Policy
It is the policy of Hackensack University Medical Center to obey all federal and state laws, to implement and enforce procedures to detect and prevent fraud, waste and abuse regarding payments to Hackensack University Medical Center from federal or state healthcare programs, and to provide protections for those who report actual or suspected wrongdoing.

Purpose
To satisfy the requirements of Section 6032 of the Deficit Reduction Act of 2005 by communicating certain federal and state laws relating to liability for false claims and statements; protections against reprisal or retaliation for those who report wrongdoing; and Hackensack University Medical Center policies and procedures to detect and prevent fraud, waste and abuse.

Administration
The Senior Vice President and General Counsel and the Vice President, Chief Compliance Officer will be responsible for the implementation and subsequent revisions to this policy.

Hackensack University Medical Center's Policies and Procedures
To assure that Hackensack University Medical Center meets its legal and ethical obligations, obeys all federal and state laws, implements and enforces procedures to detect and prevent fraud, waste and abuse, the Medical Center has implemented a Corporate Compliance Program. Established in 1998, the program is designed to comply with OIG Compliance Program Guidance for Hospitals. The program operates under the Hackensack University Medical Center Compliance Plan and establishes priorities under an annual Work Plan. The Executive Leadership and Board of Governors of Hackensack University Medical Center oversee the program through regular reports.

In order to effectively implement the Compliance Program, the Medical Center requires that any employee who reasonably suspects or is aware of the preparation or submission of a false claim or report or any other potential fraud, waste, or abuse, take the following steps:

1. Report such information to his/her supervisor or Hackensack University Medical Center's compliance officer immediately. Employees may report such concerns in person, directly to the compliance officer at (201) 996-5611 or through the organization's compliance hotline at (888) 411-0012.

- Any employee of Hackensack University Medical Center who reports such information will have the right and opportunity to do so anonymously (see HR Policy 1043-20-19 – Hot Line Operations).

- In addition, the employee will be protected against retaliation for coming forward with such information both under Hackensack University Medical Center's internal compliance policies and procedures and Federal and State law (see HR Policy 1043-20-20 – Non-retaliation/Retribution for Reporting)

- However, Hackensack University Medical Center retains the right to take appropriate action against an employee who has participated in a violation of Federal or State law or hospital policy (see HR Policy 1043-20-17 - Code of Conduct).

2. If an employee believes that Hackensack University Medical Center is not responding to his or her report within a reasonable period of time, the employee should bring these concerns about Hackensack University Medical Center's perceived inaction to Hackensack University Medical Center's compliance officer.

3. Employees should remember that failure to report and disclose or assist in an investigation of fraud and abuse is a breach of the employee's obligations to Hackensack University Medical Center and may result in disciplinary action (see HR Policy 1043-20-17 - Code of Conduct).

After an employee report has been filed, Hackensack University Medical Center will take immediate action investigate the employee report based on the information provided. Hackensack University Medical Center may request additional information from the employee in order to complete its investigation. Once the investigation is complete Hackensack University Medical Center will take all necessary action actions in order to correct, mitigate and/or report the false claim or report or any other identified fraud, waste, or abuse.

Explanation of Laws: Set forth below are summaries of certain statutes that provide liability for false claims and statements. These summaries are not intended to identify all applicable laws, but rather to outline some of the major statutory provisions as required by the Deficit Reduction Act of 2005.Federal Claims Laws

The Role of Federal and State Laws in Preventing Fraud, Waste, and Abuse: The Centers for Medicare and Medicaid Services (CMS) defines "fraud" as the intentional deception or misrepresentation that an individual knows to be false (or does not believe to be true) and makes, knowing that the deception could result in an unauthorized benefit to himself or another person. CMS defines "abuse" as incidents or practices of providers that are inconsistent with sound medical practice and may result in unnecessary costs, improper

payment, or the payment for services that either fail to meet professionally recognized standards of care or are medically unnecessary.

The Federal Government and the State of New Jersey have enacted criminal and civil laws pertaining to the submission of false or fraudulent claims for payment or approval to the federal and state governments and to private payors. These false claims laws, which provide for criminal, civil, and administrative penalties, provide governmental authorities with broad authority to investigate and prosecute potentially fraudulent activities, and also provide anti-retaliation provisions for individuals who make good faith reports of waste, fraud, and abuse.

A. Federal Civil False Claims Act

The **Civil False Claims Act** (31 U.S.C. §3729 *et seq.*) is a 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 other fraudulent acts enumerated in the statute.

The term **"knowingly"** as defined in the Civil False Claims Act ("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 in 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.

Potential civil liability under the FCA currently includes penalties of between five thousand five hundred and eleven thousand per claim, treble damages, and the costs of any civil action brought to recovery such penalties or damages.

The **Attorney General of the United States** is required to diligently investigate violations of the FCA, and may bring a civil action against a person. Before filing suit the Attorney General may issue an investigative demand requiring production of documents and written answers and oral testimony.

The FCA also provides for **Actions by Private Persons** (*qui tam* lawsuits) who can bring a civil action in the name of the government for a violation of the Act. Generally, the action may not be brought more than six years after the violation, but in no event more than ten. When the action is filed it remains under seal for at least sixty days. The United States 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 private party 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 fifteen to twenty-five per cent of the proceeds of the action or settlement. If the *qui tam* plaintiff proceeds with the action without the government, the plaintiff may receive twenty-five to thirty per cent of the recovery. In either case, the plaintiff may also receive an amount for reasonable expenses plus reasonable attorneys' fees and costs.

If the civil action is frivolous, clearly vexatious, or brought primarily for harassment, the plaintiff may have to pay the defendant its 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, no share will be awarded the plaintiff.

Whistleblower Protection and Anti-Discrimination

The Civil False Claims Act also provides for protection for employees from retaliation. An employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in terms and conditions of employment because of lawful acts conducted in furtherance of an action under the FCA may bring an action in Federal District Court seeking reinstatement, back pay plus penalties and interest, and other enumerated costs, damages, and fees.

Hackensack University Medical Center's Corporate Compliance Program and Code of Conduct place an affirmative duty on its employees to report action or behavior that violate policy and procedure or may violate law in some manner. Employees are encouraged to use chain of command in reporting their concerns, however employees may also report directly to the Corporate Compliance Department or to the Compliance Hotline. The Medical Center has embraced a policy of non-retaliation or retribution for reporting of issues (see HR Policy 1043-20-20 – Non-retaliation/Retribution for Reporting and HR Policy 1043-20-1 – C.E.P.A.)

B. Federal Program Fraud Civil Remedies Act of 1986

The **Program Fraud Civil Remedies Act of 1986** ("Administrative Remedies for False Claims and Statements" at 38 U.S.C. §3801 *et seq.*) is a statute 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 Department of Health and Human Services). These penalties are separate from and in addition to any liability that may be imposed under the Federal False Claims Act.

The term **"knows or has reason to know"** is defined in the Act as 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. No proof of specific intent to defraud is required.

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.

The authority, i.e., federal department, may investigate and with the Attorney General's approval commence proceedings if the claim is less than one hundred and fifty thousand dollars. A hearing must begin within six years from the submission of the claim. The Act allows for **civil monetary sanctions** to be imposed in administrative hearings, including penalties of five thousand five hundred dollars per claim and an assessment, in lieu of damages, of not more than twice the amount of the original claim.

C. The New Jersey Medical Assistance and Health Services Act

The criminal provisions of the **NJ Medical Assistance and Health Services Act** (NJSA 30:4D-17 (1) – (d)) provides for the imposition of penalties not more than $10,000 or imprisonment of not more than 3 years or both, for a conviction of willfully receiving, in the case of recipients, or payments in the case of providers, to which a person is not entitled.

The civil provisions of the **NJ Medical Assistance and Health Services Act** (NJSA 30:4D-17(e) – (i)) allows for the imposition of civil penalties of payment of interest on the amounts of excess benefits or payments made, payment of up to three time the amount of excess benefits or payments made and payment in the amount of $2000 for each excessive claim for assistance, benefits or payments

D. The New Jersey Health Care Claims Fraud Act

Health Care Claims Fraud Act (N.J.S.A. 2C:21-4.2 and 4.3; N.J.S. 2C:51-5), provides for automatic permanent forfeiture of health care licenses for those convicted of health care claims fraud in the second degree, and a one-year suspension for those convicted of health care claims fraud in the third degree. The Act also provides for imprisonment of up to 10 years for fraudulent claims submitted for professional services and payment of fines up to $150,000 or up to 5 times the amount of the fraudulent claim.

E. The New Jersey False Claims Act

The NJ False Claims Act amends the New Jersey Medicaid Statute, NJSA 30:4D-17(e), and authorizes the NJ Attorney General and whistleblowers to initiate false claims litigation similar to what is authorized under the Federal False Claims Act, and has similar whistleblower protections. The act also provides that violations of the NJ False Claims Act give rise to liability under NJSA 30:4D-17(e) and also amends the NJ Medicaid statute to increase the false claim civil penalties under NJSA 30:4D-17(e)(3) to the same level provided for under the Federal False Claims Act, currently between $5,500 and $11,000 per false claim.

References:
Deficit Reduction Act of 2005, S. 1932 (February 8, 2006)
Federal False Claims Act, 31 U.S.C. §3729 – 3733
Federal Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 – 3812
New Jersey Medical Assistance and Health Services Act – Criminal Penalties, N.J.S.A. 30:4D-17(a) – (d)
New Jersey Medical Assistance and Health Services Act – Civil Remedies, N.J.S.A. 30:4D-7.h.; N.J.S. 30:4D-17(e) – (i); N.J.S. 30:4D-17.1.a.
Health Care Claims Fraud Act, N.J.S.A. 2C:21-4.2 and 4.3; N.J.S. 2C:51-5.
Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq.
New Jersey False Claims Act, P.L.. 2007, C. 265

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