

**TITLE: FRAUD, WASTE, AND ABUSE**

**PURPOSE:** The Harris County Hospital District implemented a Corporate Compliance Program in an effort to establish effective internal controls that promote adherence to applicable federal and state laws and the program requirements of federal, state, and private health plans. The Deficit Reduction Act of 2005 (DRA) Section 6032 requires that any entity receiving or making annual Medicaid payments exceeding five (5) million dollars establish and disseminate to all of its employees (including management) and contractors written policies that set forth the entity's policies and procedures for preventing and detecting fraud, waste, and abuse in federal health care programs and that describe the federal and state false claims laws. This policy summarizes Harris County Hospital District's existing policies and procedures for detecting and preventing fraud, waste, and abuse, including how to report concerns internally.

**POLICY STATEMENT:**

The Harris County Hospital District (HCHD) is committed to complying with all applicable laws and regulations, including the Deficit Reduction Act, the Federal False Claims Act, and the Texas Medicaid Fraud Prevention Act. The HCHD supports the efforts of federal and state authorities in identifying incidents of fraud, waste, and abuse and has implemented procedures to prevent and detect fraud, waste, and abuse. This policy provides an overview of applicable federal and state laws used by the government to enforce compliance with federal and state health care program requirements, including the Federal Civil False Claims Act and Program Fraud Civil Remedies Act, and the Texas Medicaid Fraud Prevention Law.

**POLICY ELABORATION****I. BACKGROUND:**

- A. The federal government and the state of Texas have enacted criminal, civil, and administrative laws that prohibit the submission of false or fraudulent claims and the making of false statements to the federal and state governments. These laws contain various criminal, civil, and administrative penalties and provide governmental authorities with broad authority to investigate allegations of fraud, waste, and abuse and to enforce compliance with federal and state health care program requirements. The Federal False Claims Act (FCA) imposes liability on any person who submits a claim to the federal government that he or she knows (or should know) is false.

B. The FCA provides that anyone 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. Conspires to commit a violation of the FCA;
4. Has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;
5. 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, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government;
  - a. Is liable to the United States Government for a civil penalty of not less than five thousand dollars (**\$5,000**) and not more than ten thousand dollars (**\$10,000**), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, **plus 3 times the amount of damages** which the Government sustains.

“Knowingly” in the context of the FCA means:

- i. Actually knowing that a claim or statement is false;
- ii. Deliberately ignoring whether the claim or statement is true or false;
- iii. Recklessly disregarding whether the claim or statement is true or false; or
- iv. Requires no proof of specific intent to defraud.

The FCA also provides that private parties may bring an action on behalf of the United States. These private parties, known as “*qui tam* relators,” may share in a percentage of the proceeds from an FCA action or settlement.

The FCA provides protection to *qui tam* relators (“whistleblowers”) who are discharged, demoted, suspended, threatened, harassed, or in any other manner

discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA.

- C. *The Texas Medicaid Fraud Prevention Law* (FPL) is substantially similar to the Federal False Claims Act. The actions that trigger civil and criminal penalties under the Texas FPL generally mirror those of the federal FCA, and include making a false statement or concealing information that affects the right to a Medicaid benefit or payment and conspiring to defraud the state by obtaining an unauthorized payment from the Medicaid program or its fiscal agent. In addition, under the FPL, a person may also be liable if he presents a claim for payment under the Medicaid program for a product or service that was rendered by an unlicensed provider or that has not been approved by the patient's treating healthcare practitioner.

The damages and penalties for violating the FPL include:

1. Payback to the state with interest;
2. Civil penalties of (a) not less than five thousand dollars (**\$5,000**) or more than fifteen thousand dollars (**\$15,000**) per violation if the unlawful act results in injury to an elderly person, a disabled person, or a person younger than eighteen (18) years of age, or (b) not less than five thousand dollars (**\$5,000**) or more than ten thousand dollars (**\$10,000**) for each violation that does not result in injury to a person as described above, ***plus two (2) times the amount of the payment*** or the value of benefit received.

Like the federal FCA, the FPL has a provision that permits private individuals ("whistleblowers") to bring an action on behalf of the state and receive a portion of the recovery if the case is successful. The private individual's share could be reduced or eliminated altogether, however, if the individual planned and initiated the activity upon which the lawsuit was based or if the individual is convicted of criminal conduct arising from his role in the illegal activity. Like the FCA, the FPL includes provisions to prevent employers from retaliating against employees for their involvement in FPL actions.

- D. Examples of Fraud, Waste, or Abuse include:

1. A Qualified Medical Practitioner who submits a claim to Medicare for payment of medical services that she knows were not provided.

2. A hospital that disregards reports by hospital billing personnel that claims for services to Medicare or Medicaid are not supported by medical documentation, and continues to submit them.
3. A Qualified Medical Practitioner who submits a claim to Medicare or Medicaid that is coded for services at a higher level than the services actually provided.

## II. PROCEDURES:

- A. All employees and contractors must conduct themselves in an ethical and legal manner as defined in the HCHD Code of Conduct.
- B. All employees, contractors and agents have an affirmative duty to report potential or suspected incidents of fraud and abuse, and other wrongdoing.
- C. The Senior Vice President of Corporate Compliance, i.e., Corporate Compliance Officer (CCO), in consultation with the Harris County Attorney's Office, has responsibility for receiving and acting upon all information suggesting the existence of possible fraud, waste, abuse or other wrongdoing, and for directing or transferring to appropriate departments all investigations arising from this information
- D. HCHD has implemented several policies and procedures supporting its efforts to prevent and detect violations of federal and state health care program requirements and HCHD's own policies and procedures, including the following:

*Code of Conduct.* HCHD has implemented a Code of Conduct as a foundation document for its Corporate Compliance Program that applies to everyone doing business with HCHD. The Code of Conduct is made available on the Internet and Intranet. Everyone, i.e., members of the Board of Managers, employees, medical staff, contractors and vendors must abide by the Code.

*Open Door policy and Affirmative Duty to Report.* HCHD has an Open Door policy that encourages employees, contractors, and agents to report problems, concerns, and perceived violations. All employees, contractors, agents, medical staff as well as the members of the Board of Managers are responsible for reporting potential or suspected incidents of fraud and abuse or other wrongdoing. Employees, contractors and agents are encouraged to discuss questions or concerns with the direct supervisor, contact a member of the HCHD management team, the Harris County Attorney's

Office or Human Resources, calling the Corporate Compliance Officer directly, or calling the Compliance Hotline. The affirmative duty to report suspected violations of law, Code of Conduct, or compliance policies is emphasized in the Code of Conduct.

*HCHD Compliance Hotline.* HCHD has established a confidential telephone hotline. The Compliance Hotline is toll-free telephone number that is available to everyone twenty-four hours a day by calling **1-800-500-0333**. Employees and medical staff are encouraged to use the Compliance Hotline. Callers to the Hotline may remain anonymous or may seek confidentiality. In addition, a PO Box is available for reporting concerns anonymously to the Corporate Compliance Department. A 4-step reporting process that includes the Compliance Hotline is elaborated in the Code of Conduct.

*Non-Retaliation Policy.* HCHD is committed to protecting employees, medical staff, and others who report problems and concerns in good faith from retaliation and retribution. It is HCHD policy that no disciplinary action or retaliation will be taken against anyone for reporting a perceived issue, problem, concern, or violation to management, Human Resources, Corporate Compliance, Joint Commission, or the Compliance Hotline “in good faith” or acting as a whistleblower pursuant to the Federal False Claims Act, State False Claims act, or other law.

*Responding to Complaints and Allegations.* Upon receipt of a report or notice of suspected noncompliance with any criminal, civil, or administrative law, the CCO will conduct an “Initial Inquiry” into the alleged noncompliance. If fraud is suspected, a supervisor or manager should gain prior approval from the Harris County Attorney’s Office prior to directly confronting an employee related to an alleged fraud or violation of law. If the Initial Inquiry indicates that there is sufficient evidence of possible fraud or noncompliance, an investigation will be conducted in accordance with HCHD policy. Upon completion of an investigation, appropriate action shall be taken for corrective action measures to prevent similar problems from occurring in the future. Additional information on the conduct of investigations is included in the “Corporate Compliance Department and Legal Counsel Protocols” and the “Corporate Compliance Department Coordination with Human Resources” policies.

*Enforcement and Discipline.* HCHD will take appropriate and consistent disciplinary and enforcement action (i.e., corrective action plans, employment discipline up to and including termination, or contract termination) against employees, providers, subcontractors, consultants, and agents whose conduct is not in compliance with

HCHD's compliance policies, the Code of Conduct, or any federal or state law or regulation.

*Training and Education.* The development and implementation of regular, effective education and training programs for employees is an integral part of the HCHD Compliance Program. All HCHD employees receive an introduction to the Corporate Compliance Program during new employee orientation and annually thereafter, which includes the False Claims Act, fees and fines and whistleblower rights. In addition, some employees receive specialized compliance education pertaining to their job function and responsibilities. Additional information about the HCHD compliance and training program is included in the Compliance Education and Training Policy.

*Cooperation with Investigations.* It is HCHD's policy to cooperate with federal and state agencies that conduct health care fraud and abuse investigations.



**REFERENCES/BIBLIOGRAPHY:**

HCHD Code of Conduct

HCHD Compliance Hotline policy

HCHD Corporate Compliance Department and Legal Counsel Protocols policy

HCHD Corporate Compliance Department Coordination with Human Resources policy

False Claims Act, 31 U.S.C., Chapter 37, as amended  
42 CFR Part 1003, *Civil Money Penalties, Assessments and Exclusions*,

Program Fraud Civil Remedies Act of 1986, 31 USC Chapter 38  
45 CFR Part 79, *Program Fraud Civil Remedies*

Texas Human Resources Code, Chapter 36, *Medicaid Fraud Prevention*  
1 TAC, Part 15, Chapter 371, *Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity*

Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410).

**OFFICE OF PRIMARY RESPONSIBILITY:**

HCHD Senior Vice President of Corporate Compliance

**REVIEW/REVISION HISTORY:**

Effective Date	Version# (If Applicable)	Review or Revision Date (Indicate Reviewed or Revised)	Reviewed or Approved by: (If Board of Managers Approved, include Board Motion#)
		Reviewed 11/12/2007	Vice President of Corporate Compliance
		Approved 11/20/2007	HCHD Policy Review Committee
12/6/2007			HCHD Board Of Managers (No. 07.12-584)
		Revised 12/21/2009	Sr. Vice President of Corporate Compliance
		Approved 02/02/2010	HCHD Policy Review Committee