

<b>DEPARTMENT:</b> Legal	<b>POLICY DESCRIPTION:</b> Oklahoma False Claims Statutes Policy
<b>PAGE:</b> 1 of 4	<b>REPLACES POLICY DATED:</b> 1/1/07, 11/1/07, 2/10/09, 1/1/10, 9/1/2013
<b>EFFECTIVE DATE:</b> September 1, 2018	<b>REFERENCE NUMBER:</b> LL.OK.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 Oklahoma or providing services to Medicare or Medicaid providers located in the State of Oklahoma, 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 Oklahoma or provide services to Oklahoma 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. Oklahoma 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, Oklahoma has adopted a generally applicable Medicaid antifraud statute that is intended to prevent the submission of false and fraudulent claims to the Oklahoma 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

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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.

### **OKLAHOMA FALSE CLAIMS LAWS**

The Oklahoma Medicaid False Claims Act ("OMFCA") makes it unlawful for any person to: (a) knowingly present a false or fraudulent claim for payment or approval to an officer of the State, or a contractor or other recipient if the money is to be used on the State's behalf; (b) knowingly make, use, or cause to be made or used a false record or statement that is material to a false or fraudulent claim; (c) have control of money or property used or to be used by the state and knowingly deliver or cause to be delivered less than all of such money or property; (d) be authorized to make or deliver a document certifying receipt of property used by the State and intentionally make or deliver the receipt without completely knowing that the information on the receipt is true; (e) knowingly make, use, or cause to be made or used, a false record or statement that is material to an obligation to pay or transmit money or property to the State; or (f) conspire to commit a violation of the OMFCA. A violator of the OMFCA may be subject to a civil penalty that is not less than \$5,500 and not more than \$11,000, plus three times the amount of damages the State sustains because of the fraudulent act. See Okla. Stat. tit. 63, § 5053.1(B).

The Oklahoma Attorney General will investigate violations of OMFCA and may bring a civil action against a person found to be in violation. The OMFCA also includes a qui tam provision through which an individual may be awarded a percentage of the proceeds of the action if that person substantially contributed to the action and the State chose to pursue the claim. If the information was available through another source, such as an administrative hearing or news media, the whistleblower may recover less than he or she would otherwise. See Okla. Stat. tit. 63, § 5053.2, §5053.

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**Whistleblower Protection**

The OMFCA contains an employee protection provision that provides that any employee, contractor, or agent who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee, contractor agent, or associate in furtherance of an action under the OMFCA or other efforts to stop one or more violations under the OMFCA is entitled to relief.

Such relief under the OMFCA’s whistleblower protections include the following: reinstatement with the same seniority stats the 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 attorney fees. See Okla. Stat. tit. 63, § 5053.5.

**OKLAHOMA MEDICAID ANTIFRAUD STATUTE**

Oklahoma has also enacted a generally applicable Medicaid anti-fraud statute called the Oklahoma Medicaid Program Integrity Act (“OMPIA”) Violations of the OMPIA are both civil and criminal offenses. Actions that violate OMPIA include: (a) knowingly making or causing to be made a claim the person knows to be false; (b) knowingly making or causing to be made a false statement or representation in order to obtain authorization to provide a good or service payable by the State; (c) knowingly making or causing to be made a false statement or representation in order to obtain a good or service from the Oklahoma Medicaid program; (d) knowingly making or causing to be made a false statement or representation for use in qualifying as a provider of Oklahoma Medicaid services; (e) charging any recipient in excess of the Medicaid program’s established remuneration rates; (f) soliciting benefits or kickbacks in connections with goods or services payable by the Oklahoma Medicaid program; or (g) failing to maintain claim records in the manner required by the law and Oklahoma Health Care Authority regulations. A violator who receives more than \$2,500 in illegal payments will be imprisoned for a maximum of three years or pay the greater of a fine of up to three times the amount of the illegal payments or \$10,000. A violator who receives less than \$2,500 in illegal payments will be imprisoned for a maximum of one year or pay the greater of a fine of up to three times the amount of the illegal payments or \$1,000. See Okla. Stat. tit. 56, § 1005, 1006.

**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

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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-affiliate 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 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.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.
- 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**

1. Okla. Stat. tit. 56, §§ 1005-1007
2. Okla. Stat. tit. 21, §§ 358-359
3. Okla. Stat. tit. 63, §§ 5053.1 – 5053.7, 5015
4. 31 U.S.C. §§ 3801-3812
5. 31 U.S.C. §§ 3729-3733
6. Deficit Reduction Act of 2005, §§ 6031, 6032
7. HCA Code of Conduct, "Resources for Guidance and Reporting Concerns"