Coffee Regional Medical Center
FALSE CLAIMS EDUCATION

Policy/Procedure	FALSE CLAIMS EDUCATION
Department	Administration
Effective	08/15/2008
Scope	Organization

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Policy:

It is the policy of Coffee Regional Medical Center (CRMC) to provide health care services and submit claims on such services in a manner that meets the highest standards of business and professional ethics as well as complies with applicable federal and state laws. As required by the Deficit Reduction Act (DRA) of 2005 for providers receiving annual Medicaid payments of five million or more and to further our efforts in avoiding fraud, waste and abuse with respect to reimbursement for healthcare services from government programs such as Medicaid and Medicare, it is the policy of CRMC to provide detailed information to employees, agents, vendors and other persons acting on behalf of CRMC, about the Federal False Claims Act, administrative remedies for false claims and statements established under 31 U.S.C. § 3801 et seq., and applicable State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws (collectively, “False Claims Acts”).

Procedure:

The False Claims Acts assist the Federal and State Governments in preventing and detecting fraud, waste and abuse in Federal health care programs, such as Medicare and Medicaid. This policy contains a summary of the Federal False Claims Act and relevant State False Claims Acts.

I. The Federal False Claims Act

Federal Civil False Claims Act (31 U.S.C. 3729 *et seq.)*
The FCA is a federal statute that imposes civil liability on any person who knowingly presents (or causes to be presented) a false or fraudulent claim, record, or statement for payment or approval; conspires to defraud the government by getting a false or fraudulent claim allowed or paid; uses a false record or statement to avoid or decrease an obligation to pay the government; and commits other fraudulent acts listed in the FCA. The term “knowingly”, as defined in the FCA, includes a person who has actual

knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts of reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required. The term "claim" includes any request or demand for money or property if the United States government provides any portion of the money requested or demanded.

A. Civil Liability

The penalty for violating the FCA is a minimum of five thousand, five hundred dollars, or up to a maximum of eleven thousand dollars for each false claim submitted. In addition to the penalty, a provider could be found liable for damages of up to three times the amount unlawfully claimed, and the costs of any civil action brought to recover such penalties or damages.

B. Private Qui Tam Actions

The FCA also provides for actions by a private person (a "whistleblower" or "*qui tam* realtor) who can bring a civil action (a "*qui tam"* lawsuit) in the name of the government for a violation of the FCA. Generally, such an action may not be brought more than six years after the violation, but in no event more than ten years after the violation. When the action is filed and served on the federal government, it remains under seal for at least sixty days. The federal government may choose to intervene in the lawsuit and assume primary responsibility for prosecuting, dismissing, or settling the action. If the government chooses not to intervene, the whistleblower who initiated the lawsuit has the right to conduct the action.

In the event the government proceeds with the lawsuit, the *qui tam* plaintiff may receive a portion of the proceeds of the action or settlement. If the *qui tam* plaintiff proceeds with the action without the government, the plaintiff may receive a portion of the recovery. In either case, the plaintiff may also receive an amount for reasonable expenses plus reasonable attorney's fees and costs.

If the civil action is frivolous, clearly vexations, or brought primarily for purposes of harassment, the plaintiff may be required to pay the defendant's fees and costs. If the plaintiff planned or initiated the violation, the share of proceeds may be reduced and, if found guilty of a crime associated with the violation, the plaintiff will not share in any award.

C. Whistleblower Protection

The FCA also protects whistleblowers from retaliation. An employee who is discharged, demoted, suspended, threatened, harassed or discriminated against in the terms and conditions of his employment because of lawful acts in furtherance of an action under the FCA may bring an action in federal district court seeking reinstatement, two times the amount of back pay plus interest, and other enumerated costs, damages and fees.

II. Program Fraud Civil Remedies Act

The Program Fraud Civil Remedies Act of 1986 (PFCRA) is a federal law that establishes an administrative remedy against any person who presents or causes to be presented a claim or written statement that the person knows or has reason to know is false, fictitious, or fraudulent due to an assertion or omission to certain federal agencies (including the U.S. Department of Health and Human Services).

The term "knows or has reason to know" means a person who 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.
The term "claim" includes any request or demand for property or money, e.g., grants, loans, insurance or benefits, when the United States government provides or will reimburse any portion of the money.

A. Summary of Provisions

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

a. False, fictitious, or fraudulent; or
b. Includes or is supported by written statements that are false, fictitious or fraudulent; or;
c. Includes or is supported by a written statement that omits a material fact; the statement is false, fictitious or fraudulent as a result of the omission; and the person submitting the statement has a duty to include the omitted facts; or
d. For payment for property or services not provided as claimed.

B. Penalties

A violation of this 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 this act if they submit a written statement which they know or should know:

a. Asserts a material fact which is false, fictitious or fraudulent; or
b. Omits a material fact and is false, fictitious or fraudulent as a result of the omission. In this situation, there must be a duty to include the fact and the statement contains a certification of the accuracy or truthfulness of the statement.

A violation of the prohibition for submitting an improper statement carries a civil penalty of up to $5,000.

III. Georgia Law Pertaining to Health Care Fraud

A. The State False Medicaid Claims Act – O.C.G.A. 49-4-168 *et seq. (2007)*

The State False Medicaid Claims Act ("SFMCA"), enacted in 2007, sets forth the procedures whereby the state and private citizens acting on behalf of the state, may bring civil actions against entities or individuals who have submitted false or fraudulent claims to the Medicaid program.

The SFMCA authorizes a civil penalty for any person who does any of the following: knowingly presents or causes to be presented to the Medicaid program a false or fraudulent claim; knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved; conspires to defraud the Medicaid program by getting a false or fraudulent claim allowed or paid; has possession, custody, or control of property or money for use of the Medicaid program and who delivers or causes to be delivered less property than that for which the person receives a receipt; is authorized to make or deliver a receipt of property or use by the

Medicaid program and who makes or delivers the receipt without completely knowing that the information on the receipt is true; knowingly buys or receives a pledge of obligation or debt, public property from an officer or employee of the Medicaid program who may not lawfully sell or pledge the property; or knowingly makes uses or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay, repay, or transmit money or property to the state.

A person found in violation of the foregoing is liable of a civil penalty of not less than five thousand, five hundred dollars and not more than eleven thousand dollars, plus three times the amount of damages sustained by the Medicaid program and the costs of bringing the action. The SFMCA provides for a potential reduction in the penalty where the alleged violator cooperates with the investigation The term "claim" means any request or demand for money, property or services made to directly or indirectly to the Medicaid program, where the Medicaid program is to provide any portion of the money or property or will reimburse any portion of the property or money requested or demanded. The terms "know" and "knowingly" mean that a person has knowledge of the information, acts in deliberate ignorance of the information, or acts in reckless disregard of the truth or falsity of the information.

a. **Private Civil Actions:** The SFMCA also provides for actions by a private person (a "whistleblower") who can bring a civil action in the name of the government for a violation of the FCA. Generally, such an action may not be brought more than six years after the violation, but in no event more than ten years after the violation. When the action is filed and served on the attorney general, it remains under seal for at least sixty days. The attorney general may choose to intervene in the lawsuit and assume primary responsibility for prosecuting, dismissing, or settling the action. If the attorney general elects not to proceed with the action, the whistleblower who initiated the lawsuit has the right to conduct the action.

In the event the government proceeds with the lawsuit, the whistleblower may receive a portion of the proceeds of the action or settlement. If the whistleblower proceeds with the action without the government, the plaintiff may receive a portion of the recovery. In either case, the whistleblower may also receive an amount for reasonable expenses plus reasonable attorney's fees and costs. If the civil action is frivolous, clearly vexatious, or brought primarily for purposes of harassment, the whistleblower may be required to pay the defendant's fees and costs. If the whistleblower planned or initiated the violation, the share of proceeds may be reduced and, if found guilty of a crime associated with the violation, the plaintiff will not share in any award.

b. **Whistleblower Protection**:

The SFMCA also protects whistleblowers from retaliation. An employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in the terms and conditions of employment because of lawful acts done by the employee in furtherance of an action under the SFMCA may bring an action in the appropriate court in Georgia seeking reinstatement at the same seniority status, two times the amount of back pay plus interest, and other enumerated costs, damages, and fees.

B. Medicaid Fraud – O.C.G.A. 49-4-146.1 (2007)

Subsection (b) of this statute provides that it shall be unlawful for any person or provider to obtain, attempt to obtain, or retain for himself, herself, or any other person any medical assistance or other benefits or payments under this article, or under a managed care program operated, funded, or

reimbursed by the Georgia Medicaid program, to which the person or provider is not entitled, or in an amount greater than that to which the person or provider is entitled, when the assistance, benefits, or payment is obtained, attempted, or retained by: knowingly and willfully making a false statement or false representation; deliberate concealment of any material fact; or any fraudulent scheme or device. Furthermore, it is also unlawful for any person or provider knowingly and willfully to accept medical assistance payments to which he or she is not entitled or in an amount greater than that to which he or she is entitled, or knowingly and willfully to falsify any report or document required under the Medicaid program.

Any person violating these provisions is guilty of a felony and, upon conviction thereof, is subject to punishment for each offense by a fine of not more than ten thousand dollars, or by imprisonment for not less than one year and not more than ten years, or by both such fine and imprisonment. This statute is a criminal statute and the state has the burden of proving beyond a reasonable doubt that the defendant intentionally committed the acts for which he or she is charged. In addition to criminal penalties, any person committing abuse shall be liable for a civil monetary penalty equal to two times of any excess benefit or payment.

"Abuse" is defined in the statute as a provider knowingly obtaining or attempting to obtain medical assistance or other benefits or payments under this article to which the provider knows he or she is not entitled and the payments assistance, benefits, or payments directly or indirectly result in unnecessary costs to the Medicaid program.

Miscoding does not constitute abuse if there is a good faith basis that the codes used were appropriate under the Department of Community Health, Division of Medical Assistance's policies and procedures manual and there was no deceptive intent on the part of the provider.

In addition to any other penalties provided by law, each person violating this law is liable for a civil penalty equal to the greater of three times the amount of any such excess benefit or payment or one thousand dollars for each excessive claim. Interest on the penalty shall be paid at the rate of twelve percent per annum.

IV. The Role of Such Laws in Preventing and Detecting Fraud, Waste and Abuse in Federal and State Health Care Programs

The laws described in this policy create a comprehensive process for controlling waste, fraud 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 are pursued in three available forums: Criminal, civil and administrative. This provides a broad spectrum of remedies to address the fraud and abuse problem.

Moreover, whistleblower protections, such as those included in the federal Civil False Claims Act, provide protections for individuals reporting fraud and abuse in good faith.

V. Related Facility Policies and Procedures

CRMC has also implemented policies and programs for the prevention and detection of fraud, waste and abuse. These policies and other CRMC policies relating to the prevention and detection of fraud, waste and abuse can be found and utilized by CRMC employees on the CRMC Intranet. Vendors and other subcontractors will be given a copy of these materials, as relevant and requested. The CRMC policies and programs include the following*.

A. Administration
   a. Code of Ethics
   b. Compliance Program
   c. Corporate Compliance Program Non-Retaliation Retribution Policy

B. Human Resources
   a. Rules of Conduct

C. Patient Financial Services
   a. Adherence to Standard Billing Practices
   b. Billing Policy
   c. Ethics in Billing

* The CRMC policies and procedures referenced herein are not intended to be all inclusive. Employees should become familiar with the policies that relate to his/her job requirements.