ORGANIZATION POLICY

POLICY TITLE: INFORMATION ABOUT COMBATING FRAUD, WASTE AND ABUSE AND THE ABILITY OF EMPLOYEES TO REPORT WRONGDOING

POLICY NUMBER: 1223

POLICY: Pursuant to the United States Code, it is the policy of Onslow Memorial Hospital ("OMH") to provide information to all employees, contractors and agents of OMH to work to eliminate and prevent fraud, waste, and abuse with respect to payments to OMH from federal or state programs.

This policy shall be distributed to all current and new employees and to all current and future contractors of OMH, and shall be included in the *Onslow Memorial Hospital Employee Handbook.*

The Federal False Claims Act

The Federal False Claims Act ("FCA") prohibits knowingly making a false claim against the government, including, but not limited to, the submission of false claims by health care providers for payment by Medicare, Medicaid and other federal and state health care programs. The FCA prohibits, among other things:

(1) Knowingly overcharging for a product or service;

(2) Knowingly delivering less than the promised amount or type of goods or services;

(3) Knowingly underpaying money owed to the government; and

(4) Knowingly charging for one product/service while providing another.

"Knowingly" means that a person, with respect to the information: (1) has actual knowledge of the information; (2) acts in deliberate disregard of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information. No proof of the specific intent to defraud is required.

Penalties: Persons or organizations may be fined a civil penalty of not less than $5,000 nor more than $10,000, plus three (3) times the amount of damages sustained by the government for each false claim.

Enforcement: The United States Attorney General may bring civil actions for violations of the False Claims Act. The False Claims Act also allows private individuals to bring "qui tam" (also referred to as "whistleblower") actions for violations of the Act.

Qui Tam (Whistleblower) Provisions: Any person (called a *qui tam* relator or whistleblower) may bring an action under this law in federal court. After the suit is filed, the government is given the opportunity to investigate the complaint and may then pursue the matter, or decline to proceed. If the government declines to proceed, the person who brought the action has the right to proceed on their own in federal court.

Whistleblower Protections: 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 for any job related losses resulting from any such discrimination or retaliation.

Program Fraud Civil Remedies Act of 1986

The Program Fraud Civil Remedies Act ("PFCRA") creates administrative remedies for making false claims separate from and in addition to the judicial or court remedy for false claims provided by the FCA.

The PFCRA is quite similar to the FCA in many respects, but is somewhat broader and more detailed, with differing penalties. The Act deals with making, presenting or submitting a false, fictitious or fraudulent claim to the Department of Health and Human Services.

Specifically, a person violates this PFCRA if they know or have reason to know they are submitting a claim that is:

(1) False, fictitious or fraudulent; or

(2) Includes or is supported by written statements that are false, fictitious or fraudulent; or

(3) 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

(4) For payment for property or services not provided as claimed.

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.

North Carolina Medical Assistance Provider False Claims Act

The North Carolina General Assembly has enacted the North Carolina Medical Assistance Provider False Claims Act, a statute directed at prosecuting Medicaid fraud. The statute carries a civil penalty. There is also a form of whistleblower protection for employees who provide information to state prosecutors or otherwise report violations of the statute.

North Carolina General Statute Section 108A-70.12 provides that is unlawful for any provider of medical assistance under the Medical Assistance Program to:

(1) Knowingly present, or cause to be presented to the Medical Assistance Program a false or fraudulent claim for payment or approval; or

(2) Knowingly make, use, or cause to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Medical Assistance Program.

Each claim presented or caused to be presented in violation of this section is a separate violation.

Penalties include a civil penalty of not less than five thousand dollars ($5,000) and not more than ten thousand dollars ($10,000) plus three times the amount of damages which the Medicaid Assistance Program sustained because of the act of the provider.

Whistleblower Protections: In the absence of fraud or malice, no person who furnishes information to officials of North Carolina responsible for investigating false claims violations shall be liable for damages in a civil action for any oral or written statement made or any other action that is necessary to supply information required by law.

The law provides that any employee of a provider who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the employee's employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under the North Carolina Medical Assistance Provider False Claims Act shall be entitled to reinstatement with the same seniority status as the employee would have had but for the discrimination, two 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.

False Statements to Private Insurers

North Carolina General Statute Section 58-2-161 provides that it is unlawful for individuals to submit false information to private insurance providers. The statute provides:

"Any person who, with the intent to injure, defraud, or deceive an insurer or insurance claimant:

(1) Presents or causes to be presented a written or oral statement, including computer-generated documents as part of, in support of, or in opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning any fact or matter material to the claim, or

(2) Assists, abets, solicits, or conspires with another person to prepare or make any written or oral statement that is intended to be presented to an insurer or insurance claimant in connection with, in support of, or in opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning a fact or matter material to the claim, is guilty of a Class H felony. Each claim shall be considered a separate count."

The Role of Federal and State 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 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 are pursued in three available forums: criminal, civil and administrative. This provides a broad spectrum of remedies to battle this problem.

Moreover, whistleblower protections for individuals who report, in good faith, suspected incidents of fraud, waste and abuse further encourages those on the front lines to help stop and prevent improper activities affecting Medicare and Medicaid.

OMH's Existing Policies and Procedures for Detecting and Preventing Fraud, Waste and Abuse

Onslow Memorial Hospital Organizational Policy 1207 *Prevention of Fraud, Waste and Abuse* outlines the OMH's commitment to comply with all applicable laws, regulations and ethical business practices. This policy sets out OMH's goal of creating a culture of compliance, where everyone is encouraged to promptly report concerns and take appropriate corrective action for any known or suspected fraud waste and abuse.

This policy and others regarding OMH's commitment to eliminating and preventing fraud, waste and abuse can be found in Chapter XII of OMH's Organizational Policies. These Compliance Policies can be accessed via OMH's administrative office as well as OMH's Compliance website: www.omhcompliance.org. In addition, employees who know or suspect they are aware of fraud, waste and abuse are encouraged to advise their supervisor or call OMH's toll free Compliance Hotline (866) 631-5718. Callers to the Hotline can remain anonymous.

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