



<b>Original Effective Date:</b>	04/2012
<b>Last Approved Review Date:</b>	
<b>Last Approved Revision Date:</b>	02/2016
<b>Responsible Department:</b>	Administration
<b>Responsible Person:</b>	Compliance Officer

**Signature:** \_\_\_\_\_

---

## **EDUCATION ABOUT FALSE CLAIMS RECOVERY**

### **I. PURPOSE**

This policy is intended to ensure compliance with the education and dissemination requirements of Section 6032 of the Federal Deficit Reduction Act of 2005 (the “DRA”).

### **II. POLICY**

It is the policy of Memorial to obey the law, and prevent fraud, waste and abuse with respect to payments made to Memorial from federal or state health care programs for patient care. This policy and the information contained in it shall be distributed to and apply to all current and new employees of Memorial. In addition, this policy must be disseminated to and complied with by all current and future contractors, subcontractors, agents or other persons that furnish or otherwise authorize the furnishing of Medicaid healthcare items or services on behalf of Memorial, perform billing or coding functions for Memorial, or are involved in the monitoring of healthcare provided by Memorial.

Memorial also makes this policy available to all employees through *Memorial’s Employee Handbook*.

### **III. GUIDELINES**

#### **A. Employees’ Responsibilities:**

Employees must report any suspected misconduct, including suspected violations of Memorial’s policies or procedures or federal or state laws, to their supervisor, Memorial’s Regulatory Compliance Officer, or anonymous reporting by internet or telephone via the BJC Ethics and Compliance Hotline ([www.bjc.ethicspoint.com](http://www.bjc.ethicspoint.com) or 800.525.2521. Memorial expressly prohibits retaliation against employees who, in good faith, report or participate in the investigation of compliance concerns, or

who, in good faith, investigate, file or participate in a whistleblower action.

**B. Managers' Responsibilities:**

Managers must inform their direct reports that Memorial does not tolerate or condone activities that result in or contribute to the submission of false claims to any federal, state or private health care program, and must take appropriate action upon notice of possible fraudulent or abusive activities. Managers also must educate and train all employees directly reporting to them on Memorial's policies about detecting and preventing fraud, waste and abuse and prohibiting the filing of false claims.

**C. Memorial's Responsibilities:**

Memorial educates and trains all employees, including management, about federal and state false claims acts, the federal Program Fraud Civil Remedies Act of 1986 and whistleblower protections available under these laws. Memorial establishes and disseminates to Memorial's contractors, subcontractors and agents policies and procedures for detecting and preventing fraud, waste and abuse. Depending on the nature of the violation, investigations of compliance issues may be performed by Memorial's Regulatory Compliance Officer and/or other appropriate staff or consultants.

**D. Contractors', Subcontractors', Agents' Responsibilities:**

Contractors, subcontractors and agents must comply with all applicable false claims recovery laws, provide education and training to their employees about these laws, and ensure compliance with Memorial's related policies by their employees insofar as they are relevant and applicable to the contractor's, subcontractor's or agent's interaction with Memorial. If an employee of a contractor, subcontractor or agent suspects that the contractor, subcontractor or agent is engaging in misconduct, including violations of federal or state laws that would have an impact on Memorial, the employee should contact Memorial's Regulatory Compliance Officer. *Anonymous reporting by internet or telephone is available through the BJC Ethics and Compliance Hotline ([www.bjc.ethicspoint.com](http://www.bjc.ethicspoint.com) or 800.525.2521).*

**III. BACKGROUND / CONTEXT**

**A. The Role of False Claim Laws**

The laws described in this policy create a comprehensive scheme for controlling fraud, waste and abuse in federal and state health care programs by giving appropriate governmental agencies the authority to seek out, investigate and prosecute violations. Enforcement activities may be pursued in criminal, civil and administrative forums. Moreover, whistleblower statutes and protections for individuals encourage reporting

of fraud, waste and abuse, which creates broader opportunities to prosecute violators. Whistleblower statutes create reasonable incentives for this purpose and may include protections that create a level of security for employees who report these cases. Set forth below are:

- A summary of the federal False Claims Act including protections for employees (whistleblowers) who report suspected violations of this law.
- A summary of administrative remedies found in the Program Fraud Civil Remedies Act.
- A summary of fraud and abuse provisions implemented by the Health Insurance Portability and Accountability Act.
- A summary of laws of the state of Illinois that impose civil or criminal penalties for false claims or statements.

**B. False Claims Act**

The federal False Claims Act (“FCA”) imposes liability on any person who “knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim” for government money or property made to the government, contractors or other recipients of federal funds (31 U.S.C. § 3729 et seq.) False claims can take the form of overcharging for a product or service, delivering less than the promised amount or type of goods or services, underpaying money owed to the government, charging for one thing while providing another and not timely returning overpayments received from the government.

The Fraud Enforcement Recovery Act of 2009 (“FERA”) substantially expanded the grounds for liability under the FCA by, among other things, creating liability for knowingly and improperly avoiding repayment of an overpayment received from the government. FERA made it clear that the FCA applies regardless of whether:

- the claim was presented to a government employee or official;
- the government has custody of the money or property; or
- the person or entity specifically intended to defraud the government.

The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (“ACA”), made several critical changes to the FCA making it more potent and also expanded it to cover payments in connection with the new health insurance exchanges to be created by ACA, if those payments include any federal funds.

The FCA defines “knowingly” to mean that a person has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the

information and, as mentioned above, there is no proof of specific intent to defraud required. Persons (including organizations such as hospitals) may be fined a civil penalty of not less than \$5,500 nor more than \$11,000, plus three times the amount of damages sustained by the government for each false claim and the costs of any civil action brought to recover any such penalties or damages. Reduced damages are available under very specific circumstances resulting in an assessment of not less than two times the amount of damages which the government sustains because of the act at issue. The FCA defines “material” as statements or records “having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.”

Although the federal government may initiate a case under the FCA, the statute also permits private persons, known as relators, to bring an action under the law (called a qui tam or whistleblower suit) in federal court. A copy of the complaint and all available relevant evidence must be served on the federal government. The case will remain sealed for at least sixty (60) days and will not be served on the defendant so the government can investigate the complaint. The government may obtain additional time for good cause.

After the sixty (60) day period or any extensions have expired, the government may pursue the matter in its own name, or decline to proceed. If the government proceeds with the case, the qui tam relator bringing the action will receive between fifteen (15) and twenty-five (25) percent of any proceeds, depending upon the contributions of the individual to the success of the case. If the government declines to proceed, the person bringing the action has the right to conduct the action in federal court and will be entitled to between twenty (25) and thirty (30) percent of the proceeds of the case, plus reasonable expenses and attorneys fees and costs awarded against the defendant. Any case must be brought within six years of the filing of the false claim.

Anyone initiating a qui tam case may not be discriminated or retaliated against in any manner by their employer. The employee is authorized under the FCA to initiate court proceedings to make themselves whole for any job related losses resulting from any such discrimination or retaliation.

Both FERA and ACA broadened the protections for and rights of whistleblowers. ACA significantly increased the rights of whistleblowers to bring FCA actions by materially narrowing the so-called “public disclosure” bar to their FCA actions.

**C. Program Fraud Civil Remedies Act**

The federal Program Fraud Civil Remedies Act (“PFCRA”) of 1986 creates administrative remedies for making false claims separate from and

in addition to the judicial remedy for false claims provided by the FCA (31 U.S.C. § 3801 et seq.).

The PFCRA is quite similar to the FCA in many respects, but is somewhat broader and more detailed, with differing penalties. The PFCRA deals with submission of improper claims or written statements to a federal agency. Specifically, a person violates the PFCRA if they know or have reason to know they are submitting a claim that is:

- False, fictitious or fraudulent;
- Includes or is supported by a written statement that asserts a material fact that is false, fictitious or fraudulent;
- Includes or is supported by a written statement that omits a material fact, is false, fictitious or fraudulent as a result of such omission, and is a statement in which the person submitting the statement has a duty to include the material fact; or
- For payment for property or services not provided as claimed.

A violation of the claim prohibition carries a \$5,000 civil penalty for each such wrongfully filed claim. In addition, an assessment of two times the amount of the claim may be made, unless the claim has not actually been paid.

A person also violates the PFCRA if they submit a written statement which they know or should know:

- Asserts a material fact which is false, fictitious or fraudulent; or
- Omits a material fact and is false, fictitious or fraudulent as a result of the omission.

A violation of the statement prohibition carries a civil penalty of up to \$5,000 for each such statement.

**D. Health Insurance Portability and Accountability Act**

In addition to regulating privacy and security of individual health information and other provisions relating to administrative simplification, the Health Insurance Portability and Accountability Act of 1996, as amended, and any regulations promulgated thereunder (“HIPAA”), includes criminal penalties for persons who knowingly and willfully make any materially false, fictitious, or fraudulent statements or representations in connection with the delivery of or payment for health care benefits, items, or services (18 U.S.C. § 1035). Health care benefit programs are defined under HIPAA to include both public and private health plans.

Persons who violate this provision may be fined or imprisoned not more than five years, or both.

**E. Illinois Whistleblower Act**

The Illinois Whistleblower Act (740 ILCS § 174/1 et seq.) prohibits employers from making, adopting or enforcing any rule, regulation, or policy preventing an employee (including full-time, part-time and contractual employees) from disclosing information to a government or law enforcement agency if the employee has reasonable cause to believe that the information discloses a violation of a state or federal law, rule, or regulation. Retaliation for any disclosure is prohibited. In addition, an employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a state or federal law, rule, or regulation. If an employer violates this law, the employee may bring a civil action against the employer for all relief necessary to make the employee whole, including but not limited to reinstatement with the same seniority status that the employee would have had, back pay with interest and compensation for any damages sustained as a result of the violation, including litigation costs, expert witness fees, and reasonable attorney's fees.

**F. Illinois False Claims Act**

The Illinois False Claims Act ("IFCA"), previously the Whistleblower Reward and Protection Act, prohibits knowingly making a false claim against or otherwise defrauding the State of Illinois (740 ILCS § 175/1 et seq.). The IFCA provides that persons and organizations may be fined a civil penalty of not less than \$5,500 and not more than \$11,000 plus three times the amount of damages which the State sustains as a result of the false claim. These penalties do not preclude criminal prosecution for the same conduct under the Illinois criminal provision for false claims upon governmental entities (720 ILCS 5/46-1.1), as described in Section I below.

Although the state government may initiate a case under the IFCA, private persons may also bring an action under this law in state court. A copy of the complaint and all available relevant evidence must be served on the state government. The case will remain sealed for at least 60 days and will not be served on the defendant so the government can investigate the complaint. The government may obtain additional time for good cause.

After the 60 day period or any extensions have expired, the government may pursue the matter in its own name, or decline to proceed. If the government proceeds with the case, the person bringing the action will receive between 15 and 25 percent of any proceeds, depending upon the contributions of the individual to the success of the case. If the government declines to proceed, the person bringing the action has the right to conduct the action on his or her own in state court and will be

entitled to between 25 and 30 percent of the proceeds of the case, plus reasonable expenses and attorneys fees and costs awarded against the defendant. A case must be brought within six years of the filing of the false claim or three years after the date when facts material to the right of action are known but in no event more than ten years after the date on which the violation is committed.

Anyone initiating an action under the IFCA may not be discriminated or retaliated against in any manner by their employer. The employee is authorized under the IFCA to initiate court proceedings to make themselves whole for any job related losses resulted from any such discrimination or retaliation. Employees, contractors or agents who report fraud and consequently suffer discrimination may be awarded two times their back pay plus interest, reinstatement at the seniority level they would have had but for the discrimination, and compensation for any costs or damages incurred.

**G. Illinois Insurance Claims Fraud Prevention Act**

The Illinois Insurance Claims Fraud Prevention Act (“ICFPA”) prohibits knowingly offering or paying any remuneration directly or indirectly, in cash or in kind, to induce any person to procure clients or patients to obtain services or benefits under a contract of insurance or that will be the basis for a claim against an insured person or the person’s insurer (740 ILCS § 92/1 et seq.). The ICFPA does not apply to any contracts or arrangements between or among insuring entities including health maintenance organizations, health care professionals, or health care facilities. The ICFPA imposes civil penalties of not less than \$5,000 nor more than \$10,000 plus an assessment of not more than three times the amount of each claim for compensation under a contract of insurance.

Although the state government may initiate a case under the ICFPA, private persons may also bring an action under this law in state court. A copy of the complaint and all available relevant evidence must be served on the state government. The case will remain sealed for at least 60 days and will not be served on the defendant so the government can investigate the complaint. The government may obtain additional time for good cause.

After the 60 day period or any extensions have expired, the government may pursue the matter in its own name, or decline to proceed. If the government proceeds with the case, the person bringing the action will receive not less than 30 percent of any proceeds, depending upon the contributions of the individual to the success of the case. If the government declines to proceed, the person bringing the action has the right to conduct the action on their own in state court and will be entitled to not less than 40 percent of the proceeds of the case, plus reasonable expenses and attorneys fees and costs awarded against the defendant. A

case must be brought within three years after the date when facts material to the right of action are known but in no event more than eight years after the date on which the violation is committed.

Anyone initiating an action under the ICFPA may not be discriminated or retaliated against in any manner by their employer. The employee is authorized under the ICFPA to initiate court proceedings to make themselves whole for any job related losses resulted from any such discrimination or retaliation.

**H. Illinois Public Assistance Fraud Act**

The Illinois Public Assistance Fraud Act (305 ILCS § 5/8A-1 et seq.) prohibits willfully making a false statement or representation or concealing any material fact in an attempt to obtain benefits or payments under the Illinois Public Aid Code to which a person is not entitled. Violations of this law will require the repayment of any excess payments along with interest and other penalties. Violations may also result in a hospital being prohibited from future participation in any state health plans. Actions under this law may be initiated by the Attorney General or by the State's Attorney when a unit of local government is involved.