envision	Ethics & Compliance Department		
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OVERVIEW OF RELEVANT HEALTHCARE LAWS

SCOPE:

All Envision Healthcare teammates. For purposes of this policy, all references to "teammate" or "teammates" include temporary, part-time and full-time employees, independent contractors, clinicians, officers and directors.

PURPOSE:

Envision Healthcare Operating, Inc. and its subsidiaries and affiliates ("Envision" or "the Company") has adopted this Overview of Relevant Healthcare Laws policy to make all teammates aware of the healthcare laws relevant to the Company.

POLICY:

There are several federal and state fraud and abuse laws that govern the healthcare industry. All teammates of the Company must strictly follow these laws. The following laws are particularly applicable:

A. The Federal Anti-Kickback Statute;
B. The Federal Anti-Kickback Safe Harbors and Exceptions;
C. The Federal Self-Referral "Stark Law" Statute;
D. The Federal False Claims Statute;
E. The Program Fraud Civil Remedies Act;
F. State False Claims Acts; and
G. The Federal Laws Governing Consumer Inducements.

The policies included in the Company's Corporate Compliance Program have been developed as a result of these specific healthcare laws and regulations.

Each law is discussed briefly below. If you have questions, you should consult your immediate supervisor, the Legal Department or the Chief Compliance Officer.

A. THE FEDERAL ANTI-KICKBACK STATUTE

Overview

The Federal Healthcare Program Anti-Kickback Statute (the "Anti-Kickback Statute"), 42 U.S.C.
§ 1320a-7b, imposes criminal penalties on individuals and entities that knowingly and willfully solicit or receive remuneration "in return for referring an individual to a person for the furnishing or arranging for the furnishing of an item or service" or "in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under… a federal healthcare program."

Prohibited Inducements

The Anti-Kickback Statute prohibits a person from knowingly and willfully offering or paying remuneration to any person to induce that person to refer or purchase, lease, order or arrange for or recommend the purchasing, leasing or ordering of items or services for which payment may be made by a federal healthcare program.

The types of remuneration prohibited by the Anti-Kickback Statute include, but are not limited to, "cash" or "in kind" kickbacks, bribes and rebates. Additionally, the Anti-Kickback Statute expressly prohibits both "direct" and "indirect" remuneration.

Penalties

Any person convicted of knowingly and willfully violating the Anti-Kickback Statute shall be found guilty of a felony and fined not more than $100,000 or imprisoned for not more than 10 years, or both, for each violation. Violators of the Anti-Kickback Statute also are subject to exclusion from federal healthcare programs by the Secretary of Health and Human Services ("HHS"), regardless of whether a criminal conviction has been obtained. In addition, the Secretary of HHS may impose civil monetary penalties for each violation of the Anti-Kickback Statute of: (a) up to $100,000; and (b) three times the amount of the remuneration in question.

B. THE FEDERAL ANTI-KICKBACK SAFE HARBORS AND EXCEPTIONS

Overview

The Anti-Kickback Statute includes limited statutory exceptions for certain financial arrangements, specifically an exception for employment arrangements. Additionally, the Department of Health and Human Services ("DHHS") has promulgated regulations, termed "safe harbors," specifying certain payment practices that are exempted from the prohibitions of the Anti- Kickback Statute. However, the protection afforded by the safe harbor regulations is limited to very narrow circumstances.

The Statutory Exception for Employment Arrangements and the Employment Safe Harbor

The Anti-Kickback Statute includes a statutory exception for "any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services." The safe harbor regulations also address employment arrangements but narrow the statutory exception through the definition of "employee." Specifically, the safe harbors provide that the term "employee" has the same meaning under IRS rules, which adopts the "usual common law rules." DHHS also considers the purpose of the employment, the amount paid for the service, and whether services were performed, in assessing the employment relationship, and could challenge "sham" employment arrangements despite the arguably blanket protection of this exception.

The Statutory Exception for Discounts and the Discount Safe Harbor

The Anti-Kickback Statute includes a statutory exception for "a discount or other reduction in price obtained by a provider of services or other entity under a Federal healthcare program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity." The discount safe harbor regulation narrows the statutory exception through its restrictive definition of the word "discount". Specifically, the discount safe harbor regulation restricts the term "discount" by excluding such typical discount arrangements as: discounted or free items or services in exchange for the purchase of different items or services; discounts not applicable to Medicare or Medicaid; and, discounts given directly to beneficiaries (for example, waivers of co-insurance). The discount safe harbor also prescribes specific disclosure standards for different types of entities: sellers, buyers, and offerors. All buyers (this category includes

providers that buy goods and services and submit claims to Medicare and Medicaid) other than those who file cost reports can only take advantage of discounts made at the time of the original sale or rebates that are fixed and disclosed in writing to the buyer at the time of the original sale. Non-cost reporting buyers generally are not required to report discounts on claims submitted to Federal health care programs but must provide documentation of discounts to the Secretary upon request. Notably, HHS has stated that the "most important aspect of the discount safe harbor is that the Federal health care programs share in the discount in proportion to the percentage the programs pay of the total cost."

The Personal Services and Management Contracts, and Outcomes-Based Payments Safe Harbors

The regulations create a safe harbor for certain personal services and management contracts. To satisfy the safe harbor, an arrangement must be set out in writing and signed by the parties. The term of the agreement must be for at least one (1) year and must specify the services covered. In addition, the methodology for determining payment must be set in advance, consistent with fair market value, and not vary based on the volume or value of any federal healthcare program covered referrals or business generated between the parties.

The personal services and management contracts safe harbor also provides protection for certain outcomes-based payments that are tied to achieving measurable outcomes that improve patient or population health or appropriately reduce payor costs. These provisions are not available to protect arrangements with the Excepted Entity Types described below in the section on Safe Harbors for Value Based Arrangements.

The Space and Equipment Rental Safe Harbors

The regulations create safe harbors for certain contracts for space and equipment rental arrangements. These two separate safe harbors are virtually identical in their requirements. For each safe harbor, an arrangement must be set out in writing and signed by the parties. The term of the agreement must be for at least one (1) year and must specify the aggregate payment amount, as well as the premises or equipment covered. If the agreement does not contemplate full-time use, the agreement must also specify the schedule of intervals, their precise length, and the exact charge for such intervals. In addition, the aggregate rental charge must be consistent with fair market value, and not vary based on the volume or value of any federal healthcare program covered referrals or business generated between the parties, and the aggregate space or equipment rented must not exceed what is reasonably necessary to accomplish the commercially reasonable business purpose of the rental.

Cybersecurity Technology and Services Safe Harbor

The regulations provide a new safe harbor for remuneration in the form of cybersecurity technology and services. This safe harbor facilitates improved cybersecurity in health care and is available to all types of individuals and entities.

Electronic Health Records Safe Harbor

In order to eliminate barriers to the adoption of electronic health records, the regulations created a safe harbor that allows the donation of electronic health records, items, and services to individuals or entities engaged in the delivery of healthcare by specified donors. The safe harbor excludes laboratory companies from the types of entities that may donate electronic health records items and services, requires that the recipient pay at least fifteen percent (15%) of the donor's costs, and prohibits any action that limits or restricts the use, compatibility, or interoperability of donated items or service, as well as adopts certain other requirements.

Compliance with Safe Harbor Provisions is Voluntary

Compliance with the terms of each criterion in a safe harbor regulation is voluntary. Although compliance with these safe harbor regulations assures an entity or an individual that a particular practice does not violate the Anti-Kickback Statute, an action or arrangement that does not satisfy each criterion of a safe harbor does not necessarily violate the Anti-Kickback Statute. Rather, it will be subject to a facts-and-circumstances based analysis.

C. THE FEDERAL SELF-REFERRAL "STARK LAW" STATUTE

Overview

The Federal Self-Referral Law (the "Stark Law), 42 U.S.C. § 1395nn; 42 C.F.R. § 411, prohibits a physician who has a financial relationship with an entity (or whose immediate family member has a financial relationship with an entity) from making a "referral" of a Medicare or Medicaid patient to that entity for the furnishing of "designated health services" for which payment may be made under the Medicare or Medicaid programs.

This is a strict liability statute, meaning that if a financial relationship exists, that financial relationship must be structured to meet all the requirements of an applicable Stark exception. There are a number of exceptions, some of which are described at a high level below. Given the importance of qualifying for an exception, any financial relationship should be reviewed by Envision's Legal Department for compliance with the requirements of an exception.

Definitions

- "Financial relationship" is defined in the Stark Law to include both compensation arrangements as well as ownership and investment interests.
- "Designated health services" includes, among other services, in-patient and outpatient hospital services, imaging services, clinical laboratory services and home health services.
- "Physician" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery; a doctor of dental surgery or dental medicine legally licensed to practice dentistry; a doctor of optometry; doctor of podiatric medicine; and a chiropractor.
- The phrase "immediate family members" includes: spouse, natural or adoptive parent, child or sibling, step-parent, step-child, step-brother or step-sister, father-in-law, mother-in-law, son-in- law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild and spouse of a grandparent or grandchild.

Exception for Bona Fide Employment Relationships

The Stark Law includes an exception for compensation paid by an employer to an employee under a bona fide employment relationship so long as the employment is for identifiable services, the amount of payment is consistent with fair market value, and the compensation is not determined in a manner that takes into consideration the volume or value of any referrals made to the employer. Although the exception includes a requirement that the payment not be determined based on the volume or value of referrals, exempted from the exception are payments in the form of productivity bonuses based on services performed personally by the physician.

Exception for Personal Service Arrangements

The Stark Law excepts certain compensation arrangements between a physician and an entity where the physician is an independent contractor and not an employee. In order to

qualify for the exception, these personal service arrangements must be set out in writing, describe the services covered, have a term of at least one year, determine the payment in advance in a manner that reflects fair market value and not the volume or value of any referrals or business generated between the parties, and the services performed under the arrangement must not involve the counseling or promotion of a business arrangement or other activity that violates any state or federal law.

Exception for Fair Market Value Arrangements

Compensation resulting from an arrangement between an entity and a physician (or group of physicians) for the provision of items or services, other than rental of office space, may fall under the exception to the Stark Law for fair market value compensation if certain conditions are satisfied. Among other conditions, the arrangement must be set forth in a writing signed by the parties and the compensation must be set in advance, consistent with fair market value, and not determined in a manner that takes into account the volume or value of referrals or other business generated by the referring physician. Additional restrictions apply to compensation for rental of equipment.

D. THE FEDERAL FALSE CLAIMS STATUTE

Overview

The Federal False Claims Act ("FCA") prohibits anyone from *knowingly* presenting, or *causing to be presented*, a false or fraudulent claim in order to secure payment from the federal government. A person found to have violated this statute may be liable for significant per-claim penalties (set at a minimum of over $12,000 per claim at the time of publication), plus three times the amount of damages sustained by the federal government. [Note: Since the penalty amounts are updated annually, omitting specification of the exact penalty amount will avoid the need to update this language annually.] The False Claims Act defines "knowing" and "knowingly" as: actual knowledge; deliberate ignorance of the truth or reckless disregard of the truth or falsity. Therefore, no proof of specific intent to defraud is required to demonstrate a violation of this Act.

The FCA helps the federal government combat fraud and recover losses resulting from fraud in federal programs, purchases, or contracts. A person or entity may violate the FCA by knowingly: (1) submitting a false claim for payment, (2) making or using a false record or statement to obtain payment for a false claim, (3) conspiring to make a false claim or get

one paid, or (4) making or using a false record to avoid payments owed to the U.S. government. Lawsuits must be filed by the later of either: (1) three years after the violation was discovered by the federal official responsible for investigating violations (but no more than ten years after the violation was committed), or (2) six years after the violation was committed.

Qui Tam Actions and Whistleblower Protections

An individual also has the right to file a civil suit for him or herself and for the government to challenge a FCA violation. The suit must be filed in the name of the government. Such an individual is called a *qui tam* plaintiff or "relator". Successful relators may receive between 15 and 30 percent of the total amount recovered (plus reasonable costs and attorney fees) depending on the involvement of the relator and whether the government prosecuted the case. An individual cannot file a lawsuit based on public information unless he or she is the original source of the information.

The FCA contains important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination are entitled to all relief necessary to be made whole, including two times their back pay plus interest, reinstatement at the seniority level they would have had except for the discrimination, and compensation for any costs or damages they have incurred.

E. THE PROGRAM FRAUD CIVILE REMEDIES ACT

Under the Program Fraud Civil Remedies Act, federal law also provides for administrative remedies against providers for false claims and statements of not more than $10,261 for each false claim or statement, and an assessment of up to twice the amount of such claim. These administrative civil remedies are described further in the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, and 45 C.F.R. § 79.3.

A "false claim" (for purposes of the administrative remedies) is defined as a claim that the person knows or has reason to know (i) is false or fraudulent, (ii) includes or is supported by any written statement which asserts a material fact which is false, (iii) includes or is supported by any written statement that omits a material fact, is false as a result of such omission, and is a statement in which the person making such statement has a duty to include such material fact, or (iv) is for payment for the provision of property or services which the person has not provided as claimed. A "false statement" is defined as a statement that the person

knows or has reason to know asserts a material fact that is false or omits a material fact that makes the statement false.

F. STATE FALSE CLAIMS ACTS

Many states in which the Company does business also have state false claims acts that prohibit anyone from knowingly presenting, or causing to be presented, a false or fraudulent claim in order to secure payment from local and/or state government. Many of these state false claims acts are similar to the federal FCA and provide for lawsuits either by the government or a *qui tam* plaintiff (or "relator"). Many of these laws also include whistleblower protections similar to the federal FCA. If you have any questions about a specific state law, please contact the Legal or Ethics & Compliance Department.

G. THE FEDERAL LAWS GOVERNING CONSUMER INDUCEMENTS

Civil Monetary Penalties – Patient Inducement Prohibition

The Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, authorizes the imposition of civil money penalties for offering inducements to individuals eligible for Medicare or Medicaid if the offeror knows or should know that it will influence the patient to order or receive items or services from a particular provider, practitioner or supplier. Significantly, the statute defines remuneration as including the waiver of co-insurance and deductibles and transfers of items or services for free or for other than fair market value. However, there are limited exceptions provided in the statute. For instance, co-insurance waivers that are based on financial need and meet other requirements are protected. Additionally, in light of the potential application of this provision to managed care arrangements, the statute excepts from the scope of illegal remuneration differentials in co-insurance and deductible amounts that are part of the benefit plan design – e.g., as part of a PPO or similar managed care product – and that are disclosed and meet other standards defined by HHS. There are also exceptions for incentives given to individuals to promote the delivery of preventive care and for other remuneration that promotes access to care and poses a low risk of harm to patients and Federal health care programs. Similarly, there is a safe harbor to the Anti-Kickback Statute, which also applies as an exception to this law, that allows eligible entities to provide local transportation for patients if certain conditions are met.

POLICY REVIEW

The Ethics & Compliance Department will review and update this Policy, when necessary, in the normal course of its review of the Company's Ethics & Compliance Program.

ARIZONA

The state of Arizona has not adopted any false claims acts or statutes that contain *qui tam* or whistleblower provisions that are similar to those found in the federal False Claims Act. It has, however, adopted fraud and false statement statutes that make it unlawful for a person to submit false and fraudulent statements or claims to an Arizona state department or agency. Violations of these statutes are civil and criminal offenses and are punishable by imprisonment and significant monetary penalties and assessments. See ARIZ. REV. STAT. §§ 13-2310, 13-2311, 36-2918 and 36-2957.

CALIFORNIA

The California False Claims Act ("CFCA") applies to fraud involving state, city, county or other local government funds. CAL. GOV'T CODE §§ 12650 – 12656. The CFCA encourages voluntary disclosure of fraudulent activities by rewarding individuals who report fraud and allowing courts to waive penalties for organizations that voluntarily disclose false claims.

Liability and Damages/Statute of Limitations

- The actions that violate the CFCA include: (1) knowingly present a false claim for payment; (2) making or using a false record to get a false claim paid; (3) conspiring to make a false claim or get one paid; or (4) making or using a false record to avoid payments owed to the state or local government. In addition, anyone who benefits from a false claim that was mistakenly submitted violates the CFCA if he or she does not disclose the false claim to the state or local government within a reasonable time after discovery of the false claim.
- The maximum civil penalty is $11,000, per claim. Persons who violate the CFCA may be liable to the state for three times the amount of damages that the state sustains because of the violation. The court can waive penalties and reduce damages for CFCA violations if the false claims are voluntarily disclosed. The CFCA does not apply to false claims of less than $500.
- Lawsuits must be filed within the latter of: (1) three years after the violation was known or should have been known by the state or local official responsible for investigating the false claim (but no more than ten years after the violation was committed), or (2) six years after the violation was committed.

Private or *Qui Tam* Actions/Whistleblower Provisions

- Individuals (or *qui tam* plaintiffs) who bring an action under the CFCA receive between 15 and 33 percent of the amount recovered (plus reasonable costs and attorney's fees) if the state prosecutes the case, and between 25 and 50 percent (plus reasonable costs and attorney's fees) if the *qui tam* plaintiff litigates the case.
- An individual cannot file a lawsuit based on public information unless he or she is the original source of the information.
- The CFCA contains whistleblower protections. Employees who report fraud and consequently suffer discrimination may be awarded: (1) two times their back pay plus interest; (2) reinstatement at the seniority level they would have had except for the

discrimination; (3) compensation for any costs or damages they have incurred; and (4) punitive damages, if appropriate.

FLORIDA

The Florida False Claims Act ("FFCA") helps prevent fraud and allows the state to recover funds lost because of fraud in state programs, purchases, or contracts. FLA. STAT. ANN. §§ 68.081–68.092.

Liability and Damages/Statute of Limitations

- The actions that violate the FFCA include but are not limited to: (1) knowingly present or cause to be presented a false or fraudulent claim ; (2) knowingly make, use, or cause to be made or used a false record or statement material to a false claim; (3) conspiring to commit a violation of the FFCA; or (4) making or using a false record to avoid payments owed to the state government.
- Penalties of $5,500 to $11,000 per claim plus three times the amount of damages to the state government for FFCA violations may be imposed.
- Lawsuits must be filed within the latter of either: (1) six years after the violation was committed, or (2) three years when material facts of the violation are known or reasonably should have been known by the state official responsible for investigating the violation (but no more than ten years after the violation was committed).

Qui Tam Actions/Whistleblower Provisions

- An individual (or *qui tam* plaintiff) can sue for violations of the FFCA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the state prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information unless he or she is the original source of the information.
- Employees who report fraud and consequently suffer discrimination can sue their employers under the Florida Whistle-blower's Act.

GEORGIA

The Georgia State False Medicaid Claims Act ("SFMCA") is intended to provide a partial remedy for the problem of false or fraudulent claims submitted to this Georgia Medicaid Program. The SFMCA does so by providing specific procedures whereby the state, and private citizens acting for and on behalf of the state, may bring civil actions against persons and entities who have obtained state funds through the submission of false or fraudulent claims to state agencies. GA. CODE ANN., §§ 49-4-168 to 49-4-168.6. Georgia's Taxpayer Protection False Claims Act expands Georgia's *qui tam* provisions beyond Medicaid. GA. CODE ANN., §§ 23-3-120 to 23-3-127.

Liability and Damages/Statute of Limitations

- Actions that violate the SFMCA include, but are not limited to: (1) knowingly presenting or causing to be presented to the Georgia Medicaid Program a false or fraudulent claim for payment or approval; (2) knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved; or (3) conspiring to defraud the Georgia Medicaid Program by getting a false or fraudulent claim allowed or paid.
- Violations of the SFMCA can result in civil penalties consistent with the civil penalties provision of the federal False Claims Act, plus three times the amount of the damages which the Georgia Medicaid Program sustains because of the Act.
- Lawsuits must be filed within the later of: (1) six years after the date the violation was committed; or (2) four years after the date when facts material to the right of civil action are known or should have been known by the state official charged with the responsibility to act in the circumstances; provided, however, that in no event shall any civil action be filed more than 10 years after the date upon which the violation was committed.

Qui Tam Actions/Whistleblower Protections

- An individual (or qui tam plaintiff) can sue for violations of the SFMCA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the government prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the qui tam plaintiff litigates the case on his or her own.

- The SFMCA contains important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination may be awarded: (1) two times their back pay plus interest; (2) reinstatement at the seniority level they would have had but for the discrimination; and (3) compensation for any costs or damages they have incurred.

ILLINOIS

The Illinois False Claims Act ("IFCA") applies to fraud involving State government, local government, and public educational institution funds. 740 ILL. COMP. STAT. ANN. 175/1 – 175/8.

Liability and Damages/Statute of Limitations

- Actions that violate the IFCA include but not limited to: (1) knowingly present or cause to be presented a false claim for payment; (2) knowingly make, use, or cause to be used, a false record to get a false claim paid; (3) conspiring to make a false claim or get one paid; or (4) making or using a false record to avoid payments owed to the State.
- Penalties of $5,500 to $11,000 per claim plus three times the amount of damages to the state government for IFCA violations may be imposed.
- Lawsuits must be filed within the latter of either: (1) three years after the violation is discovered by the State official responsible for investigating violations (but no more than ten years after the violation was committed), or (2) six years after the violation was committed.

Qui Tam Actions/Whistleblower Provisions

- An individual (or *qui tam* plaintiff) can sue for violations of the IFCA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the State prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the qui tam plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information unless he or she is the original source of the information.
- The IFCA contains important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination may be awarded: (1) two times their back pay plus interest; (2) reinstatement at the seniority level they would have had but for the discrimination; and (3) compensation for any costs or damages incurred.

KENTUCKY

Kentucky has not adopted any false claims acts or statutes that contain *qui tam* provisions that are similar to those found in the federal False Claims Act. It has, however, adopted a generally applicable Medicaid anti-fraud statute that makes it unlawful for a person to submit false and fraudulent claims to the Kentucky Medicaid program. The statute also makes it unlawful for any person to present false information regarding an institution or facility so that it may be licensed or recertified as a Medicaid provider. Violations of the statute are both civil and criminal offenses and are punishable by substantial fines and imprisonment. KY. REV. STAT. ANN. §§ 205.8451 – 205.850. Any person who reports suspected fraud to the state Medicaid Fraud Control Unit or the Medicaid Fraud and Abuse hotline shall not be liable in any civil or criminal action based on the report if it was made in good faith, nor may an employer, without just cause, discharge or in any manner discriminate or retaliate against any person who in good faith makes such a report or who participates in any proceeding related to such report. KY. REV. STAT. ANN. § 205.8465. This provision also allows whistleblowers to recover the actual damages sustained and the costs of the lawsuit, including a reasonable attorney's fee, and permits a civil cause of action to enjoin future violations. *Id.*

MICHIGAN

The Michigan Medicaid False Claims Act ("MMFCA") is a state law that is designed prevent fraud, kickbacks, and conspiracies in connection with the Medical Assistance Program. MICH. COMP. LAWS §§ 400.601 - 400.615.

Liability and Damages/Statute of Limitations

- Actions that violate the MMFCA include but not limited to: (1) knowingly making (or causing to be made) a false statement in an application for benefits or for use in determining Medicaid eligibility; (2) concealing or failing to disclose an event in order to obtain a benefit greater than that to which the person is otherwise entitled; and (3) conspiring to defraud the state by obtaining (or seeking to obtain) payment of a false claim. Violations are punishable by civil and criminal penalties.
- Violation of the MMFCA constitutes a felony punishable by four years or less in prison, or a fine of $50,000 or less, or both. A person who receives a benefit to which he or she is not entitled, by reason of fraud; makes a fraudulent statement; or knowingly conceals a material fact is liable to the state for a civil penalty equal to the full amount received plus triple damages.
- A civil suit must be filed within the latter of: (1) six years after the violation was committed, or (2) three years after the date that the violation was known or reasonably should have been known by the state official charged with responsibility to act in the circumstances (but no more than ten years after the violation was committed).

Qui Tam Actions/Whistleblower Protections

- An individual (or *qui tam* plaintiff) can sue for violations of the MMFCA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the government prosecutes the case and between 25 and 30 percent if the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information unless he or she is the original source of the information.
- The MMFCA contains important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination may be awarded: (1) two times their back pay plus interest; (2) reinstatement in their position without loss of seniority; and (3) compensation for any costs or damages they have incurred.

MISSOURI

The state of Missouri has not adopted any false claims acts or statutes that contain a *qui tam* provision that is similar to the one found in the federal False Claims Act. It has, however, adopted false statement statutes that make it unlawful for a person to submit false and fraudulent claims to the Missouri Medicaid program. Violations of these statutes are criminal and civil offenses punishable by substantial fines and imprisonment. Violators may be liable for payment of full restitution to the state plus interest and reasonable expenses. Additionally, there are important protections for whistleblowers. Employees who are discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against in the terms and conditions of employment because the of lawful acts done by the employee to assist in the furtherance of an action under the false claims statutes are entitled to: (1) reinstatement to the employee's position without loss of seniority; and (2) two times the amount of back pay with interest. See MO. REV. STAT. §§ 191.900 – 191.914, 198.006, 198.142, 198.155, 198.158.

NEVADA

The Nevada statute, Submission of False Claims to State or Local Government ("SFC") applies to fraud involving state, city, county, and other local government funds. NEV. REV. STAT. ANN. §§ 357.010 to 357.250.

Liability and Damages/Statute of Limitations

- Actions that violate the SFC include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the state or local government. In addition, anyone who benefits from a false claim that was mistakenly submitted violates the SFC if he or she does not disclose the false claim soon after he or she discovers it.
- Penalties of $5,500 to $11,000 per claim plus three times the amount of damages to the state government for false claim violations may be imposed.
- Lawsuits must be filed by the later of either: (1) three years after the violation was discovered by the state official responsible for investigating violations (but no more than ten years after the violation was committed), or (2) six years after the violation was committed.

Qui Tam Actions/Whistleblower Provisions

- Individuals (or *qui tam* plaintiffs) can sue for violations of the statute. *Qui tam* plaintiffs who report fraud receive between 15 and 25 percent of the amount recovered in cases where the state prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) in cases where the *qui tam* plaintiff litigates the case on his or her own. A *qui tam* plaintiff cannot file a lawsuit based on public information unless he or she is the original source of the information.
- The SFC bars employers from interfering with an employee's disclosure of false claims. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had except for the discrimination, (3) compensation for any costs or damages they have incurred, and (4) punitive damages, if appropriate. Employee claims based on retaliation or discrimination must be brought not more than 3 years after the conduct complained of occurred.

NEW JERSEY

The New Jersey False Claims Act ("NJFCA") was enacted by the state in order to combat fraud and abuse in the submission of claims and the transaction of business with the state. N.J. REV. STAT. §§ 2A:32C-1 – 2A:32C-18.

Liability and Damages

- Actions which violate the NJFCA include, but are not limited to: (1) knowingly presenting or causing to be presented to an employee, officer or agent of the state, or to any contractor, a false claim for payment or approval; (2) knowingly making, using or causing to be made or used a false record to get a false claim paid or approved by the state; (3) conspiring to defraud the state by getting a false claim allowed or paid by the state; or (4) possessing custody or control of public property or money to be used by the state and knowingly delivering less property than the amount for which the person receives a certificate or receipt.
- Violations may result in civil penalties of not less than and not more than the civil penalty allowed under the Federal False Claims Act, 31 U.S.C.A. § 3729 et seq., (i.e., between $5,500 and $11,000) plus three times the amount of damages which the state sustains because of the act. In addition, attorney's fees and costs may be awarded.
- A civil action instituted under the NJFCA may not be brought: (1) more than six years after the date on which the violation is committed; or (2) more than three years after the date when facts material to the right of action are known or reasonably should have been known by the state official charged with responsibility to act in the circumstances, whichever occurs last, but in no event more than 10 years after the date on which the violation is committed.

Qui Tam Actions/Whistleblower Protections

- Individuals (or *qui tam* plaintiffs) can sue for violations of the statute. *Qui tam* plaintiffs who report fraud receive between 15 and 25 percent of the amount recovered in cases where the state prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) in cases where the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information unless he or she is the original source of the information.

- The NJFCA contains important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had but for the discrimination, (3) compensation for any costs or damages incurred, and (4) punitive damages, if appropriate.

NEW YORK

The New York False Claims Act ("NYFCA") makes it a civil offense to defraud the state or any local government. N.Y. STATE FIN. LAW §§ 187 – 194.

Liability and Damages/Statute of Limitations

- Actions that violate the NYFCA include, but are not limited to: (1) knowingly presenting, or causing to be presented, to any employee, officer or agent of the state or a local government ("government"), a false or fraudulent claim for payment or approval; (2) knowingly making, using or causing to be made or used, a false record or a statement to obtain a false or fraudulent claim paid or approved by the government; (3) conspiring to defraud the government by getting a false or fraudulent claim allowed or paid; and (4) knowingly making, using or causing to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the government.
- Violations of the NYFCA are punishable by civil fines of not less than $6,000 or more than $12,000 per violation, plus three times the amount of damages which the state sustains because of the violation. In addition, a violator is liable for the cost, including attorneys' fees, of a civil action brought to recover any such penalty or damages.
- If the person committing the violation furnishes all known information to the officials responsible for investigating the false claim within thirty days after obtaining the information, the court may assess not more than two times the amount of damages sustained.
- A civil action under the NYFCA must be commenced no later than 10 years after the date on which the violation is committed.

Qui Tam Actions/Whistleblower Protections

- An individual (or *qui tam* plaintiff) may sue for violations of the NYFCA. Individuals who do so receive between 15 and 25 percent of the total amount recovered if the state prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorneys' fees) if the *qui tam* plaintiff litigates the case on his or her own. If the court finds that the action was based on disclosure of specific information related to the use of government funds during a declaration of a state of emergency, the court must increase the percentage of the proceeds to which the person commencing such qui tam civil action is entitled by up to five percent more than the maximum. An individual

cannot file a lawsuit based on public information unless he or she is the original source of that information.

- The NYFCA provides important protections for whistleblowers. Any employee who is discharged or discriminated against by his or her employer because of lawful acts in furtherance of an action brought under the NYFCA is entitled to all reasonable relief necessary to make the employee whole. Such relief includes, but is not limited to, an injunction to restrain continued discrimination; reinstatement to the individual's position and seniority rights; payment of two times back pay, plus interest; and compensation for any special damages sustained as a result of the discrimination.

OHIO

At this time, there is no Ohio false claims act that closely parallels the federal False Claims Act. However, Ohio law requires that specified health care entities provide certain information about the federal False Claims Act, Ohio false statement laws, and whistleblower protections. OHIO REV. CODE ANN. § 5162.15. In addition, Section 2913.40 of the Ohio Revised Code is a criminal law statute that is designed to prevent the commission of fraud on the state medical assistance program. OHIO REV. CODE ANN. § 2913.40. Ohio law also prohibits false statements made in connection with an application for Medicaid eligibility. OHIO REV. CODE ANN. § 2913.401. These laws *do not* contain provisions that allow individuals (or *qui tam* plaintiffs) with original information concerning fraud to file a lawsuit on behalf of the state.

Violations of Section 2913.40 (related to Medicaid fraud), Section 2913.401 (related to Medicaid eligibility fraud), and Section 2921.13 (related to certain false statements) result in penalties ranging from a first-degree misdemeanor to a third, fourth or fifth degree felony, depending on the value of the property, services or funds obtained. A person found guilty of violating Section 2913.40 may have to pay the costs of the investigation and prosecution of the violation. A person found guilty of Section 2913.401 can be compelled to make restitution of the amount of benefits received for which the applicant or recipient was not eligible (plus interest). A person who violates Section 2921.13 is liable in a civil action to any person harmed by the violation. The remedies set forth in Sections 2913.40, 2913.401, and 2921.13 do not preclude the use of any other criminal or civil remedy.

PENNSYLVANIA

Pennsylvania has not adopted any false claims acts or statutes that contain *qui tam* provisions that are similar to those found in the federal False Claims Act. It has, however, adopted a fraud and abuse statute that makes it unlawful for a person to submit false or fraudulent claims to the Pennsylvania medical assistance program. Violations of this statute are criminal and civil offenses punishable by imprisonment and substantial fines and monetary penalties. 62 PA. STAT. ANN. § 1407.

TENNESSEE

The Tennessee False Claims Act ("TFCA") is a state law that is designed to help the state government and political subdivisions combat fraud and recover losses resulting from fraud in programs, purchases, or contracts. TENN. CODE ANN. §§ 4-18-101 to 4-18-108. The Tennessee Medicaid False Claims Act (**"**TMFCA**"**) applies solely to false claims under the Medicaid program. TENN. CODE ANN. §§ 71-5-181 to 71-5-185.

Liability and Damages/Statute of Limitations

- Actions that violate the both the TFCA and the TMFCA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed. In addition, anyone who benefits from a false claim that was mistakenly submitted also violates the TFCA if he or she does not disclose the false claim soon after he or she discovers it. Finally, the TFCA also broadly prohibits using any false representation or practice to procure anything of value from the state government or any political subdivision. The courts can waive penalties and reduce damages for violations if the false claims are voluntarily disclosed. The TFCA does not apply to controversies of less than $500, workers' compensation claims, Medicaid claims, or tax claims.
- Penalties of $2,500 to $10,000 per claim plus three times the amount of damages to the state or political subdivision may be imposed for TFCA violations.
- Under the TFCA, a civil suit must be filed within three years after the violation was discovered, but no more than ten years after the violation was committed.
- The TMFCA applies only to Medicaid claims. Penalties of $5,000 to $25,000 per claim plus three times the amount of damages which the state sustains may be imposed for TMFCA violations.
- Under the TMFCA, a civil suit can be filed by the later of: (1) six years after the violation was committed, or (2) three years after the violation was discovered (but no more than ten years after the violation was committed).

Qui Tam Actions/Whistleblower Protections

- An individual (or *qui tam* plaintiff) can sue for violations of the TFCA or the TMFCA. Individuals who report fraud receive between 25 and 33 percent of the total amount recovered if the government prosecutes the case under the TFCA and between 15

and 25 percent under the TMFCA. If the *qui tam* plaintiff litigates the case on his or her own, he or she receives between 33 and 50 percent of the proceeds under the TFCA and between 25 and 30 percent under the TMFCA (plus reasonable costs and attorney fees). Under both acts, an individual cannot file a lawsuit based on public information, unless he or she is the original source of the information. Both the TMFCA and the TFCA contain important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had except for the discrimination, and (3) compensation for any costs or damages they have incurred. Under the TFCA, the employer may also be liable for punitive damages.

TEXAS

The Texas Medicaid Fraud Prevention Law ("FPL") combats fraud and abuse by health care providers participating in the Medicaid Program. TEX. HUM. RES. CODE ANN. §§ 36.001 – 36.132. Texas also enacted the Medical Assistance Program and the Award for Reporting Medicaid Fraud, Abuse or Overcharges. TEX. HUM. RES. CODE ANN. §§ 32.039 et seq. and TEX. HUM. RES. CODE ANN §§ 531.101 et seq.

Liability and Damages

- Actions that violate the FPL include: (1) making a false statement or concealing information that affects the right to a Medicaid benefit or payment; (2) submitting a claim for Medicaid payment for a product or service rendered by a person who is not licensed to provide that product or service or fails to indicate the license of the practitioner who actually performed the service; (3) submitting a claim for a service or product that has not been approved by the treating health care practitioner; (4) conspiring to defraud the state by obtaining an unauthorized payment from the Medicaid program or its fiscal agent; or (5) knowingly making or using of a false record or statement material to an obligation to pay or transmit money or property to this state under the Medicaid program, or knowingly concealing or avoiding an obligation to pay or transmit money or property to this state under the Medicaid program.
- The law requires restitution of the value of any Medicaid payment plus interest, damages of two times the value of the payment, and a civil penalty of $5,500 to $15,000 (or the amounts imposed as provided by 31 U.S.C. § 3729(a)) for each violation that results in an injury to a disabled person, an elderly person, or a person younger than 18 years of age. If the violation does not result in such an injury, the law requires a civil penalty of $5,500 to $11,000 for each violation and damages of two times the value of the payment. A court may waive the civil penalties and award two times the amount of the payment if the defendant voluntarily discloses the violations.

Qui Tam Actions/Whistleblower Protections

- Individuals (or *qui tam* plaintiffs) can sue for violations of the FPL. Individuals who bring an action under the FPL receive between 15 and 25 percent of the amount recovered (plus reasonable costs and attorney's fees) if the state prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney's fees) if the *qui tam* plaintiff litigates the case on his or her own. Employees who suffer discrimination

because of their involvement in false claims actions may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had but for the discrimination, and (3) compensation for any costs or damages they have incurred (including litigation costs and attorney fees).

VIRGINIA

The Virginia Fraud Against Taxpayers Act ("FTA") is a state law that helps the Commonwealth combat fraud and recover losses resulting from fraud in programs, purchases, or contracts. VA. CODE ANN. §§ 8.01-216.1 to 8.01-216.19.

Liability and Damages/Statute of Limitations

- Actions that violate the FTA include: (1) submitting a false claim for payment; (2) making or using a false record to get a false claim paid; (3) conspiring to make a false claim or get one paid; (4) making or using a false record to avoid payments owed to the Commonwealth or a political subdivision; or (5) possessing custody or control of Commonwealth property or money and, intending to defraud the Commonwealth, knowingly delivering less than the entirety of that property.
- The Commonwealth imposes penalties of $10,957 to $21,916 (these limits are automatically adjusted to equal the amounts allowed under the Federal False Claims Act, 31 U.S.C. § 3729 et seq., as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 Note, P.L. 101-410)), plus three times the amount of damages to the Commonwealth for FTA violations, plus the costs of a civil suit for recovery of penalties or damages.
- A civil suit must be filed by the later of either: (1) six year after the violation was committed, or (2) three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the Commonwealth charged with responsibility to act in the circumstances (but no more than ten years after the violation was committed).

Qui Tam Actions/Whistleblower Protections

- An individual (or *qui tam* plaintiff) can sue for violations of the FTA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the government prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information unless he or she is the original source of the information.
- The FTA contains important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had except

for the discrimination, and (3) compensation for any costs or damages they have incurred (including litigation costs and reasonable attorney fees).

WASHINGTON

The Washington State Medicaid Fraud False Claims Act ("MFFCA") imposes liability on any person or corporation who knowingly presents a false or fraudulent claim to the Washington Medicaid program, misappropriates public property, or avoids an obligation to the Washington state Medicaid agency. WASH. REV. CODE §§ 74.66.005 – 74.66.130.[1]

Liability and Damages/Statute of Limitations

- The actions that violate the MFFCA include, but are not limited to: (1) knowingly presenting a false or fraudulent claim for payment; (2) knowingly making or using a false record or statement material to a false or fraudulent claim; (3) conspiring to commit a violation of this section; (4) knowingly making a false record or statement material to an obligation to pay or transmit money or property to the state; or (5) possessing custody or control of state property or money and knowingly delivering less than the entirety of that property.
- Any person who violates the MFFCA shall be liable to the state for a civil penalty between $10,975 and $21,916 (or the inflation adjusted penalty amount imposed as provided by 31 U.S.C. Sec. 3729(a)), plus three times the amount of damages that the state sustains because of the violation, and the costs of investigation and prosecution of such violation. The court can reduce damages for MFFCA violations if the false claims are voluntarily disclosed.
- civil action under this section may be brought at any time, without limitation after the date on which the violation of the MFFCA occurred.

Private or *Qui Tam* Actions/Whistleblower Provisions

- Individuals (or *qui tam* plaintiffs) can sue for violations of the MFFCA. Individuals who bring an action under the MFFCA receive between 15 and 25 percent of the amount recovered (plus reasonable costs and attorney's fees) if the state prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney's fees) if the *qui*

[1] The *qui tam* provisions of the Washington MFFCA will sunset on June 30, 2023 unless the Legislature reauthorizes them. WASH. REV. CODE § 43.131.419. In November 2022, the Washington Joint Legislative Audit and Review Committee recommended reauthorizing these provisions and making them permanent.

tam plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information unless he or she is the original source of the information.

- If defendant prevails, and the court finds that the privately prosecuted case was frivolous, the court may award fees and expenses to the defendant.
- The MFFCA bars employers from interfering with an employee's disclosure of false claims. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had except for the discrimination, (3) compensation for any costs or damages they have incurred, and (4) special damages, if appropriate.

WISCONSIN

Wisconsin does not currently have a false claims act or statutes that contain qui tam provisions that are similar to those found in the federal False Claims Act.[2] It has, however, adopted several provisions that allow the state to prosecute Medicaid fraud. Wisconsin's Public Assistance Act prohibits knowing presentation of false claims to state officials made in relation to the state's Medicaid program. Violations of the Public Assistance Act result in fines between $5,000 and $10,000. WIS. STAT. ANN. § 49.485. The statute also prohibits knowing concealments and failures to disclose known events that affect a person's initial or continued right to a benefit or payment, both directly and for others on whose behalf application is made or benefits or payments are received. Each statement, representation, concealment or failure is punishable by a fine between $100 and $15,000. WIS. STAT. ANN. § 49.49(4m).

[2] Wisconsin repealed its primary statute pertaining to false claims for medical assistance, Wis. Stat. § 20.931, effective July of 2015. The impact of the repeal was to eliminate private individuals' authority to bring *qui tam* actions for false claims for medical assistance. The repeal also scaled back protections for whistleblowers.