

	Detecting and Preventing Fraud, Waste and Abuse & Whistleblower Protection Policy	
Office of Compliance and Integrity (OCI) Policy Level: I Policy Number: HHC-C03	Original Date: October 3, 2012 Revision Date: May, 2020 Replaces Policies: HHC-C03 Preventing Fraud, Waste and Abuse HHC-C04 Non-Retaliation Policy	Approved By: <u>Audit and Compliance Committee of the Board</u>

Purpose:

The purpose of this policy is to encourage participation in the Hartford HealthCare (HHC) compliance program and facilitate, without fear of Retaliation, and the Good Faith reporting of Wrongful Conduct. This policy also seeks to explain the rights of whistleblowers and the protections afforded to them under HHC policy and applicable state and federal law.

Scope:

This Policy applies to all members of the HHC Community.

Policy:

It is the policy of Hartford HealthCare (HHC) to comply with all applicable federal and state laws pertaining to fraud, waste and abuse in federal health care programs. HHC will broadly disseminate this information so that all employees, contractors and agents become aware of laws regarding fraud and abuse and false claims allowing them to identify, report and work to resolve any identified issues in a timely manner. HHC will not tolerate retribution, harassment, intimidation or any other form of Retaliation against any individual that initiates a report or complaint in Good Faith.

Procedures:

I. Responsibilities.

- A.** It is the responsibility of the HHC Community to:

1. be aware of, and understand, federal and state false claims statutes and the role of such laws in detecting fraud, waste and abuse in federal health care programs;
2. conduct all work and business functions in a legal, compliant and ethical manner that is aligned with the values of HHC;
3. seek guidance when necessary if certain situations or circumstances are unclear;
4. report suspected Wrongful Conduct, possible violations or unethical business conduct to a supervisor or to the HHC Office of Compliance and Integrity (OCI);
5. assist OCI in the investigatory process and fully cooperate with all instructions provided throughout the investigation;
6. refrain from engaging in behavior that may be deemed to be Retaliatory in any form; and,
7. complete all required compliance training that is assigned from time to time.

B. It is the responsibility of OCI to:

1. develop and maintain effective mechanisms for detecting and preventing fraud, waste and abuse through routine compliance program operations;
2. serve as a resource to the HHC Community and provide relevant training and educational communications, programs and materials related to fraud, waste and abuse and related whistleblower protections;
3. encourage Good Faith reporting of Wrongful Conduct to the compliance program through secure and widely publicized mechanisms that allow for anonymous and confidential communication;
4. maintain the anonymity and confidentiality of all reports to the fullest extent possible under applicable law or as the requirements of the investigation dictate;
5. promptly and thoroughly investigate any credible report of Wrongful Conduct; and,
6. track and report on the results and outcomes of whistleblower reports.

II. Reporting. It is the obligation of the HHC Community to promptly report any known or suspected instance of Wrongful Conduct.

Specific examples of such conduct may include, but are not limited to:

- Improper coding and/or billing of claims for health-care services;
- Routine waving of patient co-pays and deductibles;

- Intentional accounting errors, omissions or misstatements in the preparation of financial statements or regulatory filings;
- Falsifying records of any type;
- Theft or misappropriation of HHC assets, funds, equipment, supplies or other property including confidential and proprietary business information, trade secrets, and/or intellectual property;
- Accepting or offering inappropriate gifts and gratuities;
- Engaging in behavior that constitutes, or appears to constitute a conflict of interest;
- Providing substandard, unsafe or medically unnecessary patient care;
- Known or suspected violations of the Physician Self-Referral Law (the "Stark Law") or the Federal and/or State Anti-Kickback Statute;
- Improper agreements or compensation arrangements with parties in a position to refer patients to any Hartford HealthCare entity;
- Any other Good Faith concern.

The HHC Community is required to participate in the compliance efforts of HHC by promptly reporting Wrongful Conduct or any other behavior deemed to be illegal or inconsistent with the values of HHC. Initial reports may be made to a supervisor or directly to OCI. Supervisors receiving compliance-related reports shall immediately refer those reports to OCI. Complaints that do not raise a potential compliance issue shall be reported or referred to the appropriate department (e.g., Human Resources, Patient Experience, Risk Management). Reports can be made to OCI in any of the following ways:

- In writing at the following address:

Hartford HealthCare
 80 Seymour Street
 Hartford, CT 06102
 Attn: Office of Compliance and Integrity

- OCI Main Phone: 860-972-1573
- General Email Address: Compliance@hhchealth.org
- General HIPAA Privacy Email Address: Privacy@hhchealth.org
- Directly to the HHC Compliance Officer or any member of the OCI Team via phone or email
- Anonymously and confidentially 24 hours per day, 7 days per week, 365 days per year by phone or online to the OCI ComplianceLine at:

- 1-855-442-6241
- ComplianceLine.HartfordHealthCare.org

The failure to comply with laws, regulations and policies can have serious consequences for HHC. All reports will be investigated and resolved to the fullest extent possible. The results of investigations of Wrongful Conduct and Retaliation will be reported to the HHC Compliance Committee and the Audit and Compliance Committee of the Board through established reporting mechanisms. HHC has the right to take appropriate action against any HHC Community Member who has engaged in, or failed to report, any Wrongful Conduct. Employees of HHC or any HHC affiliate may be subject to discipline, up to and including termination of employment.

The HHC Community cannot exempt themselves from the consequences of personal wrongdoing by reporting their own Wrongful Conduct. However, self-reporting is encouraged and consideration will be given to any recommended corrective or disciplinary actions resulting from a self-report.

Any communication that proves to have been both unsubstantiated and made with malice or knowledge that it was false is not protected by this policy. This policy also protects individuals from false allegations of Wrongful Conduct.

III. Whistleblower Protections & Non-Retaliation. Retaliation of any form against anyone who makes a Good Faith report, cooperates in an investigation, testifies against an alleged offending individual or HHC regarding Wrongful Conduct or Retaliation, or objects to, or refuses to participate in, an activity that he or she feels involves Wrongful Conduct is strictly prohibited. HHC also prohibits anyone from intimidating and coercing an individual into not disclosing compliance concerns.

While HHC maintains a compliance program to promote the detection, identification and resolution of certain instances of non-compliance within the organization, the HHC Community may file a report directly with a regulatory agency or authority. HHC prohibits Retaliation in instances of external reports in the same manner as it prohibits retaliation in instances of internal reports. As such, the HHC Community may participate in any process established by federal, state, or local law, proceeding or hearing without fear of Retaliation.

With respect to anonymous reports, any effort to determine the identity of the reporter may result in disciplinary action against those seeking to learn or disclose this information.

Anyone believing to have been subjected to Retaliation for reporting potential Wrongful Conduct in Good Faith should report such conduct to OCI immediately.

Any HHC Employee who conducted or condoned Retaliation in response to a Good Faith report of suspected Wrongful Conduct will be subject to disciplinary action, up to and including termination.

IV. Federal and State Laws related to Filing False Claims

Federal False Claims Act (FCA) (Civil 31 U.S.C. § 3729-3733 and Criminal 18 U.S.C. § 287)

The FCA imposes civil penalties on persons and companies who knowingly submit a false claim or statement to a federal health care program or otherwise conspire to defraud the government in order to receive payment. The term "knowingly" as defined in the 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 may be required. Failure to report and return overpayments from Medicare and Medicaid within certain timeframes might also constitute a violation of the FCA. The FCA also protects people who make efforts to stop the suspected fraud.

Filing false claims may result in fines up to three times the amount of actual reimbursement received from the false claim plus an additional penalty ranging from \$11,665 to \$23,331 for each such claim submitted. Each instance of an item or services billed to Medicare or Medicaid counts as a claim. Criminal penalties for submitting false claims may include fines, imprisonment, or both.

In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States, 31 U.S.C. § 3730(b). These private parties, known as "qui tam relators," may share in a percentage of the proceeds from an FCA action or settlement.

Section 3730(d)(1) of the FCA provides, with some exceptions, that a qui tam relator, when the Government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the

relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(d)(2) provides that the relator shall receive an amount that the court decides is reasonable and shall not be less than 25 percent and not more than 30 percent.

Federal Program Fraud Civil Remedies Act (31 U.S.C. § 3801-3812)

Persons or companies that present or cause to be presented a false claim or statement that the person knows or has reason to know is false, fictitious or fraudulent, can be assessed monetary penalties in addition to the penalties of the FCA according to a law called the Program Fraud Civil Remedies Act. Specifically, these penalties may include up to \$11,664 per false claim or statement and an assessment of not more than twice the amount of the false claim. 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 may be required. Unlike the FCA, a violation of this law occurs when it is submitted, not when it is paid. Also, unlike the FCA, the determination of whether a claim is false, and the imposition of fines and penalties are made by the administrative agency, not by prosecution in the federal court system.

State False Claims Act. "False claims and other prohibited acts re state-administered health or human services programs." (C.G.S.A. § 4-275)

This statute mirrors the Federal False Claims Act in substantial part and, among other things, makes illegal for any person to knowingly present, or cause to be presented, a false or fraudulent claim for payment or approval under a state-administered health or human services program. Similarly, no person shall knowingly make, use or cause to be made or used, a false record or statement material to a false or fraudulent claim under a state-administered health or human services program. It further prohibits any person from knowingly making, using or causing to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state under a state-administered health or human services program.

Per the statute, the penalty for violation of this section is (i) a civil fine to be adjusted from time to time by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461; (ii) three times the amount of damages that the state sustains because of the act of that person; and (iii) the costs of investigation and prosecution of such violation.

V. Whistleblower Protection Laws

Federal False Claims Act (31 U.S.C. §3730[h])

The Federal False Claims Act provides protection to qui tam relators (e.g. 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. 31 U.S.C. § 3730(h).

Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

Protection of Employees Who Discloses Employer's Illegal Activities or Unethical Practices. (C.G.S.A. § 31-51m)

No employer shall discharge, discipline or otherwise penalize any employee because (1) the employee, or a person acting on behalf of the employee, reports, verbally or in writing, a violation or a suspected violation of any state or federal law or regulation or any municipal ordinance or regulation to a public body, (2) the employee is requested by a public body to participate in an investigation, hearing or inquiry held by that public body, or a court action.

Any employee who is discharged, disciplined or otherwise penalized by his employer may bring a civil action within ninety days of the date of the final administrative determination or within ninety days of such violation, whichever is later. The employee could, through the civil action, request reinstatement of his previous job, payment of back wages and reestablishment of employee benefits to which he would have otherwise been entitled if such violation had not occurred.

Note that these specific provisions are not applicable when the employee knows that such report is false. Any employee found to have knowingly made a false report may be subject to disciplinary action by his employer up to and including dismissal.

Definitions:

For the purposes of this Policy, the following definitions shall apply:

Hartford HealthCare (HHC): refers to the Hartford HealthCare Corporation and any and all Member Organizations.

Member Organization: is any entity directly or indirectly controlled by Hartford HealthCare.

HHC Community: includes all HHC employees, contracted individuals with the role and responsibility of an employee, medical directors, chiefs of a section, department and division, members of the HHC and regional board of directors and board delegated committees, officers, executive leadership, volunteers, and trainees.

Retaliation: Retaliation is defined as an adverse action taken because an individual has acted in Good Faith to make a report or participated in or with an institutional investigation, proceeding, or inquiry regarding a report. Retaliation and adverse employment consequences include intimidation, harassment, discrimination, failure to promote, adverse impact on compensation, termination, discharge, suspension, demotion, other change in responsibilities, whether formal or informal, and/or other negative consequences.

Good Faith: A good faith report is one which the whistleblower reasonably believes to be true, and reasonably believes to constitute Wrongful Conduct. Any allegation made with reckless disregard or deliberate ignorance of factual matters is not made in good faith.

Wrongful Conduct: a violation of HHC Policy, the Code of Conduct or any applicable state and/or federal laws.

OCI: refers to the HHC Office of Compliance and Integrity.

Related Policies:

Code of Conduct

HHC-C01 Compliance Program Policy

HHC-C02 Conflict of Interest Policy

HHC-C05 Vendor Interaction Policy

HHC-C06 Gifts between Patients, Patient's Families, or Visitors and the HHC Community

HHC-C10 Government Exclusion from Participation Policy

HHC-C11 Compliance Audit Investigation, Mediation and Response Policy

HHC-C13 ComplianceLine Response Policy

HHC-C14 Documentation and Reimbursement Policy

HHC-C15 Non-Monetary Compensation to Physicians Policy

HHC-C16 Identifying, Reporting and Returning Overpayments Policy

Relevant Connecticut Laws and Regulations:

1. *Criminal Citations*

a. § 53a-290 CGS (Vendor Fraud)

b. § 53-440 CGS (Health Insurance Fraud)

- c. § 53a-118 CGS (Larceny)
- d. § 53a-155 CGS (Tampering With or Fabricating Physical Evidence)
- e. § 53a-157b CGS (False Statement Intending to Mislead Public Servant)

2. *Fraud Citations*

- a. § 17b-25a CGS (Toll Free Vendor Fraud Hotline)
- b. § 17b-99 CGS (Vendor Fraud)
- c. § 17b-127 CGS (General Assistance Fraud)
- d. § 17b-102 CGS (Financial Incentive for Reporting Vendor Fraud)
- e. § 17-83k-1 REGS (Administrative Sanctions)
- f. § 17b-102-01 (Financial Incentive for Reporting Vendor Fraud and Requirements for Payment for Reporting Vendor Fraud)

3. *Whistleblower Protections*

- a. § 4-61dd CGS (Whistleblowing)
- b. § 31-51m CGS (Protection of Employee Who Discloses Employer's Illegal Activities or Unethical Practices)
- c. § 31-51q CGS (Liability of Employer for Discipline or Discharge of Employee on Account of Employee's Certain Constitutional Rights)
- d. § 4-61dd-1 REGS (Rules of Practice for Contested Case Proceedings under the Whistleblower Protection Act)