

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

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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.

VERMONT FALSE CLAIMS LAWS

The Vermont False Claims Act (the "VFCA") makes it unlawful for any person to: (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 present or cause to be presented a claim that violates Vermont and federal laws against improper referrals and kickbacks; (4) knowingly make, use or cause to be made or used, a false record or statement material to an obligation to pay or transmit money to the State; (5) knowingly conceal or knowingly and improperly avoid or decrease an obligation to pay or transmit money to the State; (6) fail to disclose an inadvertent false claim or overpayment within 120 days of discovering the error; (7) conspire to commit a violation of the VFCA. See Vt. Stat. Ann. tit. 32, § 631.

A violator of the VFCA will be liable to the State for a civil penalty of no less than \$5,000 and not more than \$11,000 for each violation, plus three times the amount of damages which the State sustains because of the violation. The violator is also liable for the costs of the investigation and the prosecution of the violation. The court may enter a judgement for no less than two times the amount of damages sustained by the State because of the violation. See Vt. Stat. Ann. tit. 32, § 631.

The Vermont Attorney General may investigate suspected violations of the VFCA and may bring civil action against a person that has violated the VFCA. 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 Vt. Stat. Ann. tit. 32, §§ 632-33.

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VFCA Whistleblower Protection

The VFCA 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 because of lawful acts done by the employee, contractor, agent, or associated person in furtherance of an action under the VFCA or other efforts to stop a violation of the VFCA is entitled to relief. Such relief includes the following: reinstatement with the same seniority status that 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 special damages sustained due to the discrimination, including litigation costs and reasonable attorney's fees. See Vt. Stat. Ann. tit. 32, § 638.

VERMONT MEDICAID ANTI-FRAUD STATUTES

Under Vermont law, it is unlawful for any person to (1) knowingly file, attempt to file, or aid and abet in the filing of a claim for services to a recipient of benefits under any state or federally funded assistance program when such services were not rendered; (2) knowingly file a false claim or a claim for unauthorized items or services under any state or federally funded assistance program; (3) knowingly bill the recipient of benefits under any state or federally funded assistance program for an amount in excess of that provided for by law or regulation; (4) knowingly fail to credit the State of Vermont or its agent for any payments received from Social Security, insurance, or other sources; or (5) knowingly receive, attempt to receive, or aid and abet in the receipt of an unauthorized payment in connection with any state or federally funded assistance program. See 33 Vt. Stat. § 141.

A person who knowingly violates this law may be subject to fines of up to \$1,000 per false claim or an amount equal to twice the amount of payments wrongfully obtained. The violator is also subject to imprisonment for up to ten (10) years. Additionally, a person who violates this law with actual knowledge may be subject to a civil suit by the Vermont Attorney General for restitution of the amount of benefits or payments wrongfully obtained, with interest, and a civil penalty of up to \$500 per false claim or false document submitted or three times the amount of wrongfully obtained benefits or payments, whichever is greater. See Vt. Stat. Ann. tit. 33, §§ 143, 143a.

OTHER VERMONT ANTI-FRAUD STATUTES

An additional Vermont anti-fraud statute makes it a crime for a person to, with intent to defraud, engage in falsifying, concealing, or covering up a material fact, make any false, fictitious or fraudulent claim or representation as to a material fact, or make or use any writing or document knowing the same to contain any false, fictitious, or fraudulent claim as to a material fact in connection with any matter within the jurisdiction of any state or local commission, board, department or agency. In the case of a violation of this law that results in a loss of less than \$500, the violator is subject to imprisonment for a maximum of two years, fined no more than \$5,000, or both. A violation that results in a loss of more than \$500, the violator is subject to imprisonment for a maximum of five years, fined no more than \$10,000, or both. See Vt. Stat. Ann. tit. 13, § 3016.

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VERMONT WHISTLEBLOWER PROTECTIONS

Vermont law contains an employee protection statute that prohibits a hospital or nursing home from discharging, disciplining, threatening, suspending, demoting, discriminating against, or otherwise taking adverse action against an employee because such employee discloses or threatens to disclose to any person or entity any activity, policy, practice, procedure, action or failure to act of the employer that the employee reasonably believes is a violation of any law. The employee protection only applies if the employee first reports the alleged violation of law to the employer and the employer is given a reasonable opportunity to address the violation. An employer that willfully violates this employee protection provision may be liable to the affected employee for reinstatement with the same seniority status that the employee had before the retaliatory action, back pay, lost wages, benefits, compensatory damages, punitive damages, attorney’s fees, or any other appropriate relief. See Vt. Stat. Ann. tit. 21, §§ 507, 508.

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 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.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

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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. Vt. Stat. Ann. tit. 13, § 3016
2. Vt. Stat. Ann. tit. 21, §§ 507, 508
3. Vt. Stat. Ann. tit. 32, § 631, *et seq.*
4. Vt. Stat. Ann. tit. 33, §§ 141, 143, 143a
5. 31 U.S.C. §§ 3801-3812
6. 31 U.S.C. §§ 3729-3733
7. Deficit Reduction Act of 2005, Sections 6031, 6032
8. HCA Code of Conduct, "Resources for Guidance and Reporting Concerns"