

<b>DEPARTMENT:</b> Legal	<b>POLICY DESCRIPTION:</b> North Carolina 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.NC.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 North Carolina or providing services to Medicare or Medicaid providers located in the State of North Carolina, 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 North Carolina or provide services to North Carolina 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. North Carolina 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. In addition, North Carolina's Workers' Compensation Act and Medical Assistance Provider False Claims Statute both allow for penalties against health care providers in the event of fraud.

**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

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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.

**NORTH CAROLINA FALSE CLAIMS ACT**

The North Carolina False Claims Act ("NCFCA") makes it unlawful for any person to: (a) knowingly present, or cause to be presented a false or fraudulent claim for payment or approval to the State; (b) knowingly make, use, or cause to be made or used, a false record or statement material to a false or fraudulent claim to the State; (c) have possession, custody, or control of property or money used, or to be used, by the State and, knowingly deliver, or cause to be delivered, less property than the amount for which the person receives a certificate or receipt; (d) 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 the State, or knowingly conceal or knowingly and improperly avoid or decreases an obligation to pay or transmit money or property to the State; (e) conspire to commit a violation of the NCFCA. See N.C. Gen. Stat. § 1-607.

A violator will be liable to the State for three times the amount of damages that the State sustains because of the act of the violator, plus a civil penalty of not less than \$5,500 and not more than \$11,000 per claim. Penalties can be lowered to two times damages instead of three times if the violator furnishes to the state officer or employee responsible for the investigation all information known to the

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violator within 30 days of receipt, the violator fully cooperates with the investigation, no criminal or civil action has been commenced and the violator does not have actual knowledge of the existence of an investigation at the time the violator first provides information to the State. See N.C. Gen. Stat. § 1-607.

The North Carolina Attorney General may issue a civil investigative demand if the Attorney General has reason to believe that a person has information relevant to an investigation of the NCFCA or any other false claims law. An individual may also bring a private civil action on behalf of the individual and the State. In the event the qui tam action is successful, the individual bringing the civil action may be awarded a percentage of the funds recovered. See N.C. Gen. Stat. §§ 1-609, 1-610, 1-614.

**Whistleblower Protections**

The North Carolina False Claims Act contains an anti-retaliation provision which indicates any employee, contractor, or agent who experiences retaliatory action because of lawful acts done by the individual in furtherance of an action under the North Carolina False Claims Act or other efforts to stop violation(s) of the North Carolina False Claims Act shall be entitled to all relief necessary to make the individual whole, including reinstatement, two times the amount of back pay, interest on back pay, and compensation for any special damages incurred as a result, including litigation costs and attorney fees. See N.C. Gen. Stat. § 1-613.

**MEDICAL ASSISTANCE PROVIDER FALSE CLAIMS ACT**

North Carolina’s Medical Assistance Provider False Claims Act prohibits any provider of medical assistance under the Medical Assistance Program from knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval, or knowingly making, using, or causing to be made or used a false record or statement to get a false or fraudulent claim paid or approved. Liability to the State for each violation is between \$5,000 and \$10,000, plus treble damages for each false claim, costs of the civil action, interest on damages, and costs of the investigation. Penalties may be reduced to not less than two times the amount of damages if the provider cooperates with the fraud investigation. Intent to repay or any actual repayment is not a defense, but it can be considered in mitigation of the penalties assessed. See N.C. Gen. Stat. §§ 108A-70.10-70.16.

**Whistleblower Protections**

The NCFCA contains an employee protection provision that provides that if an employee is discharged, demoted, suspended, threatened, harassed or discriminated against in the terms and conditions of employment as a result of any lawful act of the employee on behalf of the employee or others in furtherance of action under the NCFCA. The employee is entitled to all relief necessary to make the employee whole, including, without limitation, reinstatement with the same seniority as the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damage sustained as a result of the discharge, demotion,



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suspension, threat, harassment or discrimination and punitive damages if appropriate. See N.C. Gen. Stat. § 108A-70.15

### **NORTH CAROLINA WORKERS' COMPENSATION ACT**

The North Carolina Workers' Compensation Act provides that any health care provider who willfully or intentionally does any of the following is subject to an administrative penalty not to exceed \$1,000.00: (1) fails or refuses to timely file required reports or records; (2) makes unnecessary referrals; and (3) knowingly violates North Carolina's Worker's Compensation Act, including treatment guidelines, with intention to deceive or to gain improper advantage of a patient, employee, insurer, or the Commission. The act also provides a safe harbor for a hospital that relies in good faith on a written order of a physician in performing health care services. See N.C. Gen. Stat. § 97-88.3.

### **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) 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.

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**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:**

- 31 U.S.C. §§ 3801-3812
- 31 U.S.C. §§ 3729-3733
- Deficit Reduction Act of 2005, §§ 6031, 6032
- N.C. Gen. Stat. §§ 108A-70.10-70.16
- N.C. Gen. Stat. § 97-88.3
- N.C. Gen. Stat § 1-607 *et seq.*
- HCA Code of Conduct, "Resources for Guidance and Reporting Concerns"