

Policy / Procedure:

## **The Prevention and Detection of Health Care Fraud, Waste and Abuse**

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**KEY TERMS:** fraud, waste, abuse, compliance, integrity, Integrity Help Line

### **I. PURPOSE:**

To help our employees, agents and contractors understand the methods to prevent and detect fraud, waste and abuse, including the basic provisions of the federal and state laws related to the submission of false claims for reimbursement and the right of individuals to report potential violations of these laws.

### **II. SCOPE:**

This policy applies to all Carilion Clinic entities and locations.

### **III. DEFINITIONS:**

**“Agent” or a “contractor”** includes any contractor, subcontractor, agent or other persons who furnishes or otherwise authorizes the furnishing of health care items or services, performs billing or coding functions, or is involved in the monitoring of health services provided by Carilion Clinic.

### **IV. PROCEDURE:**

#### **I. Carilion Clinic’s Organizational Integrity & Compliance Program**

Carilion Clinic’s Organizational Integrity & Compliance Program (“Program”) is a key component in our strategy to prevent and detect fraud, waste and abuse throughout our health system. Refer to the Carilion Clinic “Code of Excellence”, the Program’s compliance plan and documents, as well as related policies and procedures for more information on the Program. Employees, agents and contractors are encouraged to contact their supervisor, administrative contact or the Organizational & Compliance Department for additional information.

Employees, agents and contractors are required to report any actual or potential integrity or compliance concerns immediately. Reports may be made to:

- Your supervisor or Carilion Clinic administrative contact;

- Members of the management team;
- The Carilion Clinic Organizational Integrity & Compliance Department (540-510-4573 or [compliance@carilionclinic.org](mailto:compliance@carilionclinic.org));
- Carilion Clinic's Chief Compliance Officer;
- Carilion Clinic's Human Resources Department; or
- Via Carilion Clinics' Integrity Help Line: Reports will not be traced and confidentiality of the reporter will be preserved up to the limits of the law and to the degree possible given the need to fully investigate the concern and fulfill any legal reporting obligations. Anonymous reports can be made. Reports can be made via phone at 1-844-732-6232 or on-line at [www.CarilionClinicIntegrity.org](http://www.CarilionClinicIntegrity.org).

All reported concerns will be investigated in a timely manner.

Carilion Clinic has a non-retaliation policy. Any retaliatory or discriminatory action against an employee, agent or contractor who reports actual or potential concerns in good faith will not be tolerated. If you believe you have been subject to retaliatory or discriminatory action because of reporting an integrity or compliance concern in good faith, please report the action immediately to any of the persons listed above.

## **II. Federal and State Laws**

The government has taken steps to prevent and detect fraud, waste and abuse in the U.S. health system. In accordance with the Deficit Reduction Act of 2005, information regarding the federal and state false claims laws and related qui tam/whistleblower provisions will be communicated to all employees, agents and contractors. In addition, this information is shared through the distribution of the Carilion Clinic Code of Excellence.

### **A. Federal Laws**

#### **1. The Federal False Claims Act ("FCA")**

The FCA is a law that deals with fraud in any federally funded program or contract. Examples of federal programs covered by the FCA are Medicare and Medicaid.

##### **a. General Provisions**

The FCA establishes liability for any person who knowingly presents or causes to be presented a false or fraudulent claim to the U.S. government for payment. A "claim" includes any request or demand for money that is submitted to the U.S. government or its contractors. The FCA also applies when a person obtains money from the federal government to which he may not be entitled, and then uses false statements or records in order to retain the money. The term "knowingly" is defined as:

- Having actual knowledge of false information in the claim
- Acting in deliberate ignorance of truth or falsity of the information in a claim
- Acting in reckless disregard of the truth or falsity of the information in a claim

The FCA does not require proof of a specific intent to defraud the U.S. government.

Health care providers who violate the FCA may be subject to civil monetary penalties ranging from \$5,500 to \$11,000 for each false claim that is submitted. Penalties of up to three times the amount of damages may also be ordered. The provider may also be excluded from participating in federal health care programs.

#### **b. FCA Qui Tam “Whistleblower” Provisions**

The FCA allows any person with actual knowledge of an allegedly false claim to file a lawsuit on behalf of the U.S. government. Such persons are called “whistleblowers.” In order to file a qui tam suit, a whistleblower must meet several requirements as outlined below.

The whistleblower must file his or her lawsuit on behalf of the government in federal district court. Once filed, the lawsuit is kept confidential or “under seal” while the government investigates the allegations and decides how to proceed. If the government decides that the lawsuit has merit, it may intervene. In this case, the U.S. Department of Justice will try the case. The government may decide not to intervene. In this case, the whistleblower can continue with the lawsuit on his or her own.

If the lawsuit is successful, the whistleblower may receive an award ranging from 15 percent to 30 percent of the amount recovered. The whistleblower may also be entitled to reasonable expenses, such as attorney fees. If a court finds that the whistleblower planned or initiated the false claims, the award may be decreased. If the whistleblower is convicted of crimes related to the false claims, no award will be given.

The FCA contains important protections for whistleblowers who file claims in good faith. Depending on the circumstances, these protections may not apply to whistleblowers who file frivolous claims, file claims in bad faith or were directly involved in certain aspects of these claims. Retaliatory conduct against an employee who files an FCA lawsuit may entitle the employee to additional relief, including reinstatement of employment, back pay and compensation for costs or damages.

### **2. The Program Fraud Civil Remedies Act of 1986 (“PFCRA”)**

The PFCRA provides administrative remedies for making false claims and false statements in connection with claims to designated federal agencies, including the U.S. Department of Health and Human Services. These penalties are separate from and in addition to any liability that may be imposed under the FCA.

The PFCRA imposes liability on those who file a claim that they know or have reason to know the claim itself or supporting documentation is false, fictitious or fraudulent, including any omission of pertinent facts.

The remedies include an assessment of twice the amount of any unlawful claims, per claim civil monetary penalties and exclusion for government-funded healthcare programs.

### **3. The American Recovery and Reinvestment Act of 2009 (“ARRA”)**

ARRA is a federal law that is designed to prevent the misuse of stimulus package funds and extends “whistleblower” protections to employees who reasonably believe they are being retaliated against for reporting misuse of ARRA funds by a non-federal employer. These penalties are separate from and in addition to any liability that may be imposed under the FCA.

ARRA prohibits retaliation against an employee who disclosed information that the employee reasonably believes constitutes evidence of:

- Gross mismanagement of a contract or grant relating to stimulus funds;
- Gross waste of stimulus funds;
- Substantial or specific danger to public health or safety related to implementation of stimulus funds;
- Abuse of authority related to implementation or use of stimulus funds; or
- Violations of law, rule, or regulation related to a contract or grant relating to stimulus funds.

The above allegations must have been reported to at least one of the following to be granted possible protection: a person with supervisory authority over the employee (or another employee of the employer who has authority to investigate, discover or terminate misconduct); an Office of Inspector General; the Recovery Accountability and Transparency Board; the Comptroller General; a member of Congress; a State or Federal regulatory or law enforcement agency; a court or grand jury; or a Federal agency head or his/her representatives.

Retaliatory conduct against a person protected under ARRA provisions may result in a federal agency order for reinstatement, back pay, employment benefits, compensatory damages and/or attorney fees.

### **4. Other Federal Laws**

Federal law also contains criminal sanctions for false claims and statements that may be applicable to identified instances of health care fraud.

#### **B. State Laws**

##### **1. The Virginia Fraud Against Taxpayers Act (“FATA”)**

FATA is a law that imposes liability on those who knowingly present false or fraudulent claims for payment with Commonwealth funds, misappropriate Commonwealth property or deceptively avoid obligations to pay the Commonwealth. FATA applies to state programs such as Medicaid.

##### **a. General Provisions**

FATA establishes liability for any person who knowingly presents or causes to be presented a false or fraudulent claim for payment to the Commonwealth. A “claim” means an attempt to cause the Commonwealth to make a payment. Liability may also occur if one avoids or decreases an obligation to pay or transmit money or property to the Commonwealth.

The term “knowingly” is defined as:

- Having actual knowledge of false information in the claim
- Acting in deliberate ignorance of truth or falsity of the information in a claim
- Acting in reckless disregard of the truth or falsity of the information in a claim

The FATA does not require proof of a specific intent to defraud the Commonwealth.

Those who violate the FATA may be subject to civil penalties. Monetary penalties of not less than \$5,500 and not more than \$11,000, plus three times the amount of damages sustained by the Commonwealth applies.

#### **b. FATA Qui Tam Whistleblower Provisions**

FATA allows any person to file a civil lawsuit on behalf of the Commonwealth. Such persons are called “whistleblowers.”

The whistleblower must file his or her lawsuit on behalf of the Commonwealth. If the government decides that the lawsuit has merit, it may intervene. In this case, the attorney general will prosecute the case. The whistleblower has the right to continue as a party to the action, subject to certain limitations. The government may decide not to intervene. In this case, the whistleblower can continue with the lawsuit on his or her own. The Commonwealth reserves the right to intervene at any time.

If the lawsuit is successful, the whistleblower may receive an award ranging from 15 and 25 percent of any recovery to the state if the Virginia Attorney General intervenes in the matter. If the whistleblower successfully prosecutes the case on his own, he may receive between 25 and 30 percent of the award. The court may reduce the value of the award if the whistleblower planned or initiated the fraud, or if the action is largely based on information disclosed in the media or public hearings.

FATA also protects whistleblowers from retaliation for filing a claim or assisting the Commonwealth. Retaliatory conduct may entitle the employee, contractor or agent to additional relief, including reinstatement, back pay and compensation for costs or damages.

## **V. OTHER ISSUES / CONCERNS:**

This policy replaces Carilion Clinic Policy “False Claims Statute Policy” (originated 12/06).

References:

- The American Recovery and Reinvestment Act of 2009 (Public Law P111-5 §1553)
- Deficit Reduction Act of 2005 (Public Law 109-171)
- Federal False Claims Act (31 U.S.C. §§ 3729-3811)

- Program Fraud Civil Remedies Act (31 U.S.C. §§3801-3811)
- Virginia Fraud Against Taxpayers Act (Virginia Code §8.01-216.1 et seq.)

### Approvals

Name	Title	Dept./Committee	Date
Vicki Clevenger	VP, Audit & Compliance, Chief Compliance Officer	Organizational Integrity & Compliance	9/18/2015