DEPARTMENT: Legal	**POLICY DESCRIPTION:** Rhode Island False Claims Statutes Policy
PAGE: 1 of 5	**REPLACES POLICY DATED:** 5/1/15
EFFECTIVE DATE: September 1, 2018	**REFERENCE NUMBER:** LL.RI.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 Rhode Island or providing services to Medicare or Medicaid providers located in the State of Rhode Island, 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 Rhode Island or provide services to Rhode Island 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. Rhode Island 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, Rhode Island has adopted a generally applicable Medicaid antifraud statute that is intended to prevent the submission of false and fraudulent claims to the Rhode Island 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.

RHODE ISLAND FALSE CLAIMS ACT

Rhode Island's False Claims Act (the "RIFCA") is similar to the federal False Claims Act and prohibits any person or entity from submitting a false or fraudulent claim to the State of Rhode Island, including Rhode Island's Medicaid program. Under the RIFCA, it is unlawful to, among other things: (1) knowingly present, or cause to be presented, a false or fraudulent claim for payment or approval; (2) knowingly make, use, or cause to be made or used, a false record or statement material to a false or fraudulent claim; (3) 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 a government entity, or knowingly conceal or knowingly and improperly avoid or decrease an obligation to pay or transmit money or property to a government entity; or (4) conspire to commit one or more of the above listed violations. A violator shall be liable to the State for three times the amount of damages sustained by the State and attributable to the violator, plus a civil penalty of at least $5,500 but no more than $11,000. The violator shall also be liable to the Rhode Island Attorney General for the costs of a civil action brought to recover such damages. *See* R.I. Gen. Laws § 9-1.1-3.

The Rhode Island Attorney General investigates suspected violations of the RIFCA and may bring a civil action against a person that has violated the RIFCA. 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* R.I. Gen. Laws § 9-1.1-4.

Whistleblower Protections

The RIFCA contains an employee protection provision that prohibits an employer from discharging, demoting, suspending, threatening, harassing, or otherwise discriminating against an employee, contractor, agent, or associate for engaging in any lawful action in furtherance of a false claims action against the employer. An employer who violates the employee protection provision is liable to the affected person for all relief necessary to make such person 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* R.I. Gen. Laws § 9-1.1-4.

RHODE ISLAND MEDICAL ASSISTANCE FRAUD LAW

Rhode Island's Medical Assistance Fraud Law (the "RIMAFL") contains a statute that prohibits certain fraudulent activities in connection with Rhode Island's Medicaid program. Under RIMAFL, it is unlawful to, among other things, (1) present for authorization or payment any false or fraudulent claim or cost report for services or merchandise payable by the Rhode Island Medicaid Program; (2) present for authorization or payment any claim or cost report for medically unnecessary services or merchandise payable by the Rhode Island Medicaid Program; (3) submit or cause to be submitted false information for the purpose of obtaining greater compensation than that to which the person is legally entitled, for furnishing services or merchandise payable by the Rhode Island Medicaid Program; (4) submit or cause to be submitted false information for the purpose of obtaining authorization to furnish services or merchandise payable by the Rhode Island Medicaid Program; (5) submit or cause to be submitted a claim, cost report, or other document that fails to make a full disclosure of material information; (6) solicit, receive, offer, or pay any remuneration to induce or reward referrals; (7) submit or cause to be submitted a duplicate claim for services, supplies, or merchandise for which the provider has already received or claimed reimbursement from another source; (8) submit or cause to be submitted a claim for services or merchandise that was not rendered to the recipient, or which includes costs or charges unrelated to what was rendered to the recipient; (9) submit or cause to be submitted a claims which are intentionally not documented and/or are medically unnecessary; (10) submit or cause to be submitted a claim that materially misrepresents the service, its cost, when the service was provided, the identity of the recipient, or the identity of the provider; (11) submit or cause to be submitted a claim for a services or merchandise at a fee that exceeds the provider's lowest fee for the provision of the service to the general public; (12) submit or cause to be submitted a claim for services or merchandise which was not rendered by the provider; (13) render or provide services or merchandise without authorization or consent; (14) charge a recipient in addition to or in excess of the rates established by the Rhode Island Medicaid program; (15) enter into an agreement to obtain aid or reimbursement for another party who is not entitled to such aid or reimbursement; or (16) make a material false statement when applying to enroll as a Rhode Island Medicaid provider. *See* R.I. Gen. Laws § 40-8.2-3.

Violators of RIMAFL are subject to expulsion from the Rhode Island Medicaid program or a suspension of no more than two years. Violators are also subject to injunctive relief and a civil penalty of no more than $1,000. Individuals injured by the violation may also bring a civil action to recover treble damages from violator. *See* R.I. Gen. Laws §§ 40-8.2-5; 40-8.2-11; 40-8.2-12.

ADDITIONAL RHODE ISLAND WHISTLEBLOWER PROTECTIONS

Rhode Island's Whistleblowers' Protection Act (the "RIWPA") contains an employee protection provision that prohibits an employer from discharging, threatening, or otherwise discriminating against an employee because the employee (1) reports or is about to report to a public body, verbally or in writing, a violation of a federal, state, or local law, regulation or rule which the employee knows or reasonably believes has occurred or is about to occur, unless the employee knows or has reason to know that the report is false; (2) is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action; (3) refuses to violate or assist in violating federal, state, or local law, rule or regulation; or (4) reports verbally or in writing to the employer or to the employee's supervisor a violation, of a federal, state, or local law, regulation or rule which the employee knows or reasonably believes has occurred or is about to occur, unless the employee knows or has reason to know that the report is false. An employer who violates this employee protection provision may be liable to the affected employee for injunctive relief and actual damages, including reinstatement, restoration of benefits and back pay. *See* R.I. Gen. Laws §§ 28-50-3; 28-50-4; 28-50-5.

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 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.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. R.I. Gen. Laws §§ 9-1.1-3; 9-1.1-4
2. R.I. Gen. Laws §§ 40-8.2-3; 40-8.2-5; 40-8.2-11; 40-8.2-12
3. R.I. Gen. Laws §§ 28-50-3; 28-50-4; 28-50-5
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”