DEPARTMENT: Legal	POLICY DESCRIPTION: Indiana False Claims Statutes Policy
PAGE: 1 of 5	REPLACES POLICY DATED: 1/1/07, 9/1/07, 2/10/09, 9/1/13
EFFECTIVE DATE: September 1, 2018	REFERENCE NUMBER: LL.IN.001
APPROVED BY: Ethics and Compliance Policy Committee	

SCOPE: All employees and, as defined below, contractors or agents of Company affiliates located in the State of Indiana or providing services to Medicare or Medicaid providers located in the State of Indiana, including but not limited to, hospitals, ambulatory surgery centers, outpatient imaging centers, home health agencies, physician practices, service centers, and all Corporate Departments, Groups, Divisions and Markets.

PURPOSE: To comply with certain requirements set forth in the Deficit Reduction Act of 2005 with regard to federal and state false claims laws.

POLICY: Company affiliates who are Medicare or Medicaid providers in Indiana or provide services to Indiana Medicare or Medicaid providers must ensure that all employees, including management, and any contractors or agents are educated regarding the federal and state false claims statutes and the role of such laws in preventing and detecting fraud, waste, and abuse in federal health care programs.

FALSE CLAIMS LAWS

One of the primary purposes of false claims laws is to combat fraud and abuse in government health care programs. False claims laws do this by making it possible for the government to bring civil actions to recover damages and penalties when healthcare providers submit false claims. These laws often permit qui tam suits as well, which are lawsuits brought by lay people, typically employees or former employees of healthcare facilities that submit false claims. There is a federal False Claims Act. Indiana has adopted a similar false claims act that contains qui tam and whistleblower protection provisions that are similar to those found in the federal False Claims Act. Additionally, Indiana has adopted a generally applicable Medicaid antifraud statute that is intended to prevent the submission of false and fraudulent claims to the Indiana Medicaid program.

FEDERAL FALSE CLAIMS LAWS

Under the federal False Claims Act, any person or entity that knowingly submits a false or fraudulent claim for payment of United States Government funds, or knowingly retains an overpayment of such funds more than 60 days, is liable for significant penalties and fines. The fines include a penalty of up to three times the Government's damages, civil penalties ranging from $10,957 to $21,916 per false claim, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus the costs of the civil action against the entity that submitted the false claims. Generally, the federal False Claims Act applies to any federally funded program. The federal False Claims Act applies, for example, to claims submitted by healthcare providers to Medicare or Medicaid.

One of the unique aspects of the federal False Claims Act is the "qui tam" provision, commonly referred to as the "whistleblower" provision. This provision allows a private person with knowledge of

a false claim to bring a civil action on behalf of the United States Government to recover the funds paid by the Government as a result of the false claim. If the suit is ultimately successful, the whistleblower who initially brought the suit may be awarded a percentage of the funds recovered. In addition, the United States Government may elect to join the qui tam suit. In this case, if the suit is successful, the percentage of the funds awarded to the whistleblower is lower because the Government will take over the expenses of the suit. However, regardless of whether the Government participates in the lawsuit, the court may reduce the whistleblower's share of the proceeds if the court finds that the whistleblower planned and initiated the false claims violation. Further, if the whistleblower is convicted of criminal conduct related to his role in the false claims, the whistleblower will be dismissed from the civil action without receiving any portion of the proceeds.

The federal False Claims Act also contains a provision that protects a whistleblower from retaliation by his or her employer. This applies to any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in his or her employment as a result of the employee's lawful acts in furtherance of a false claims action. The whistleblower may bring an action in the appropriate federal district court and is entitled to reinstatement with the same seniority status, two times the amount of back pay, interest on the back pay, and compensation for any special damages as a result of the discrimination, such as litigation costs and reasonable attorney's fees.

A similar federal law is the Program Fraud Civil Remedies Act of 1986 (the "PFCRA"). It provides administrative remedies for knowingly submitting false claims and statements. A false claim or statement includes submitting a claim or making a written statement that is for services that were not provided, or that asserts a material fact that is false, or that omits a material fact. A violation of the PFCRA results in a maximum civil penalty of $5,000 per claim plus an assessment of up to twice the amount of each false or fraudulent claim.

INDIANA FALSE CLAIMS ACT

Indiana's state version of the federal False Claims Act makes it unlawful for any person to knowingly or intentionally: (a) present a false claim to the State for payment or approval; (b) make or use a false record or statement to obtain payment or approval of a false claim from the State; (c) with the intent to defraud the State, deliver less money or property to the State than the amount recorded on the certificate or receipt the person receives from the State; (d) make or use a false record or statement to avoid an obligation to pay or transmit property to the State; (e) conspire with another person to perform an act described above; or (f) cause or induce another person to perform an act described above. *See* Ind. Code § 5-11-5.5-2.

A violator will be liable to the State for a civil penalty of at least $5,000 and for up to three times the amount of damages sustained by the State. The violator shall also be liable to the State for cost of a civil action brought to recover a penalty or damages. *See* Ind. Code § 5-11-5.5-2.

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The Indiana Attorney General and the Inspector General have concurrent jurisdiction to investigate suspected violations of the Indiana False Claims Act and the Attorney General may bring civil action against a person that has violated the Indiana False Claims Act. An individual may also bring a private civil action on behalf of the individual and the State. In the event the qui tam action is successful, the individual bringing the civil action may be awarded a percentage of the funds recovered. *See* Ind. Code §§ 5-11-5.5-3, 4 & 6.

Whistleblower Protections

The Indiana False Claims Act contains an employee protection provision that provides that any employee who is discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against in the terms and conditions of employment by his or her employer because the employee objected to an act or omission described in Ind. Code § 5-11-5.5-2 or initiated testified, assisted, or participated in an investigation, an action or hearing, shall be entitled to relief necessary to make the employee whole. *See* Ind. Code § 5-11-5.5-8.

Such relief include, but are not limited to, the following: reinstatement with the same seniority status that the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including punitive damages, litigation costs and reasonable attorneys' fees. *See* Ind. Code § 5-11-5.5-8.

INDIANA MEDICAID ANTIFRAUD STATUTE

Indiana's Medicaid antifraud laws state that a person may not knowingly or intentionally: (a) make, utter, present or cause to be presented to the Medicaid program, a Medicaid claim that contains materially false or misleading information concerning the claim; (b) obtain payment from the Medicaid program by means of a false or misleading oral or written statement or other fraudulent means; (c) acquire a provider number under the Medicaid program except as authorized by law; (d) alters with the intent to defraud or falsify documents or records of a provider that are required to be kept under the Medicaid program; or (e) conceal information for the purpose of applying for or receiving unauthorized payments from the Medicaid program. A person who violates the above prohibitions, may be guilty of the following: (a) a Class A misdemeanor; (b) a Level 6 felony if the fair market value of the offense is at least $750 and less than $50,00; and (c) a Level 5 felony if the fair market value of the offense is at least $50,000. *See* Ind. Code § 35-43-5-7.1.

REPORTING CONCERNS REGARDING FRAUD, ABUSE AND FALSE CLAIMS

The Company takes issues regarding false claims and fraud and abuse seriously. The Company encourages all employees, management, and contractors or agents of the Company's affiliated

facilities 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. Therefore, the Company encourages its employees, managers, and contractors to report 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 should be encouraged to discuss the situation with the Company's human resources manager, the Company's Ethics and Compliance Officer, another member of management, or with the Company's Ethics Hotline (1-800-455-1996).

Employees, including management, and any contractors or agents of Company-affiliated facilities should be aware of related facility policies regarding detection and prevention of health care fraud and abuse. These policies and procedures can be accessed on Atlas, the Company's Intranet site, or the Company website at www.hcahealthcare.com. The following are some of the policies that are relevant to this policy and to the prevention and detection of fraud and abuse: (1) EC.025-Reporting Compliance Issues and Occurrences to the Corporate Office Policy; (2) REGS.GEN.015-Correction of Errors Related to Federal and State Healthcare Program FFS Reimbursement Policy; and (3) RB.009-Reporting of Cost Report Overpayment Policy. Note that employees, contractors, and agents of Company affiliates providing services to other, non-affiliated facilities should also understand that all such facilities are expected to have similar policies applying to contractors (including the Company) requiring (1) compliance with federal and state laws, including false claims laws; (2) reporting of potential overpayments and compliance concerns; and (3) the whistleblower protections described above.

DEFINITION:

Contractor or **agent** includes any contractor, subcontractor, agent, or other person which or who, on behalf of the facility, furnishes, or otherwise authorizes the furnishing of Medicare or Medicaid health care items or services, performs billing or coding functions, or is involved in monitoring of health care provided by the facility.

PROCEDURE:

Company responsibilities include, but are not limited to:

a. Ensuring that all employees, including management, and any contractors or agents of the facility, are provided with this policy, within 30 days of commencing employment or contractor status.

b. Ensuring that the Company's employee handbook includes a detailed summary of this policy.

c. Revising this policy as necessary to comply with changes in the law. Changes must be documented and implemented. When policies and procedures are revised, the previous versions of the policies and procedures must be retained for ten (10) years.

REFERENCES

1. Ind. Code § 5-11-5.5 et seq.
2. Ind. Code § 35-43-5-7.1
3. 31 U.S.C. § 3801-3812
4. 31 U.S.C. § 3729-3733
5. Deficit Reduction Act of 2005, Sections 6031, 6032
6. HCA Code of Conduct, “Resources for Guidance and Reporting Concerns”