be made a false record in order to get a false claim paid by the Federal Government. A violation of the FFCA can result in a civil penalty of not less than \$5,500 and not more than \$11,000, plus 3 times the amount of damages sustained by the Federal Government

Knowingly – means that a person, with respect to information (a) Has actual knowledge of the information, (b) Act in deliberate ignorance of the truth or falsity of the information; or (c) Acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

Office of Inspector General (OIG) – The agency within the Department of Health and Human Services charged with investigating fraud and abuse.

Program Fraud Civil Remedies Act (PFCRA) - A federal statute that creates administrative remedies for making false claims separate from, and in addition to, the judicial or court remedy for false claims provided by the False Claims Act.

Qui tam relator suit – An action under law brought by a person on behalf of the government.

Whistleblower – a person who brings an action under law on behalf of the government.

Procedure:

I. Acknowledgment Process

The Company will complete appropriate training of employees and certain contractors/agents regarding this policy. Following the training, those individuals will be required to complete an acknowledgment statement as a condition of the employment or contractor relationship. Adherence to this policy and participation in related activities and training will be considered in decisions regarding hiring, promotion, evaluation and continuation of the employment or contract relationship.

II. Federal False Claims Act

The following is a summary of the Federal False Claims Act (the "FCA"), the Program Fraud Civil Remedies Act (the "PFCRA") and its role in preventing and detecting waste, fraud and abuse in federal health care programs. The FCA has undergone several changes and now applies to any federally funded contract or program, except tax fraud. The FCA was expanded to include Medicare and Medicaid programs in 1986. Today, any false statement that is material to a claim can be actionable and liability has been expanded to knowingly failing to repay an overpayment.

A. Definitions. The following definitions are provided for further clarity.

1. *Claim* – This term includes any request or demand for money that is submitted to the United States government or its contractors.
2. *Knowing and Knowingly* – "knowing" and "knowingly" mean that a person, with respect to the information has:
 - i. Actual knowledge of the information;
 - ii. Acts in deliberate ignorance of the truth or falsity of the information; or
 - iii. Acts in reckless disregard of the truth or falsity of the information (no specific intent to defraud is required).

B. Civil Liabilities. The FCA imposes civil liability, on any person who, with respect to federal health care programs, does any of the following:

1. Knowingly files a false or fraudulent claim for payments to Medicare, Medicaid or other federally funded health care program;
2. Knowingly makes or uses (or causes to be used) a false record or statement to obtain payment on a false or fraudulent claim from Medicare, Medicaid or other federally funded health care program;
3. Knowingly makes or uses (or causes to be used) a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money to the government; or
4. Conspires to defraud Medicare, Medicaid or other federally funded health care program by attempting to have a false or fraudulent claim paid.

C. Examples. A person violates the FCA by knowingly submitting, or causing another to submit, false claims for payment of government funds. Examples of violations of a FCA include, but are not limited to any of the following:

1. Submission of a claim to Medicare for payment for services not rendered.

2. Submission of a claim to Medicare for payment for a non-existent or fake prescription.
3. Submission of a claim to Medicare for payment on a prescription that does not have any refills.
4. Submission of a claim to Medicare for payment on a brand name drug while dispensing a generic.
5. Failure to reverse a prescription from Medicare if it is returned to stock.

D. Enforcement. Any of the following penalties may be levied against a violator of the FCA:

1. Violators found liable under the FCA are generally subject to civil monetary penalties of between \$5,500 and \$11,000 per claim plus three times the amount of damages that the government sustained because of the illegal act. In health care cases, the amount of damages sustained is the amount paid for each claim filed that is determined to be false.
2. The OIG may seek exclusion of a convicted health-care provider or supplier from further participation in any federal health-care program.
3. Violators can also be held liable to the government for costs associated with any civil action that seeks to recover penalties or damages.
4. The FCA imposes criminal liability, to persons that knowingly and willfully make any materially false, fictitious or fraudulent statements in connection with the delivery or payment for health benefits. Penalties may include imprisonment for up to five years.

III. **Qui Tam Relator or Whistleblower Actions**

Any person may bring an action under this law on behalf of the government (called a “qui tam relator” or “whistleblower” suit) in federal court.

- A. Individual Initiation of a Case. The case is initiated by filing the complaint and all available material evidence under seal with a federal court. The case initiated by causing a copy of the complaint and all available relevant evidence to be served on the federal government.
 1. The case will remain sealed for at least 60 days and will not be served on the defendant so the government can investigate the complaint. The government may, and often does, obtain additional investigation time by showing good cause.
 2. After expiration of the review and investigation period, the government may elect to pursue the case in its own name or decide not to pursue the case.
- B. Government Initiation of a Case. The government may decide to initiate a case as indicated below. The government on its own initiative may also initiate a case under the FCA. After the

60-day period (or any extensions) has expired, the government may pursue the matter in its own name or decline to proceed.

1. If the government decides not to pursue the case, the person who filed the action has the right to continue with the case on his or her own. The person who filed the action will be entitled to between 25% and 30% of any recovery, plus reasonable expenses and attorneys' fees and costs.
2. If the government proceeds with the case, the person who filed the action will receive between 15% and 25% of any recovery, depending upon the contribution of that person to the successful prosecution of the case.

C. Filing Time Frame. Any case must be brought within 6 years of the filing of the false claim.

IV. State False Claims Acts

A growing number of states have false claims acts that are either identical or like the federal False Claims Act that are directed at prosecuting Medicaid fraud. The Company currently operates in 5 states, and any false claims and whistleblower laws in those states will govern the company's operations in these states. Many of them are based on the provisions of the federal laws outlined above, and a portion of the DRA has established a procedure to encourage states to adopt such laws if they do not currently have them, or to model their law's minimum requirements after the federal law. Further information regarding the details of the current applicable state laws in the states that the Company operates is included as an attachment at the end of this policy as described below.

- A. Exhibit A – Georgia False Claims Act
- B. Exhibit B – Louisiana False Claims Act
- C. Exhibit C – North Carolina False Claims Act
- D. Exhibit D – South Carolina False Claims Act
- E. Exhibit E – Texas False Claims Act

V. Reporting Requirements

All persons making reports of compliance concerns are assured that such reports will be considered confidential to the extent permitted by law. Such reports will be shared with others only on a bona fide need to know basis.

- A. General Questions. Any general questions regarding reporting requirements should be routed to the Compliance Department.

B. Reporting a Known or Suspected Violation of FFCA or State FCA. An employee is expected to report any known or suspected violation of either the FFCA or the State False Claims Act in one of the following ways:

1. *Internal Reporting.* to the employee's supervisor, department head or chair, the Compliance Officer, or to the 24-hour Confidential Hot at (844) 319-0646. In making reports to either the Compliance Hotline, the caller may make a report anonymously by contacting the Compliance Officer with the below provided information.

Compliance Department
Long's Drugs Corporate, 111 Executive Center Drive, Suite 228, Columbia, South Carolina 29210
(If mailing, please indicate CONFIDENTIAL TO BE OPENED BY COMPLIANCE ONLY on the letter)

Email: compliance@longsrx.com

Toll-free Number: (844) 319-0646

Fax Number: (866) 550-7485

2. *External Reporting.* An employee may also report known or suspected violations of the FFCA to the OIG hotline, (800) 424-5197, by email at hotline@oig.doc.gov, or visit the website at www.oig.doc.gov.

VI. Detection and Prevention of FWA

The Company takes issues regarding false claims and fraud and abuse seriously. The Company's Compliance Plan provides procedures for preventing, detecting and reporting claims of fraud, waste and abuse. A copy of the Compliance Plan is available on Share Point at or you may contact the Director of Corporate Compliance at (844) 319-0646.

- A. Employee Communication. The Company encourages all employees to be aware of the laws regarding fraud and abuse and false claims and to identify and resolve any issues immediately. Issues are resolved fastest and most effectively when given prompt attention at the local level. The Company encourages all employees to report any concerns to their immediate supervisor when appropriate. If the supervisor is not deemed to be the appropriate contact or if the supervisor fails to respond quickly and appropriately to the concern, then the individual with the concern is encouraged to discuss the situation with the Compliance Office by emailing compliance@longsrx.com or to contact the Compliance hotline at (844) 319-0646.
- B. Internal Auditing and Monitoring. The Company is committed to the aggressive monitoring of compliance with its policies. Much of this monitoring effort is conducted through scheduled and unannounced internal audits of issues that may involve actual or potential violations. Internal audits and monitoring will involve direct efforts of the Compliance Officer that may or may not include delegation of duties to various corporate and facility departments such as Operations, Finance, Human Resources and/or Quality Assurance.
- C. Internal Investigations of Reports. The Company is committed to investigating all reported concerns promptly and confidentially to the extent possible. The Compliance Officer will coordinate investigations with proper department supervisors, if appropriate, and shall report

any findings of a violation to the Board of Directors and Senior Executive Officers of the Company. Furthermore, proper reporting, including self-reporting, to appropriate oversight agencies shall occur if circumstances warrant. Such agencies may include Office of the Inspector General, Centers for Medicare or Medicaid (CMS), Medicare Approved Contractors (MAC) and/or State Department of Inspections & Appeals. Recommended corrective actions may accompany such reports. The Company expects that all employees shall cooperate with investigation efforts.

- D. Corrective Actions. When an internal investigation finds a violation, it is the Company policy to initiate appropriate corrective action, including, but not limited to, making prompt restitution of any overpayment amounts and implementing systemic changes to prevent a similar violation from recurring in the future.
- E. For additional information regarding Compliance Schedules or procedures, visit Share Point, Knowledge. This False Claims Liability Policy is available to external associates on the websites: www.longsrx.com or www.avitapharmacy.com

VII. Whistleblower Rights and Protections

Federal and State law prohibit discrimination or retaliation against whistleblowers, as discussed within this policy. The Company prohibits retaliation and discrimination and will take no adverse action against persons for making such reports in good faith ("whistleblowers"), even if the report turns out not to be correct.

- A. Retaliation Defined. Retaliation and adverse action include any of the following: discharge, demotion, suspension, harassment, denial of promotion, transfer or in any other manner discriminating or threatening to discriminate against a staff member in the terms and conditions of the employee's employment. Any employee who believes that he or she has been subjected to or affected by a retaliatory conduct for reporting a suspected violation of a FCA or for refusing to engage in activity that would be a violation of a FCA should report such retaliation to the Compliance Officer. The Compliance Officer will be responsible for investigating such report or referring the report to Corporate Counsel, as needed, for timely investigation.
- B. Compliance Department. The Compliance Plan, contains further details about whistleblower rights and protections and is available on the Share Point, in the Knowledge, Policies and Procedures folder. Alternatively, you may contact the Director of Corporate Compliance at (844) 319-0646.

VII. Violations

Any Company employee who violates the Corporate and Compliance Program policies may be subject to appropriate disciplinary action, up to and including termination of employment, and/or retraining, to prevent recurrence of the violation. In determining the level of disciplinary action to be taken, management will consider the amount of training provided to the involved employee(s). The discipline imposed will depend on the nature, severity and frequency of the violation and may result in any of the permitted disciplinary actions as provided by law.

VIII. Questions

For questions about this policy, contact the Compliance Department.

Compliance Department
Long's Drugs Corporate
111 Executive Center Drive, Suite 228
Columbia, South Carolina 29210
Email: compliance@longsrx.com
Toll-free Number: (844) 319-0646
Fax Number: (866) 550-7485



Exhibit A – Georgia False Claims Act

Legal Citations: GA. CODE ANN. §§ 49-4-168 et seq.

Georgia's FCA is part of the State's Medicaid laws. Georgia's FCA, called the "State False Medicaid Claims Act," is similar to the Federal FCA including that it is actionable to knowingly submit a false claim for payment; make or use a false record or statement to get a claim paid; and conspiring to make a false claim or get one paid.

The Georgia FCA applies only to claims submitted to the State Medicaid Program.

The actions and events that trigger penalties under the Georgia FCA are very similar to those that trigger penalties under the federal FCA. Specifically, these include: knowingly submitting a false claim for payment; making or using a false record or statement to get a claim paid; conspiring to make a false claim or get one paid; or making or using a false record to avoid repayments to the government.

An FCA claim must be brought within 6 years from when the violation occurred.

Penalties include treble damages (actual loss to state multiplied by three times) and penalties of \$5,500 to \$11,000 for each false claim submitted.

The Georgia FCA also has a whistleblower or qui tam provision nearly identical to the federal FCA (whistleblowers may recover up to 30 percent of the state's recovery), as well as a whistleblower protection provision that prohibits employers from retaliating against employees who report their employer's potentially false claims or who assist to bring a FCA action.



Exhibit B – Louisiana False Claims Act

Legal Citation: La. R.S. § 46:437.1 et seq.

Under Louisiana state law, the definition of a false or fraudulent claim is slightly broader, At LSA R.S. 46.437.--, “(8) "False or fraudulent claim" means a claim which the health care provider or his billing agent submits knowing the claim to be false, fictitious, untrue, or misleading in regard to any material information. “ Under state law, (12) "Knowing" or "knowingly" means that the person has actual knowledge of the information or acts in deliberate ignorance or reckless disregard of the truth or falsity of the information. Just as with the federal whistleblower statute, under Louisiana state law, “a private person (“Qui Tam plaintiff) may institute a civil action (“Qui Tam Action”) in the courts of this state on behalf of the medical assistance programs and himself to seek recovery. A person who is or was a public employee or public official or a person who is or was acting on behalf of the state shall not bring a qui tam action if the person has or had a duty or obligation to report, investigate, or pursue allegations of wrongdoing or misconduct by health care providers, or had access to the records of the state through the normal course and scope of his employment relative to activities of health care providers.

State Whistleblower Protection. No employer of a qui tam plaintiff shall discharge, demote, suspend, threaten, harass, or discriminate against a qui tam plaintiff at any time arising out of the fact that the qui tam plaintiff brought an action pursuant to this Subpart unless the court finds that the qui tam plaintiff has instituted or proceeded with an action that is frivolous, vexatious, or harassing. No employee shall be discharged, demoted, suspended, threatened, harassed, or discriminated against in any manner in the terms and conditions of his employment because of any lawful act engaged in by the employee or on behalf of the employee in furtherance of any action taken pursuant to this Part in regard to a health care provider or other person from whom recovery is or could be sought. Such an employee may seek any and all relief for his injury to which he is entitled under state or federal law. No individual shall be threatened, harassed, or discriminated against in any manner by a health care provider or other person because of any lawful act engaged in by the individual or on behalf of the individual in furtherance of any action taken pursuant to this Part in regard to a health care provider or other person from whom recovery is or could be sought except that a health care provider may arrange for a recipient to receive goods, services, or supplies from another health care provider if the recipient agrees and the arrangement is approved by the secretary. Such an individual may seek any and all relief for his injury to which he is entitled under state or federal law. An employee of a private entity may bring his action for relief against his employer or the health care provider in the same court as the action or actions were brought pursuant to this Part or as part of an action brought pursuant to this Part.

Recovery awarded to a qui tam plaintiff. Generally, if the secretary or the attorney general intervenes in the action brought by a qui tam plaintiff, the qui tam plaintiff shall receive at least ten percent, but not more than twenty percent, of recovery, exclusive of the civil monetary penalty provided in R.S. 46:439.6(C). In making a determination of award to the qui tam plaintiff the court shall consider the extent to which the qui tam plaintiff substantially contributed to investigations and proceedings related to the qui tam action.

Rewards for fraud and abuse information. State law provides that there may be a reward of up to two thousand dollars to an individual who submits information to the secretary which results in recovery pursuant to the provisions of this Part, provided such individual is not himself subject to recovery under this Part.

Louisiana State False Claims Penalties include Payment of actual damages, in addition to actual damages, a civil fine not to exceed 10,000 dollars per violation; OR A civil fine not to exceed three times the value of the illegal remuneration, whichever is **GREATER**. Payment of interest on the mandatory civil fine imposed.



Exhibit C – North Carolina False Claims Act

Legal Citations: N.C. Gen. Stat. §§ 108A-70.10 to 70.16; N.C. False Claims Act 1-605, et. seq.

North Carolina has a state FCA that is very similar to the federal FCA and is known as the “Medical Assistance Provider FCA.” It applies to claims made in connection with the North Carolina Medicaid Program.

Actions and conduct that trigger penalties under the North Carolina FCA are substantially similar to those that trigger penalties under the federal FCA. Specifically, these include knowingly submitting a false claim for payment or making or using a false record or statement to get a claim paid.

The North Carolina FCA contains an explicit statement that notes that the North Carolina law was intended to be interpreted and construed consistent with the federal FCA and any subsequent amendment to the federal FCA.

Penalties for violating the North Carolina FCA include fines of \$5,000 to \$10,000 per claim, plus three times the damage caused to the North Carolina Medical Assistance Program. If a payment has already been made to the federal government under the FCA for these same claims, then the party will not be charged again for these claims.

A civil lawsuit under the North Carolina FCA must be brought within the later of: (1) 6 years after the violation was committed, or (2) 3 years after the date the violation was discovered (but no more than 10 years after the violation was committed).

Although there are no qui tam provisions, the North Carolina FCA has a whistleblower protection provision that prohibits employers from retaliating against employees who report their employer’s potentially false claims or who participate in bringing or assisting with a FCA action.

NC also has a state FCA statute enacted to address damages sustained by the state. The same actions listed above trigger penalties, but the penalties are different in that they range from \$5,500 - \$11,000 per violation, plus three times the damage caused.

There is private right of action and whistleblower protection under this statute, and the individual may recover up to 25 percent of any award.



Exhibit D – South Carolina False Claims Act

Legal Citations: S.C. Code Ann. § 43-7-60; S.C. Code Ann. §§ 8-27-10 to 8-27-50; S.C. Code Ann. § 38-55-170.

South Carolina has not yet enacted a state FCA. However, South Carolina's State Medicaid false claims statute provides criminal, civil, and administrative penalties and sanctions for healthcare providers who knowingly and willfully make or cause to be made a false claim in an application or request for a benefit, payment, or reimbursement from a state or federal agency which administers or assists in the administration of the state's medical assistance or Medicaid program. It is also unlawful for a provider to knowingly and willfully conceal or fail to disclose any material fact, event, or transaction which affects payment or reimbursement under the state's Medicaid plan. Each fact, event, or transaction concealed or not disclosed constitutes a separate offense.

A violation of the South Carolina's false claims laws may result in restitution for any improper payment and a civil penalty for false claims of up to \$2,000 for each excessive payment, three times the amount of the excess payments, and any other available administrative sanctions as provided by law. In addition, any person who violates these laws may be guilty of crimes punishable by imprisonment for up to 3 years and/or a fine up to \$1,000 for each offense.

In addition, under South Carolina law, a person who knowingly causes to be presented a false claim for payment to an insurer or health maintenance organization in South Carolina, or who knowingly assists, solicits, or conspires with another to present a false claim for payment is guilty of a felony if the amount is greater than \$2,000.

Upon conviction, a person may be imprisoned not more than 10 years or fined not more than \$5,000. Currently, unlike the federal FCA, South Carolina law only permits the state government and not private citizens or employees to file civil lawsuits to recover monetary damages. There are no qui tam or relator provisions and there are no provisions allowing a private citizen to share a percentage of any monetary recoveries.

Similar to Federal law, South Carolina does have a whistleblower statute, but this law relates only to state employers and prohibits state employers from retaliating against any state employee who discloses a violation of any federal, state, or local law, rule, regulation, or ordinance. South Carolina law does not contain similar protections for non-governmental employees.



Exhibit E – Texas False Claims Act

Legal Citations: TEX. HUM. RES. CODE ANN. § 32.039; TEX. HUM. RES. CODE ANN. §§ 36.001 TO 36.132

Texas has a Medicaid FCA that is very similar to the federal FCA. Actions and conduct that trigger penalties under the Texas FCA are substantially similar to those that trigger penalties under the federal FCA. Specifically, these include knowingly submitting a false claim for payment; making or using a false record or statement to get a claim paid; conspiring to make a false claim or get one paid; or making or using a false record to avoid repayments to the government.

However, under the Texas Medicaid FCA, a person or entity may also be liable if he or she presents a claim for payment under the Medicaid program for a product or service that was furnished or rendered by an unlicensed provider or that has not been approved by a healthcare practitioner.

The Texas Act differs from the federal FCA in that the civil penalty is greater under the Texas law for unlawful acts that result in injury to an elderly person, a disabled person, or someone younger than 18 years old. The Texas Medicaid Fraud Prevention Law provides for civil penalties of between \$5,000 to \$15,000 for each violation that results in an injury to a disabled person, an elderly person, or a person younger than 18 years old; or between \$5,000 to \$10,000 for each violation that did not result in such injury, plus damages of two times the amount of damage to the state.

A civil lawsuit must be brought within the later of (1) 6 years from when the violation occurred or (2) 3 years after the violation was discovered by the relevant agency, but no more than 10 years after the violation was committed.

The Act contains qui tam whistleblower provisions permitting a person to bring a suit on behalf of the government that is very similar to the federal FCA qui tam provisions and also has a whistleblower protection provision that prohibits employers from retaliating against employees who report their employer's potentially false claims or who participate in bringing or assisting with a FCA action.

Under the Texas Medicaid FCA, a whistleblower may be entitled to 15 to 25 percent of the state's recovery.