



Corporate E&C Policies and Procedure Manual Policy #: EC.019M

Department: Ethics & Compliance **Policy Description:** False Claims Act Education: Idaho

Last Review Date: 5/1/2017 **Date Approved:** May 2017

Revision Dates: **Effective Date:** 5/1/2017

Retired Date:

POLICY NAME

SCOPE

This policy is applicable to:

- Each Company owned entity
- Any joint ventures or investments that are controlled by these entities of the Company
- Each of the officers, employees, consultants and agents of these entities

All officers and employees of the Company should be aware that conduct that violates this policy is always considered outside the scope of their employment. Individuals who violate these policies are subject to appropriate disciplinary action, including possible termination of employment.

RESPONSIBLE PARTIES

The following Responsible Parties are accountable for implementing, educating, and ensuring compliance with this policy.

Chief Ethics and Compliance Officer (CECO)
Regional Ethics and Compliance Officers (RCO)
Facility Ethics and Compliance Officers (ECO)
Facility Chief Executive Officer (Facility CEO)
Human Resources
Vice President, Material Resource Operations / Supply Chain
Facility Materiel Resource Operations / Supply Chain

PURPOSE

To comply with certain requirements set forth in the Deficit Reduction Act of 2005 (DRA) with regard to federal and state laws.

DEFINITIONS

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.

BACKGROUND

The Federal False Claims Act prohibits a person from knowingly presenting, or causing to be presented, a false or fraudulent claim to the U.S. government. The statute defines “knowingly” to



include not only actual knowledge of a claim's falsity, but also reckless disregard for or intentional ignorance of the truth or falsity of a claim. As of August 1, 2016 the fines include a penalty of up to three times the government's damages, civil penalties ranging from \$10,781.40 to \$21,562.80 per false claim, and the costs of the civil action against the entity that submitted the false claims. In addition, some courts have held that a violation of the Federal Anti-Kickback Statute or the Stark Law can result in liability under the Federal False Claims Act.

POLICY

Company-affiliated hospitals in Idaho 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.

IDAHO 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 Idaho laws that address fraud and abuse in the Idaho 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 \$10,781.40 to \$21,562.80 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 Idaho 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 Idaho Medicaid program. Violations of the statute are both civil 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. 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 Facility's Human Resources manager, the ECO, the CECO, another member of management, or with the Ethics Line.

Employees, including management, and any contractors or agents of Company-affiliated Facilities, should be aware of related Company policies regarding detection and prevention of health care fraud and abuse. In particular, all such employees and contractors should be aware of the contents of the Code of Conduct and with Ethics and Compliance policies and procedures.



PROCEDURE

Facility responsibilities include, but are not limited, to:

- I. Ensuring that all employees, including management and any contractors or agents of the facility, are provided with this policy.
- II. Ensuring that this policy is incorporated into employee handbooks distributed to employees.
- III. Making revisions to this policy as necessary to comply with changes in the law. Changes must be documented and implemented.

Facility Human Resources is responsible for ensuring compliance with this policy for all Facility-affiliated personnel. Facility Materiel Resource Operations / Supply Chain is responsible for ensuring compliance with this policy for all vendors contracting with Facility.

REFERENCES

Idaho Code Ann. §§ 56-227 & 56-209

31 U.S.C. §§ 3801-3812

31 U.S.C. §§ 3729-3733

Deficit Reduction Act of 2005, Sections 6031, 6032