DEPARTMENT: Legal	**POLICY DESCRIPTION:** New Mexico False Claims Statutes Policy
PAGE: 1 of 5	**REPLACES POLICY DATED:** 7/1/13
EFFECTIVE DATE: September 1, 2018	**REFERENCE NUMBER:** LL.NM.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 New Mexico or providing services to Medicare Medicaid providers located in the State of New Mexico, 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 Mexico or provide services to New Mexico 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 Mexico 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 Mexico has adopted a generally applicable Medicaid antifraud statute that is intended to prevent the submission of false and fraudulent claims to the New Mexico 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 if

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 MEXICO FALSE CLAIMS ACT

The New Mexico Medicaid False Claims Act (the "NMFCA") makes it unlawful for any person to (1) present, or cause to be presented for payment under the Medicaid program, a claim that is known to be false or fraudulent, (2) present, or cause to be presented, a claim for payment under the Medicaid program knowing that the person receiving a Medicaid benefit or payment is not authorized or is not eligible for such benefit or payment under the program, (3) knowingly make, use, or cause to be made or used a record or statement to obtain a false or fraudulent claim under the Medicaid program; (4) conspire to get a claim allowed or paid under the Medicaid program knowing that such claim is false or fraudulent, (5) make, use, or cause to be made or used a record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state, relative to the Medicaid program, knowing that such record or statement is false, (6) knowingly apply for and receive a benefit or payment on behalf of another person, except pursuant to a lawful assignment of benefits, under the Medicaid program and convert that benefit or payment to his or her own personal use, (7) knowingly make a false statement or misrepresentation of material fact concerning the conditions or operation of a health care facility so that the facility may qualify for certification or recertification required by the Medicaid program, or (8) knowingly make a claim under the Medicaid program for a service or product that was not provided. *See* N.M. Stat. Ann. § 27-14-4.

The Human Services Department investigates suspected violations of the NMFCA and may bring a civil action against a person who has violated the NMFCA. Prior to bringing the civil action, the

Department notifies the Attorney General who may also proceed with a civil action. Under the NMFCA, a civil action for a false or fraudulent claim must be filed within four years. *See* N.M. Stat. Ann. § 27-14-7.

An affected individual may also bring a private civil action on behalf of the individual and the State. In the event that the Department proceeds with an action brought by a person pursuant to the NMFCA, the private plaintiff may receive a percentage of the funds recovered. *See* N.M. Stat. Ann. § 27-14-9, N.M. Stat. Ann. § 27-14-7.

Whistleblower Protections

The NMFCA contains an employee protection provision that prohibits an employer from discharging, demoting, suspending, threatening, harassing, or otherwise discriminating against an employee for lawfully disclosing information regarding or furthering a false claims action against the employer. An employer who violates the employee protection provision is liable to the affected employee for all relief necessary to make the employee 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.M. Stat. Ann. § 27-14-12.

NEW MEXICO MEDICAID ANTIFRAUD ACT

The New Mexico Medicaid Fraud Act prohibits a person from: (1) knowingly making or causing to be made a misrepresentation of a material fact required to be furnished under the Medicaid program or knowingly failing or causing the failure to include a material fact required to be furnished under the Medicaid program in any record required to be retained in connection with the Medicaid program, or (2) knowingly submitting or causing to be submitted false or incomplete information for the purpose of receiving benefits or qualifying as a Medicaid provider; or (3) presenting or causing to be presented for allowance or payment any false, fraudulent, excessive, multiple, or incomplete claim for furnishing treatment, services, or goods. Medicaid fraud is a fourth degree felony punishable by fine or imprisonment. *See* N.M. Stat. Ann. §§ 30-44-1, 30-44-4, 30-44-7.

Medicaid fraud also includes executing or conspiring to execute a plan or action to (1) defraud a state or federally funded or mandated managed health care plan in connection with the delivery of or payment for health care benefits, including engaging in any intentionally deceptive marketing practice in connection with proposing, offering, selling, soliciting, or providing any health care service in a state or federally funded or mandated managed health care plan, or (2) obtain by means of false or fraudulent representation of anything of value in connection with the delivery of or payment for health care benefits that are in whole or in part paid for or subsidized by a state or federally funded or mandated managed health care plan, including representations or statements of financial information, enrollment claims, demographic statistics, encounter data, health services available or rendered, or the qualifications of persons rendering health care or ancillary services. Depending upon the value of the benefit, treatment, services, or goods improperly provided, such Medicaid fraud may be a petty misdemeanor, misdemeanor, fourth degree felony, third degree felony, or second degree felony. Such Medicaid fraud is punishable by fine or imprisonment. *See* N.M. Stat. Ann. § 30-44-7.

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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 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. 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) 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.M. Stat. Ann. §§ 27-14-1, *et seq.*
- N.M. Stat. Ann. §§ 30-44-1, *et seq.*
- 31 U.S.C. §§ 3801-3812
- 31 U.S.C. §§ 3729-3733
- Deficit Reduction Act of 2005, Sections 6031, 6032