

DEPARTMENT: Legal	POLICY DESCRIPTION: Montana False Claims Statutes Policy
PAGE: 1 of 5	REPLACES POLICY DATED: 5/1/15
EFFECTIVE DATE: September 1, 2018	REFERENCE NUMBER: LL.MT.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 Montana or providing services to Medicare or Medicaid providers located in the State of Montana 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 Montana or provide services to Montana 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. Montana 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, Montana has adopted a generally applicable Medicaid antifraud statute that is intended to prevent the submission of false and fraudulent claims to the Montana 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 claims. If the suit is ultimately successful, the whistleblower who initially brought the suit may be awarded a percentage of the funds recovered. In

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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.

MONTANA FALSE CLAIMS ACT

The Montana False Claims Act (“MFCA”) makes it unlawful for any person to, with respect to a governmental entity: (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) have possession, custody or control of property or money used or to be used by a governmental entity and knowingly deliver or cause to be delivered, less than all of that money or property; (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 a governmental entity, or knowingly conceal or knowingly and improperly avoid or decrease an obligation to pay or transmit money or property to a governmental entity; (e) as a beneficiary of an inadvertent submission of a false or fraudulent claim to a governmental entity, subsequently discover the falsity of the claim or that the claim is fraudulent and fails to disclose the false or fraudulent claim to a governmental entity within a reasonable time after discovery of the false or fraudulent claim; or (f) conspire to commit one of the violations listed above. See Mont. Code Ann. 17-8-403.

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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 in violation of the MFCA, plus not less than two times and not more than three times the amount of damages that a governmental entity 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. A person who violates the MFCA is also liable to the governmental entity for the expenses, costs, and attorney fees of the civil action brought to recover the penalty or damages. See Mont. Code Ann. § 17-8-403(1)-(2).

The Montana Attorney General shall investigate an alleged violation of the MFCA and may file a civil action against any person who has violated or is violating the MFCA. An individual may also bring a private civil action on behalf of the individual and the governmental entity. The action must be brought in the name of the governmental entity. In the event that the qui tam action is successful, the individual bringing the civil action may be awarded a percentage of the funds recovered. See §§ Mont. Code Ann. 17-8-405, 17-8-406, 17-8-410.

Whistleblower Protections

The MFCA contains an employee protection provision that prohibits employer workplace retaliation. Any employee, agent or contractor who is discharged, demoted, suspended, threatened, harassed, denied promotion to, or in any other manner discriminated against in the terms and conditions of employment, agency, or contract because of the disclosure by the employee, agent, or contractor of information to a government or law enforcement agency pertaining to a violation of the MCFA shall be entitled to all relief necessary to make the employee, agent, or contractor whole. See Mont. Code Ann. § 17-8-412.

Such relief under MCFA's whistleblower protections, include, but are not limited to the following: reinstatement with the same seniority status such employee, contractor or agent 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 litigation costs and reasonable attorneys' fees. A civil action may not be brought more than 3 years after the date on which the retaliation occurred. See Mont. Code Ann. § 17-8-412.

MONTANA MEDICAID ANTIFRAUD STATUTE

Under the Montana Medicaid antifraud statute, a person commits Medicaid fraud when: (a) the person obtains a Medicaid payment or benefit for the person or another person by purposely or knowingly making, submitting, or authorizing the making or submitting of a false or misleading claim, statement, representation, application or document to a Medicaid agency for a service or item that the person is not entitled; (b) the person purposely or knowingly: (i) solicits, accepts, offers, or provides any remuneration, including but not limited to a kickback, bribe, or rebate, other than an amount legally payable under the medical assistance program, for furnishing services or items for which payment may be made under the Medicaid program or in return for purchasing, leasing, ordering, arranging



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for, or recommending the purchasing, leasing, or ordering of any services or items from a provider for which payment may be made under the Medicaid program; or (ii) makes, offers, or accepts a remuneration, rebate, charge for referring a recipient to a provider for the furnishing of services or items for which payment may be made under the Medicaid program; or (c) the person, with respect to a managed care contract, health maintenance organization contract, or similar contract or subcontract under the Medicaid program, purposely or knowingly fails or refuses to provide covered medically necessary services to eligible recipients as required by the contract. In a prosecution for the violation of Medicaid fraud, it is a defense if the person acted in reliance upon the written authorization or advice of the department. A person convicted of Medicaid fraud not exceeding \$1,500 in value may be fined an amount not to exceed \$1,500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of Medicaid fraud exceeding \$1,500 in value may be fined an amount not to exceed \$50,000 or 10 times the value of payments obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both.

See Mont. Code Ann. § 45-6-313.

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 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 affiliates 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 Overpayments 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:

- 31 U.S.C. §§ 3801-3812
- 31 U.S.C. §§ 3729-3733
- Deficit Reduction Act of 2005, §§ 6031, 6032
- Mont. Code Ann. §§ 17-8-401 *et seq.*
- Mont. Code Ann. § 45-6-313
- HCA Code of Conduct, “Resources for Guidance and Reporting Concerns”