

Oklahoma

Company-affiliated facilities in Oklahoma 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, and there are also Oklahoma laws that address fraud and abuse in the state Medicaid program. 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 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 \$5,500 to \$11,000 per false claim, and 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 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 allows a private person with knowledge of a false claim to bring a civil action on behalf of the United States Government. The purpose of bringing the qui tam suit is to recover the funds paid by the Government as a result of the false claims. Sometimes the United States Government decides to join the qui tam suit. If the suit is ultimately successful, the whistleblower who initially brought the suit may be awarded a percentage of the funds recovered. Because the Government assumes responsibility for all of the expenses associated with a suit when it joins a false claims action, the percentage is lower when the Government joins a qui tam claim.

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 preparation or submission of the false claims, 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 employer. This applies to any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in his 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 attorneys 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.

The Oklahoma Medicaid False Claims Act mirrors the federal False Claims Act with regard to fraudulent claims from the State of Oklahoma. For each violation, the civil penalty is not less than \$5,000 and not more than \$10,000, plus three times the amount of damages the State sustains because of the fraudulent

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act. Oklahoma has also adopted a generally applicable Medicaid anti-fraud statute that makes it unlawful for a person to submit false and fraudulent claims to the Oklahoma Medicaid program. Violations of the statute are both civil and criminal offenses and are punishable by imprisonment and significant monetary penalties. The Oklahoma Medicaid False Claims Act does include a qui tam provision through which the whistleblower may recover between 15% and 25% 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 up to 10%.

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. The Company, therefore, 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 facility's human resources manager, the facility's ECO, another member of management, or with the Company's Ethics Hotline (1-866-384-4276).

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. Information about our policies regarding the detection and prevention of fraud and abuse can be accessed on the Company website at www.capellahealthcare.com and by employees using our internal policy management tool and shared network drives. In particular, all such employees and contractors should be aware of the contents of the Capella "Code of Conduct" and related policies and procedures.

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 Medicaid health care items or services, performs billing or coding functions, or is involved in monitoring of health care provided by the facility.

PROCEDURE:

Facility responsibilities include, but are not limited to:

- Ensuring that all employees, including management, and any contractors or agents of the facility, are provided with this policy.
- Ensuring that the facility's employee handbook, if one exists, incorporates this policy.
- Making revisions to this policy as necessary to comply with changes in the law.

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, Sections 6031, 6032

Arkansas

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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. The State of Arkansas has similarly adopted a False Claims Act and a generally applicable Medicaid anti-fraud statute, both of which are intended to prevent the submission of false and fraudulent claims to the Arkansas 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 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 \$5,500 to \$11,000 per false claim, and 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 claims. 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 claims, 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 employer. This applies to any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in his 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 claim.

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ARKANSAS FALSE CLAIMS LAWS

The Arkansas Medicaid Fraud False Claims Act (“AMFFCA”) is a civil statute that helps the state combat fraud and recover losses resulting from fraud in the Arkansas Medicaid program. In addition, Arkansas has a criminal statute, the Arkansas Medicaid Fraud Act (“AMFA”) which provides for criminal sanctions in cases of Medicaid fraud.

Violations of the AMFFCA include: (1) knowingly making false statements or concealing relevant knowledge related to any benefit or payment under the Medicaid program or to the condition of an entity in relation to eligibility for participation in the Medicaid program; (2) knowingly converting a benefit to a use other than for the use and benefit of another person; (3) knowingly soliciting, giving or receiving any remuneration (kickback, bribe, or rebate) in exchange for referrals or recommendations; (4) knowingly charging in excess of the established rates or requiring additional payment as a condition of admission or continued stay; and (5) knowingly participating in the Medicaid program after having been found guilty or pleading guilty or no contest to a Medicaid fraud charge, theft of public benefits, or abuse of adults or employing a person who has abused adults. Penalties of actual damages, plus a fine of \$5,000 to \$10,000 per claim and treble damages may be imposed for AMFFCA violations. A violator may also be suspended from Medicaid or have its provider agreement revoked. See Ark. Code Ann. §§ 20-77-901 et seq.

Actions that violate the AMFA include: (1) purposely making false statements or concealing relevant knowledge related to any benefit or payment under the Medicaid program or to the condition of an entity in relation to eligibility for participation in the Medicaid program; (2) purposely converting a benefit to a use other than for the use and benefit of another person; (3) purposely soliciting, giving or receiving any remuneration (kickback, bribe, or rebate) in exchange for referrals or recommendations; and (4) purposely charging in excess of the established rates or requiring additional payment as a condition of admission or continued stay. Penalties of full restitution, a mandatory fine of three times the total amount of the false claims, and a fine of up to \$3,000 per claim may be imposed. A violator may also be suspended from Medicaid or have its provider agreement revoked. Violation of the AMFA is also a Class A misdemeanor if the amount of violation is under \$200, a Class C felony if the amount is between \$200 and \$2,500, and a Class B felony if the amount is over \$2,500. The AMFA also prohibits participation in the Medicaid program after receiving a conviction for a Medicaid fraud charge. See Ark. Code Ann. §§ 5-55-101 et seq.

The AMFFCA and AMFA do not contain whistleblower protections or provisions that allow individuals (or qui tam plaintiffs) with original information concerning fraud to file a lawsuit on behalf of the state. However, both statutes allow individuals who report fraud to the Attorney General to receive up to 10% of the total amount recovered. Violations of the AMFFCA and AMFA are investigated by the Attorney General. If the Attorney General has reasonable cause to believe that a person has information relevant to an investigation, the Attorney General may demand such person to produce such information, answer interrogatories and appear before the Attorney General. All evidence gathered is to be kept confidential by the Attorney General until the Attorney General brings an action against a person accused. Any action brought under the AMFFCA must be brought within five (5) years of the date on which the violation occurred.

REPORTING CONCERNS REGARDING FRAUD, ABUSE AND FALSE CLAIMS

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Hotline (1-866-384-4276).

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PROCEDURE:

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- Ensuring that the facility’s employee handbook, if one exists, incorporates this policy.
- Making revisions to this policy as necessary to comply with changes in the law.

REFERENCES:

- Ark. Code Ann. §§ 20-77-901 et seq.
- Ark. Code Ann. §§ 5-55-101 et seq.
- 31 U.S.C. §§ 3801-3812
- 31 U.S.C. §§ 3729-3733
- Deficit Reduction Act of 2005, Sections 6031, 6032

Missouri

Company-affiliated facilities in Missouri 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, and there are also Missouri laws that address fraud and abuse in the Missouri Medicaid program. 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 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 \$5,500 to \$11,000 per false claim, and 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 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 allows a private person with knowledge of a false claim to bring a civil action on behalf of the United States Government. The purpose of bringing the qui tam suit is to recover the funds paid by the Government as a result of the false claims. Sometimes the United States Government decides to join the qui tam suit. If the suit is ultimately successful, the whistleblower who initially brought the suit may be awarded a percentage of the funds recovered. Because the Government assumes responsibility for all of the expenses associated with a suit when it joins a false claims action, the percentage is lower when the Government joins a qui tam claim.

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 preparation or submission of the false claims, 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 employer. This applies to any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in his 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 attorneys 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.

The State of Missouri has not adopted any false claims acts or statutes that contain qui tam or whistleblower provisions that are similar to those found in the federal False Claims Act. It has, however, adopted several generally applicable Medicaid anti-fraud statutes that make it unlawful for a person to

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submit false and fraudulent claims to the Missouri Medicaid program. The statutes also make it unlawful for anyone to present false information to obtain certification or recertification as a Missouri Medicaid provider. Violations of the statutes are both civil and criminal offenses and are punishable by imprisonment and significant monetary penalties.

REPORTING CONCERNS REGARDING FRAUD, ABUSE AND FALSE CLAIMS

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PROCEDURE:

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- Making revisions to this policy as necessary to comply with changes in the law.

REFERENCES

1. Mo. Rev. Stat. §§ 191.900, .905, & .910
2. Mo. Rev. Stat. §§ 198.006, .142, .155, & .158
3. 31 U.S.C. §§ 3801-3812
4. 31 U.S.C. §§ 3729-3733
5. Deficit Reduction Act of 2005, Sections 6031, 6032

Oregon

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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. The State of Oregon has similarly adopted a False Claims Act and generally applicable Medicaid antifraud regulations, both of which are intended to prevent the submission of false and fraudulent claims to the Oregon 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 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 \$5,500 to \$11,000 per false claim, and 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 claims. 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 claims, 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 employer. This applies to any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in his 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 claim.

OREGON FALSE CLAIMS STATUTE

Oregon's False Claims Act (the "OFCA") is similar to the federal False Claims Act and prohibits any person

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or entity from submitting a false or fraudulent claim to any public agency, including Oregon's Medicaid program. The OFCA makes it unlawful for any person or entity to commit any of the following acts: (1) knowingly present or cause to be presented a fraudulent claim for payment or approval; (2) knowingly use a false record or make a false statement in connection with presenting a claim; and (3) fail to disclose a false claim that benefits the claimant within a reasonable time after discovering the false claim. Violations of the OFCA shall result in liability to the State for the costs of a civil action brought to recover any penalties or damages under the OFCA and a civil penalty of not less than \$10,000 or twice the amount of damages incurred for each violation. This liability may be reduced if the person committing the violation substantially cooperates with the Attorney General's investigation and produces all information known about the violation within thirty (30) days after discovering the falsity of the violator's claim. See Or. Rev. Stat. §§ 180.755, 760.

Unlike the federal False Claims Act, the OFCA does not permit qui tam or whistleblower suits. Only the Attorney General or a district attorney may bring a civil action under the OFCA. The Attorney General may file a civil action up three (3) years after discovering the violation, but in no event more than ten (10) years after the date on which the violation is committed. See Or. Rev. Stat. § 180.765.

ADDITIONAL OREGON ANTIFRAUD LAWS

Medicaid Antifraud Statutes

Oregon's Medicaid program statutes prohibit any person submitting a fraudulent claim for payment with respect to the Medicaid program. A person found to have violated this prohibition is liable to the State for three times the amount of damages incurred by the State. The Department of Human Services and the Oregon Health Authority each may prosecute civil actions to recover these damages. See Or. Rev. Stat. §§ 411.675, 690.

Additionally, in Oregon it is a crime to knowingly make a false claim with respect to a health care payment or to knowingly conceal or fail to disclose a material fact with the intent to obtain a health care payment. The Attorney General or appropriate district attorney may commence criminal prosecution against a person that violates this statute. See Or. Rev. Stat. §§ 165.690 - 698

Whistleblower Protections

Oregon prohibits an employer from retaliating against an employee or agent of the employer that lawfully discloses information regarding a violation of any state or federal law. Retaliation includes discharging, demoting, suspending, or in any way discriminating against an employee because the employee has reported information regarding potential violations. An employee that has been retaliated against may file a civil action for equitable relief, including reinstatement, back pay, compensatory damages, punitive damages, litigation costs and reasonable attorney's fees. See Or. Rev. Stat. §§ 695A.199, 885.

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REFERENCES:

- Or. Rev. Stat. §§ 180.755, 760, 765
- Or. Rev. Stat. §§ 695A.199, 885
- Or. Rev. Stat. §§ 165.690 - 698
- Or. Rev. Stat. §§ 411.675, 690
- 31 U.S.C. §§ 3801-3812
- 31 U.S.C. §§ 3729-3733
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South Carolina

Company-affiliated facilities in South Carolina 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

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There is a federal False Claims Act, and there are also South Carolina laws that address fraud and abuse in the South Carolina Medicaid program. 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 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 \$5,500 to \$11,000 per false claim, and 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 False Claims Act applies, for example, to claims submitted by healthcare providers to Medicare or Medicaid.

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The federal False Claims Act also contains a provision that protects a whistleblower from retaliation by his employer. This applies to any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in his 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 attorneys fees.

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The State of South Carolina has not adopted any false claims acts or statutes that contain qui tam or whistleblower provisions that are similar to those found in the federal False Claims Act. It has, however, adopted a generally applicable Medicaid anti-fraud statute that makes it unlawful for a person to submit false and fraudulent claims to the South Carolina Medicaid program. Violations of the statute are both civil

South Carolina

and criminal offenses and are punishable by imprisonment and significant monetary penalties.

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. The Company, therefore, 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 facility's human resources manager, the facility's ECO, another member of management, or with the Company's Ethics Hotline (1-866-384-4276).

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. Information about our policies regarding the detection and prevention of fraud and abuse can be accessed on the Company website at www.capellahealthcare.com and by employees using our internal policy management tool and shared network drives. In particular, all such employees and contractors should be aware of the contents of the Capella "Code of Conduct" and related policies and procedures.

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 Medicaid health care items or services, performs billing or coding functions, or is involved in monitoring of health care provided by the facility.

PROCEDURE:

Facility responsibilities include, but are not limited to:

- Ensuring that all employees, including management, and any contractors or agents of the facility, are provided with this policy.
- Ensuring that the facility's employee handbook, if one exists, incorporates this policy.
- Making revisions to this policy as necessary to comply with changes in the law.

REFERENCES

1. S.C. Code Ann. § 38-55-170
2. S.C. Code Ann. § 43-7-60
3. S. C. Code Regs. 126-403
4. 31 U.S.C. §§ 3801-3812
5. 31 U.S.C. §§ 3729-3733
6. Deficit Reduction Act of 2005, Sections 6031, 6032

Tennessee

Company-affiliated facilities in Tennessee 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 and a Tennessee version of the False Claims Act. 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 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 \$5,500 to \$11,000 per false claim, and 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 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 allows a private person with knowledge of a false claim to bring a civil action on behalf of the United States Government. The purpose of bringing the qui tam suit is to recover the funds paid by the Government as a result of the false claims. Sometimes the United States Government decides to join the qui tam suit. If the suit is ultimately successful, the whistleblower who initially brought the suit may be awarded a percentage of the funds recovered. Because the Government assumes responsibility for all of the expenses associated with a suit when it joins a false claims action, the percentage is lower when the Government joins a qui tam claim.

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 preparation or submission of the false claims, 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 attorneys 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.

Tennessee has a state version of the False Claims Act that mirrors many of the provisions of the federal False Claims Act. The actions that trigger civil penalties under the Tennessee False Claims Act are identical to those of the federal False Claims Act. However, under the Tennessee False Claims Act, a person may also be liable if he is a beneficiary of an inadvertent submission of a false claim, subsequently discovers that the claim is false, and fails to disclose the false claim to the state within a reasonable time after

Tennessee

discovery of the false claim. The Tennessee False Claims Act also differs from the federal False Claims Act in that it does not apply to any claim of less than \$500 in value or claims involving workers' compensation or relating to tax laws administered by the Tennessee Department of Revenue.

The Tennessee False Claims Act also has a whistleblower provision. Like the federal False Claims Act, the Tennessee law includes provisions to prevent employers from retaliating against employees who report their employer's false claims.

The State of Tennessee has also adopted several other false claims statutes that are intended to prevent fraud and abuse in a state Medicaid program, including TennCare. These laws generally prohibit the filing of any false or fraudulent claim or documentation in order to receive compensation from the Tennessee Medicaid program.

REPORTING CONCERNS REGARDING FRAUD, ABUSE AND FALSE CLAIMS

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DEFINITION:

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PROCEDURE:

Facility responsibilities include, but are not limited to:

- Ensuring that all employees, including management, and any contractors or agents of the facility, are provided with this policy.
- Ensuring that the facility's employee handbook, if one exists, incorporates this policy.
- Making revisions to this policy as necessary to comply with changes in the law.

REFERENCES

1. Tenn. Code Ann. §§ 4-18-101, *et. seq.*
2. Tenn. Code Ann. §§ 71-5-181, *et. seq.*
3. Tenn. Code Ann. § 71-5-2601

Tennessee

4. 31 U.S.C. §§ 3801-3812
5. 31 U.S.C. §§ 3729-3733
6. Deficit Reduction Act of 2005, Sections 6031, 6032

Washington

Company must ensure that all employees 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. Washington has adopted similar false claims acts that contain qui tam and whistleblower protection provisions. Washington has also adopted a generally applicable Medicaid antifraud provision that is intended to prevent the submission of false and fraudulent claims to the Washington 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 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 \$5,500 to \$11,000 per false claim, and 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 claims. 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 claims, 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 employer. This applies to any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in his 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 claim.

WASHINGTON MEDICAID FALSE CLAIMS ACT

Washington

Washington's Medicaid False Claims Act (the "WMFCA") 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 Washington, including Medicaid. Under the WMFCA, any person who (1) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; (3) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the government entity and, intending to defraud a government entity, makes or delivers the receipt without completely knowing that the information on the receipt is true; (4) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the government entity, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the government entity; or (5) conspires to commit one or more of the above listed violations 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 Attorney General for the costs of a civil action brought to recover such damages. Certain liabilities may be reduced if the violator furnishes the Attorney General with all information known to the violator within thirty (30) days of receiving such information, provided that the violator does not have knowledge of an investigation at the time the violator furnishes such information. See RCW 74.66.020.

The Attorney General shall investigate suspected violations of the WMFCA and may bring civil action against a person that has violated the WMFCA. An individual may also bring a private civil action on behalf of the individual and the State. See RCW 74.66.050, 060.

If the Attorney General proceeds with a qui tam action, the private plaintiff must receive at least fifteen percent but not more than twenty-five percent of the proceeds of the action or settlement of the claim. Where the action is one which the court finds to be based primarily on disclosures of specific public information, other than information provided by the private plaintiff (such as information obtained from the news media), the court may award an amount it considers appropriate, but in no case more than ten percent of the proceeds. If the Attorney General does not proceed with a qui tam action, the private plaintiff shall receive an amount not less than twenty-five percent and not more than thirty percent of the proceeds of the action or settlement. The private plaintiff must also receive an amount for reasonable expenses the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. See RCW 74.66.070.

Whistleblower Protections

The WMFCA contains an employee protection provision that prohibits an employer from discharging, demoting, suspending, threatening, harassing, or otherwise discriminating against an employee, contractor, or agent for lawfully disclosing information regarding a false claims action against the employer. An employer who violates the employee protection provision is liable to the affected employee, contractor, or agent 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 RCW 74.66.090.

WASHINGTON MEDICAID ANTIFRAUD STATUTE

Washington also prohibits certain fraudulent activities in connection with any Washington health care benefit program, including Medicaid. Washington's antifraud law prohibits a person from obtaining or attempting to obtain payments in excess of the amount to which such person is entitled by means of willful false statements, misrepresentation, concealment of material facts, misrepresentation of items billed, or willfully billing for purportedly covered items which were in fact not covered by Washington's Medicaid program. Any person that violates this section must repay the amounts wrongfully obtained plus interest and may be subject to a civil penalty in an amount up to three times the amount of the excess payment

Washington

received. See RCW 74.09.210.

Whistleblower Protections

Washington's antifraud law also contains an employee protection provision that prohibits an employer allowing any workplace reprisal or retaliatory action against an employee who in good faith reports a violation of Washington's Medicaid antifraud provision. Retaliatory action includes denying adequate staff to fulfill duties, causing frequent staff changes, causing frequent and undesirable office changes, refusing to assign meaningful work, causing an unwarranted and unsubstantiated report of misconduct, causing unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations, demoting, reducing pay, denying promotion, suspending, dismissing, denying employment, a supervisor or superior behaving in or encouraging coworkers to behave in a hostile manner toward the whistleblower, a change in the physical location of the employee's workplace, or a change in the basic nature of the employee's job. An employer who violates this employee protection provision may be liable to the affected employee for restoration of benefits, back pay, and any increases in compensation that would have occurred, all with interest. Such employer may also be subject to a civil penalty of up to \$5,000. The identity of a whistleblower who complains, in good faith, to the authorities about a suspected violation of the Medicaid antifraud provision may remain confidential if requested. See RCW 74.09.315.

ADDITIONAL WASHINGTON FALSE CLAIMS STATUTES

Additional false claims provisions prohibit any person from (1) knowingly making or causing to be made any false statement or false representation of a material fact in any application for payment under any state health care benefit program; (2) at any time knowingly making or causing to be made any false statement or representation of a material fact for use in determining rights to such payment, or knowingly falsifying or concealing a material fact in connection with such application for payment, or (3) knowingly concealing the occurrence of any event affecting a person's right to have payment made for a health care service with the intent to obtain a health care payment to which the person or any other person is not entitled or in an amount greater than that which the person or any other person is entitled. Each violation of this provision is a class C felony, provided that any fine imposed will not exceed \$25,000. See RCW 74.09.230.

REPORTING CONCERNS REGARDING FRAUD, ABUSE AND FALSE CLAIMS

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PROCEDURE:

Washington

Facility responsibilities include, but are not limited to:

- Ensuring that all employees, including management, and any contractors or agents of the facility, are provided with this policy.
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- Making revisions to this policy as necessary to comply with changes in the law.

REFERENCES:

- RCW 74.66.995 et seq.
- RCW 48.80.010 et seq.
- RCW 74.09.210, 230, 260, 315
- 31 U.S.C. §§ 3801-3812
- 31 U.S.C. §§ 3729-3733
- Deficit Reduction Act of 2005, Sections 6031, 6032