

<b>DEPARTMENT:</b> Legal	<b>POLICY DESCRIPTION:</b> Oregon False Claims Statutes Policy
<b>PAGE:</b> 1 of 5	<b>REPLACES POLICY DATED:</b> 7/1/2003
<b>EFFECTIVE DATE:</b> September 1, 2018	<b>REFERENCE NUMBER:</b> LL.OR.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 Oregon or providing services to Medicare or Medicaid providers located in the State of Oregon, 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 Oregon or provide services to Oregon 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. Oregon 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, Oregon has adopted a generally applicable Medicaid antifraud statute that is intended to prevent the submission of false and fraudulent claims to the Oregon 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

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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 claim.

### **OREGON FALSE CLAIMS ACT**

Oregon's False Claims Act (the "OFCA") is similar to the federal False Claims Act and prohibits any person or entity from submitting a false or fraudulent claim to any public agency, including Oregon's Medicaid program. The OFCA makes it unlawful for any person or entity to commit any of the following acts: (1) knowingly present or cause to be presented a false claim for payment or approval; (2) knowingly use a false record or make a false statement in connection with presenting a claim; (3) agree to or conspire with others to knowingly present a false claim for payment; (4) knowingly deliver, or cause to be delivered property to a state public agency in an amount that is less than the amount for which the person receives a certificate; (5) knowingly make a false or fraudulent statement to conceal or avoid an obligation to pay a state public agency; and (6) fail to disclose a false claim that benefits the claimant within a reasonable time after discovering the false claim.

Violations of the OFCA will result in liability to the State for the costs of a civil action brought to recover any penalties or damages under the OFCA and a civil penalty equal to the greater of \$10,000 or twice the amount of damages incurred by State for each violation. This liability may be reduced if the person committing the violation fully cooperates with the Attorney General's investigation, produces all information known about the violation within thirty (30) days after discovering the falsity of the violator's claim, and provides this information before an investigation, court proceeding, or administrative action related to the violation has commenced. See Or. Rev. Stat. §§ 180.755, 760.

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Unlike the federal False Claims Act, the OFCA does not permit qui tam or whistleblower suits. Only the Attorney General or a district attorney may bring a civil action under the OFCA. The Attorney General may file a civil action up three (3) years after discovering the violation, but in no event more than ten (10) years after the date on which the violation is committed. See Or. Rev. Stat. § 180.765.

**OREGON MEDICAID ANTIFRAUD STATUTE**

Oregon’s Medicaid program statutes prohibit any person from submitting a fraudulent claim for payment with respect to the Medicaid program. A person found to have violated this prohibition is liable to the State for three times the amount of damages incurred by the State. A person who accepts an overpayment in connection with the Medicaid program is liable to refund or credit the amount of the payment to the issuing authority. The Department of Human Services and the Oregon Health Authority each may prosecute civil actions to recover these damages. See Or. Rev. Stat. §§ 411.675, 690.

Additionally, in Oregon it is a crime to knowingly make a false claim with respect to payment for healthcare items or services to knowingly conceal or fail to disclose a material fact with the intent to obtain such payment. The Oregon Attorney General or appropriate district attorney may commence criminal prosecution against a person that violates this statute. Upon conviction, the prosecuting attorney will notify the Oregon Health Authority and appropriate licensing boards. See Or. Rev. Stat. §§ 165.690 - 698.

**WHISTLEBLOWER PROTECTIONS**

Oregon prohibits an employer from retaliating against an employee or agent of the employer that lawfully discloses information regarding a violation of any state or federal law. Retaliation includes discharging, demoting, suspending, or in any way discriminating against an employee or agent because the employee or agent has made a good faith report of a potential violation. An employee or agent that has been retaliated against may file a civil action for injunctive or equitable relief, including reinstatement, back pay, compensatory damages, punitive damages, litigation costs and reasonable attorney’s fees. See Or. Rev. Stat. §§ 659A.199, 885.

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**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 [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.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 handbook includes a detailed summary of this policy.

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<p>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.</p>
<p><b>REFERENCES:</b></p> <ol style="list-style-type: none"> <li>1. Or. Rev. Stat. §§ 180.755, 760, 765</li> <li>2. Or. Rev. Stat. §§ 659A.199, 885</li> <li>3. Or. Rev. Stat. §§ 165.690 - 698</li> <li>4. Or. Rev. Stat. §§ 411.675, 690</li> <li>5. 31 U.S.C. §§ 3801-3812</li> <li>6. 31 U.S.C. §§ 3729-3733</li> <li>7. Deficit Reduction Act of 2005, §§ 6031, 6032</li> <li>8. HCA Code of Conduct, "Resources for Guidance and Reporting Concerns"</li> </ol>