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| **DEPARTMENT:** Legal | **POLICY DESCRIPTION:** Florida 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.FL.002 |
| **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 Florida or providing services to Medicare or Medicaid providers located in the State of Florida, 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 Florida or provide services to Florida 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. Florida 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, Florida has adopted a generally applicable Medicaid antifraud statute that is intended to prevent the submission of false and fraudulent claims to the Florida 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 claim, 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.

## FLORIDA FALSE CLAIMS LAWS

The Florida False Claims Act (the "FFCA") makes it unlawful for any person to: (a) knowingly present or cause to be presented a false or fraudulent claim for payment or approval; (b) knowingly make, use, or cause to be made or used a false record or statement material to a false or fraudulent claim; (c) conspire to commit a violation of the FFCA; or (d) knowingly make, use, or cause to be made or used a false record or statement material to an obligation to pay or transmit money or property to the State, or knowingly conceal or knowingly and improperly avoid or decrease an obligation to pay or transmit money or property to the State. *See* Fla. Stat. § 68.082(2).

A violator will be liable to the State for a civil penalty of not less than $ 5,500 and not more than $ 11,000 for each act constituting a violation of the FFCA, plus three times the amount of damages which the State sustains because of the act of that person. Certain liabilities may be reduced if the violator furnishes the State with all information known to the violator within thirty (30) days of receiving

such information, provided that the violator does not have knowledge of an investigation at the time the violator furnishes such information. *See* Fla. Stat. §§ 68.082(2)-(3).

The Department of Financial Services (the "DFS") may investigate suspected violations of the FFCA and may bring civil action against a person that has violated the DFS. 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* Fla. Stat. §§ 68.083 & 68.085.

**Whistleblower Protection**

The FFCA contains an employee protection provision that provides that any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under the FFCA, including investigation of, testimony for, or assistance in an action filed or to be filed under the FFCA, shall have a cause of action under Fla. Stat. § 112.3187. *See* Fla. Stat. § 68.088.

Such relief under FFCA's whistleblower protections include, but are not limited to, the following: reinstatement of the employee to the same position held before the adverse action was commenced, or to an equivalent position or reasonable front pay as alternative relief; compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the adverse action; and payment of reasonable costs, including attorneys' fees. *See* Fla. Stat. § 112.3187

**FLORIDA MEDICAID ANTIFRAUD STATUTE**

Florida's Medicaid antifraud laws state that a person may not: (a) knowingly make, cause to be made, or aid and abet in the making of any false statement or false representation of a material fact, by commission or omission, in any claim submitted to the Florida Agency for Healthcare Administration ("AHCA") or its fiscal agent or a managed care plan for payment; (b) knowingly make, cause to be made, or aid and abet in the making of a claim for items or services that are not authorized to be reimbursed by the Medicaid program; (c) knowingly charge, solicit, accept, or receive anything of value, other than an authorized copayment from a Medicaid recipient, from any source in addition to the amount legally payable for an item or service provided to a Medicaid recipient under the Medicaid program or knowingly fail to credit AHCA or its fiscal agent for any payment received from a third-party source; (d) knowingly make or in any way cause to be made any false statement or false representation of a material fact, by commission or omission, in any document containing items of income and expense that is or may be used by the agency to determine a general or specific rate of payment for an item or service provided by a provider; (e) knowingly solicit, offer, pay, or receive any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash

or in kind, in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under the Medicaid program, or in return for obtaining, purchasing, leasing, ordering, or arranging for or recommending, obtaining, purchasing, leasing, or ordering any goods, facility, item, or service, for which payment may be made, in whole or in part, under the Medicaid program; (f) knowingly submit false or misleading information or statements to the Medicaid program for the purpose of being accepted as a Medicaid provider; (g) knowingly use or endeavor to use a Medicaid provider's identification number or a Medicaid recipient's identification number to make, cause to be made, or aid and abet in the making of a claim for items or services that are not authorized to be reimbursed by the Medicaid program. A person who violates the above prohibitions, may be guilty of a felony of the first, second or third degree. *See* Fla. Stat. §§ 409.920(2)(a)-(b) & 812.035.68.

**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 affiliated facilities' 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 ECO, 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.

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**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 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. Fla. Stat. §§ 68.081, *et seq*.
2. Fla. Stat. § 112.3187
3. Fla. Stat. §§ 409.920, 409.9201, 409.913, 775.082, 812.035 and Fla. Admin. Code Ann. r. 59G-9.070
4. Fla. Stat. §§ 414.39, 817.155, and 837.06
5. 31 U.S.C. §§ 3801-3812
6. 31 U.S.C. §§ 3729-3733
7. Deficit Reduction Act of 2005, Sections 6031, 6032
8. HCA Code of Conduct, “Resources for Guidance and Reporting Concerns”