DEPARTMENT: Legal	POLICY DESCRIPTION: Arkansas False Claims Statutes Policy
PAGE: 1 of 4	REPLACES POLICY DATED: 7/1/13
EFFECTIVE DATE: September 1, 2018	REFERENCE NUMBER: LL.AR.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 Arkansas or providing services to Medicare or Medicaid providers located in the state of Arkansas 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 Arkansas or provide services to Arkansas 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. Arkansas has adopted a similar false claims act that contains only a qui tam provision that is similar to the qui tam provision found in the federal False Claims Act. Additionally, Arkansas has adopted a generally applicable Medicaid antifraud statute that is intended to prevent the submission of false and fraudulent claims to the Arkansas 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.

ARKANSAS FALSE CLAIMS LAWS

The Arkansas Medicaid Fraud False Claims Act ("AMFFCA") is a civil statute that helps the state combat fraud and recover losses resulting from fraud in the Arkansas Medicaid program. Violations of the AMFFCA include, but are not limited to the following: (1) knowingly making false statements or concealing relevant knowledge related to any benefit or payment under the Medicaid program or to the condition of an entity in relation to eligibility for participation in the Medicaid program; (2) knowingly converting a benefit to a use other than for the use and benefit of another person; (3) knowingly soliciting, giving or receiving any remuneration (kickback, bribe, or rebate) in exchange for referrals or recommendations; (4) knowingly charging in excess of the established rates or requiring additional payment as a condition of admission or continued stay; and (5) knowingly participating in the Medicaid program after having been found guilty or pleading guilty or no contest to a Medicaid fraud charge, theft of public benefits, or abuse of adults or employing a person who has abused adults. Penalties of actual damages, plus a fine of $5,000 to $10,000 per claim and treble damages may be imposed for AMFFCA violations. A violator may also be suspended from Medicaid or have its provider agreement revoked. *See* Ark. Code Ann. §§ 20-77-901 et seq.

In addition, Arkansas has a criminal statute, the Arkansas Medicaid Fraud Act ("AMFA") which provides for criminal sanctions in cases of Medicaid fraud. Actions that violate the AMFA include, but are not limited to the following: (1) purposely making false statements or concealing relevant knowledge related to any benefit or payment under the Medicaid program or to the condition of an entity in relation to eligibility for participation in the Medicaid program; (2) purposely converting a benefit to a use other than for the use and benefit of another person; (3) purposely soliciting, giving or receiving any remuneration (kickback, bribe, or rebate) in exchange for referrals or recommendations; and (4) purposely charging in excess of the established rates or requiring additional payment as a condition of admission or continued stay. Penalties of full restitution, a mandatory fine of three times the total amount of the false claims, and a fine of up to $3,000 per claim may be imposed. A violator may also be suspended from Medicaid or have its provider agreement revoked. Violation of the AMFA is also a Class A misdemeanor if the amount of false claims violation is under $200, a Class C felony if the amount is between $200 and $2,500, and a Class B felony if the amount is over $2,500. The AMFA also prohibits participation in the Medicaid program after receiving a conviction for a Medicaid fraud charge. *See* Ark. Code Ann. §§ 5-55-101 et seq.

The AMFFCA and AMFA do not contain whistleblower protections or provisions that allow individuals (or qui tam plaintiffs) with original information concerning fraud to file a lawsuit on behalf of the state. However, both statutes allow individuals who report fraud to the Attorney General to receive a percentage of the total amount recovered. Violations of the AMFFCA and AMFA are investigated by the Attorney General. If the Attorney General has reasonable cause to believe that a person has information relevant to an investigation, the Attorney General may demand such person to produce such information, answer interrogatories and appear before the Attorney General. All evidence gathered is kept confidential by the Attorney General until the Attorney General brings an action against a person accused. Any action brought under the AMFFCA must be brought within five (5) years of the date on which the violation occurred. *See* Ark. Code Ann. §§ 20-77-911 & 5-55-113.

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. Information about our policies regarding detection and prevention of fraud and abuse can be accessed on Atlas, Company's Intranet site, or on the Company website 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; and (2) reporting of potential overpayments and compliance concerns.

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:

- Ark. Code Ann. §§ 20-77-901 et seq.
- Ark. Code Ann. §§ 5-55-101 et seq.
- 31 U.S.C. §§ 3801-3812
- 31 U.S.C. §§ 3729-3733
- Deficit Reduction Act of 2005, Sections 6031, 6032