

<b>Hospital</b> Policy & Procedure		Title:		Number: <b>05-950-20</b>
Coverage: <b>All Employees, Contractors, and Agents</b>		<b>False Claims Recovery</b>		Source: <b>Administration &amp; Corporate Compliance</b>
				Approved: <b>EN/JF Audit Committee</b>
Date Issued: <b>08/06/2008</b>	Date Effective: <b>08/06/2008</b>	Supersedes: <b>01/01/2007</b>	Distribution: <b>Intranet, Internet, Leadership, Employee Handbook</b>	<b>Page 1 of 3</b>

## I. Purpose

To provide education to employees, contractors, and agents about false claims recovery in an effort to reduce fraud and false claims.

## II. Responsibility

### A. St. Joseph Health Services of Rhode Island

The Deficit Reduction Act of 2005, Section 6032, requires the Hospital and other entities that receive or make annual Medicaid payments of \$5 million or more to establish and make available policies with detailed information about:

- The federal False Claims Act and similar state laws
- The right to be protected as a whistleblower
- The Hospital's policies and procedures for detecting and preventing fraud, waste, and abuse in state and federal healthcare programs.
- Include a detailed discussion of the False Claims Acts, including the rights of whistleblowers in the Employee Handbook

### B. Leadership

It is the responsibility of the Leadership Group to have written policies on paper or electronically available to all employees, contractors, or agents.

### C. Contractors and Agents

Contractors and agents are defined as any contractor, subcontractor, or agent, or other person, who, on behalf of the Hospital, provides or authorizes providing health care items or services, performs billing or coding functions, or is involved in the monitoring of health care provided by the Hospital.

Per a memorandum dated December 13, 2006 from the Director of the Center for Medicare and Medicaid Services, this written policy must be disseminated to contractors and agents who must adopt this policy.

## III. False Claims Acts

### A. Federal False Claims Laws

The federal False Claims Act (31 U.S.C. § 3729), is a law that covers fraud involving federal contracts or federal health care programs, including the Medicare and Medicaid programs. The law allows private citizens ("qui tam relators" or "whistleblowers") who have evidence of fraud to initiate a lawsuit on behalf of the federal government. If the lawsuit is successful, the whistleblower may receive an amount ranging from 15 to 30 percent of the amount recovered, plus reasonable expenses such as attorney's fees.

The law covers a wide variety of conduct that leads to the submission of fraudulent claims, including:

1. Knowingly presenting, or causing to be presented to the Government a false claim for payment;
2. Knowingly making, using, or causing to be made or used, a false record or statement to get a false claim paid or approved by the government;
3. Conspiring to defraud the Government by getting a false claim allowed or paid;
4. Falsely certifying the type or amount of property to be used by the Government;
5. Certifying receipt of property on a document without completely knowing that the information is true;
6. Knowingly buying Government property from an unauthorized officer of the Government, and;
7. Knowingly making, using, or causing to be made or used a false record to avoid, or decrease an obligation to pay or transmit property to the Government.

While not all inclusive, examples of false claims include:

- Falsifying information and billing for services not medically necessary.
- Duplicate billing.
- Giving inducements in exchange for referrals for services.
- Failure to report overpayments.
- Billing for services not provided.
- Falsifying information to maximize payments.
- Billing separately for services that are bundled.

Fines and penalties for violation of this law include:

- Civil monetary penalties ranging from \$5,000 to \$10,000 for each false claim submitted.
- Payments of up to three times the amount of damages sustained by the government.
- Exclusion from participation in federal health care programs.

### **B. State False Claims Laws**

The Deficit Reduction Act provides a financial incentive for states to pass their own false claims legislation and entitles states with laws as strict as or tougher than the federal False Claims Act to a 10 percent increase in their share of Medicaid recoveries.

On July 24, 2008, The Office of Inspector General (OIG), for the Department of Health & Human Services, notified the State of Rhode Island that it has reviewed and determined that the "State False Claim Act", R.I. Gen. Laws §§ 9-1.1-1 through 9-1.1-8, effective February 15, 2008, meets the requirements of section 6031(b) of the Deficit Reduction Act.

## **IV. Whistleblower Protection**

### **A. Federal Whistleblower Laws**

In 1986, Congress added anti-retaliation protections to the False Claims Act (31 U.S.C. Sec. 3730(h))

The law provides protection against retaliation for any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in the terms and conditions of employment for the employees legal actions involving investigation, initiation, testimony, or assistance in an action filed or to be filed under the False Claims Act.

The protection against retaliation extends to whistleblowers whose allegations could legitimately support a False Claims Act case even if the case is never filed. The statute of limitations is six years in most jurisdictions.

The whistleblower plaintiff is entitled to all relief necessary to remain whole, including reinstatement with seniority, double back pay, interest, special damages sustained as a result of discriminatory treatment, and attorneys' fees and costs.

There are many other federal laws protecting whistleblowers or otherwise designed to protect workers from retaliation or other illegal treatment. However, the laws vary as to the proper procedure or intake agency for filing a complaint or charge. Some statutes do not permit a whistleblower to go directly to court but require an administrative pursuit. Some statutes designate a federal agency such as the Department of Labor/OSHA and others designate the EEOC as the intake office for claims. Some of the protection laws have statute of limitations as short as 30 days from the date of the alleged retaliation, so whistleblowers are cautioned not to delay filing a claim with the appropriate government official.

**B. State Whistleblower Protection Laws**

The Rhode Island Whistleblowers' Protection Act (R.I. General Law § 28-50-1 to § 28-50-9) protects employees from discharge, threat, or discrimination against compensation, terms, conditions, location, or employment privileges because an employee reports or is about to report a violation, or is requested to participate in an investigation, hearing, inquiry, or court action. If the employee knows or has reason to know that the report is false, there is no protection under this law.

Rhode Island's "State False Claim Act" provides relief, through action in the appropriate superior court, for any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee in furtherance of an action under the Act. Relief includes reinstatement with the same seniority status the employee would have had but for the discrimination, two (2) times 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 attorneys' fees.

**V. Policies and Procedures**

The Hospital's Corporate Compliance Program was approved in January 1998 by the Board of Trustees to insure St. Joseph Health Services of Rhode Island conducts its operations and provides services in a manner consistent with its Mission Statement, charitable purposes, and in compliance with all federal and state laws and regulations.

As established in the Code of Conduct Policy, No. 05-950-07, It is mandatory for any employee or member of the professional staff who becomes aware of an apparent violation, actual or threatened, of any St. Joseph policy, applicable law, regulation, or standard of conduct to report the situation to their immediate supervisor, or if appropriate, to the anonymous and confidential Network Hotline (1-877-888-0002). The Hospital has a strict Non-Retaliation Policy, No. 10-950-08, and will not take any adverse action against any employee or member of any professional staff of St. Joseph who reports, in good faith, any apparent violation, actual or threatened of any St. Joseph policy, applicable law, regulation, or standard of conduct.

The Hospital has various policies and procedures for detecting and preventing fraud, waste, and abuse. These policies are available on the Hospital's intranet or by leaving a message at 401-456-3623. The policies include:

- Background and Sanction Screening, Policy No.10-950-09
- Board of Trustees Audit Committee Charter, Policy No. 05-950-16
- Code of Conduct Policy, No. 05-950-07
- Conflict of Interest, Policy No.01-950-47
- Controlling the Introduction and Evaluation of New Products or Equipment, Policy No. 08-955-09
- Corporate Compliance Committee Charter, Policy No. 10-950-06
- Corporate Compliance Program, Policy No. 10-950-05
- Corrective Action, Policy No. 03-951-07
- Follow-up to the Network Hotline, Policy No. 01-950-142
- Gifts and Entertainment, Policy No. 03-950-148
- Hospital Property Removal Pass, Policy No. H-002
- Political Contributions, Policy No. CC-1999-5
- Referrals and Kickbacks, Policy No. 01-950-100
- Security Incidents Reporting and Investigation, Policy No. 03-839-94

Employees are responsible for complying with all applicable federal and state laws and regulations and professional standards governing St. Joseph Health Services' operations and its delivery of health care services and products.