

<b>DEPARTMENT:</b> Legal	<b>POLICY DESCRIPTION:</b> New York False Claims Statutes Policy
<b>PAGE:</b> 1 of 5	<b>REPLACES POLICY DATED:</b> 5/1/15
<b>EFFECTIVE DATE:</b> September 1, 2018	<b>REFERENCE NUMBER:</b> LL.NY.001
<b>APPROVED BY:</b> Ethics and Compliance Policy Committee	

**SCOPE:** All employees and, as defined below, contractors or agents of Company affiliates located in the State of New York or providing services to Medicare or Medicaid providers located in the State of New York, 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 New York or provide services to New York 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. New York 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, New York has adopted a generally applicable Medicaid antifraud statute that is intended to prevent the submission of false and fraudulent claims to the New York 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

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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 claim violation. Further, if the whistleblower is convicted of criminal conduct related to his or her 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.

### **NEW YORK FALSE CLAIMS ACT**

The New York False Claims Act (the "NYFCA") makes it unlawful for any person to: (1) knowingly present, or cause to be presented, a false or fraudulent claim for payment or approval; (2) knowingly make, use, or cause to be made or used, a false record or statement material to a false or fraudulent claim; (3) 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 government entity, or knowingly conceal or knowingly and improperly avoid or decrease an obligation to pay or transmit money or property to a government entity; or (4) conspire to commit one or more of the above listed violations. *See* N.Y. State Fin. Law § 189.

A violator of the NYFCA will be liable to the State for three times the amount of damages sustained by the State and attributable to the violator, plus a civil penalty of at least \$6,000 but no more than \$12,000. Certain liabilities may be reduced if the violator furnishes the New York Attorney General

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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* N.Y. State Fin. Law § 189.

The New York Attorney General investigates suspected violations of the NYFCA and may bring a civil action against a person that has violated the NYFCA. An individual may also bring a private civil action on behalf of the individual and the State, and 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* N.Y. State Fin. Law § 190.

**Whistleblower Protections**

The NYFCA contains an employee protection provision that prohibits an employer from discharging, demoting, suspending, threatening, harassing, or otherwise discriminating against an employee, contractor, or agent for lawfully disclosing information regarding a false claims action against the employer. An employer who violates the employee protection provision is liable to the affected employee, contractor, or agent for all relief necessary to make such person whole, including reinstatement with the same seniority status as if the discrimination had not occurred, twice 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 attorney’s fees. *See* N.Y. State Fin. Law § 191.

Additionally, New York law contains an employee protection provision that prohibits an employer from taking any retaliatory action against an employee because such employee (1) discloses or threatens to disclose any activity, policy or practice of the employer that the employee reasonably believes health care fraud; or (2) provides information to a public body regarding, or objects to participate in, any activity, policy or practice of the employer that the employee reasonably believes is in violation of a federal or state law, rule, or regulation. Retaliatory action includes discharging, disciplining, or otherwise taking an adverse action against such employee. An employer who violates this employee protection provision may be liable to the affected employee for reinstatement, restoration of benefits, back pay and reasonable costs and attorney’s fees. Such employer may also be subject to a civil penalty of up to \$10,000. *See* N.Y. Lab. Law § 740.

**NEW YORK MEDICAID ANTIFRAUD STATUTE**

New York’s medical assistance antifraud laws prohibit certain fraudulent activities in connection with certain New York health care benefit programs, including New York’s Medicaid program. Under New York law, it is unlawful for any person to knowingly, by means of a false statement or representation, by deliberate concealment of any material fact, or by other fraudulent scheme or device on behalf of himself or others, attempt to obtain payment from public funds for services or supplies furnished under New York’s Medicaid program. A statement or representation includes any claim for payment made

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to the State, a political subdivision of the State, or an entity performing services under contract to the State, or any acknowledgment, certification, claim, ratification or report of data which serves as the basis for a claim or a rate of payment. *See* N.Y. Soc. Serv. Law § 145-b.

A violator may be subject to civil damages equal to three times the amount by which any figure is falsely overstated or, in the case of non-monetary false statements or representations, three times the amount of damages which the State, political subdivision of the State, or entity performing services under contract to the State or political subdivision of the State sustain as a result of the violation or \$5,000, whichever is greater. *See* N.Y. Soc. Serv. Law § 145-b.

Additionally, under New York law, any person who, with intent to defraud, presents for allowance or payment any false or fraudulent claim for furnishing services or merchandise, or knowingly submits false information for the purpose of obtaining greater compensation than that to which he or she is legally entitled, or knowingly submits false information for the purpose of obtaining authorization for furnishing services or merchandise under New York’s Medicaid program is guilty of a criminal offense punishable by fines and imprisonment. *See* N.Y. Soc. Serv. Law § 366-b.

**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](http://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. 0.15- Correction of Errors Related to Federal and State Healthcare Programs 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)

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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 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:**

- N.Y. State Fin. Law §§ 189-191.
- N.Y. Soc. Serv. Law § 145-b.
- N.Y. Soc. Serv. Law § 366-b.
- N.Y. Lab. Law § 740.
- 31 U.S.C. §§ 3801-3812
- 31 U.S.C. §§ 3729-3733
- Deficit Reduction Act of 2005, Sections 6031, 6032
- HCA Code of Conduct, “Resources for Guidance and Reporting Concerns”