

## Corporate Compliance

Policy: <b>Education Concerning False Claims Liability, Anti-Retaliation Protections, And Detecting And Responding To Fraud</b>	Effective Date: <b>October 23, 2006</b>
Policy Number: <b>ED-06-0001</b>	Replaces: <b>n/a</b>
Authorized by: <b>Corporate Compliance Committee</b>	

**PURPOSE:** To satisfy the requirements of Section 6032 of the Deficit Reduction Act of 2005 by setting forth certain federal and state laws relating to liability for false claims and statements; protections against retaliation for those who report wrongdoing; and Baptist Health’s policies and procedures to detect and prevent fraud, waste and abuse.

**POLICY:** Federal and Arkansas laws strictly forbid any health care provider from submitting false or fraudulent claims to health care payers including Medicare, Medicaid, and other Federal or State health care programs. There are also a variety of laws that punish the making of false statements to the state and Federal health care programs. It is the policy of Baptist Health that no employee, medical staff member, or contractor or agent violate any of these laws or be aware of another person violating these laws without making a report of such alleged violation to the individual’s immediate supervisor or to Baptist Health’s Corporate Compliance Officer.

**DISTRIBUTION:** Written notification shall be made to Board members, officers, administrators, managers, staff, employees, contractors and agents of Baptist Health of the posting of this policy to the Baptist Health website and EmployeeNet. This policy will also be referenced in the Baptist Health Code of Ethical Conduct.

### The Federal False Claims Act

The Federal False Claims Act (the “FCA”)(31U.S.C.§§3729-3733) 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 or decrease payments owed to the U.S. Government (the “Government”). “Knowingly” means that a person: (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

The FCA imposes penalties of \$5,500 to \$11,000 per claim plus three times the amount of damages to the Government for FCA violations. 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.

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### **Whistleblower Protections and Private or *Qui Tam* Actions under the Federal False Claims Act**

An individual 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. Individuals 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 that apply to Baptist Health employees. Employees who file a *qui tam* action 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.

### **Federal Administrative Remedies for False Claims and Statements**

Federal law also provides administrative remedies against any person who makes, or causes someone else to make, a false claim or a false statement in the amount of \$5,000 for each false claim or statement. A “false claim” (for purposes of the civil remedies) is defined as a claim that the person knows or has reason to know: is false; includes or is supported by any written statement which asserts a material fact which is false; 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 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 which is false; or omits a material fact that makes the statement false.

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### **Other Federal Laws Prohibiting False Claims and Statements**

Another Federal law provides criminal and civil penalties specifically against anyone who (among other things) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a Federal health care program or knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment; presents or causes to be presented a claim for a physician's service for which payment may be made under a Federal health care program and knows that the individual who furnished the service was not licensed as a physician. A violation of this law can result in criminal fines of not more than \$25,000 or imprisoned for not more than five years or both.

A related Federal law prohibits anyone from knowingly and willfully making or causing to be made any false statement or representation of a material fact about the conditions or operation of any institution, facility, or entity in order that it may qualify for Medicare or Medicaid certification as a hospital, critical access hospital, skilled nursing facility, nursing facility, intermediate care facility for the mentally retarded, or other entity. A violation of the law can result in criminal fines of not more than \$25,000 or imprisoned for not more than five years or both.

### **The Arkansas Medicaid Fraud Act**

The Arkansas Medicaid Fraud Act, among other things, establishes criminal liability for any person for: (1) purposely making (or causing to be made) false statements or concealing relevant knowledge in regard to any benefit or payment under the Arkansas Medicaid Program or in regard to the condition or operation of an entity as regards certification; (2) purposely converting a benefit to a use other than for the use and benefit of the other person; (3) purposely soliciting or receiving any remuneration (kickback, bribe, or rebate) in exchange for certain referrals or recommendations; (4) purposely charging in excess of the rates established by the state or requiring funds additional to those paid by the program as a condition of admission or continued stay.

The Arkansas Medicaid Fraud Act provides that any person violating the law shall be subject to penalties of full restitution, a mandatory fine of three times the total amount of the false claims, and a fine of up to \$3,000 per claim. Violation of this law is a Class A misdemeanor if the aggregate amount of violations is under \$200, a Class C felony if the aggregate amount is between \$200 and \$2,500, and a Class B felony if the aggregate amount is over \$2,500. There may be additional fines associated with criminal conviction. In addition, the Arkansas Medicaid Frauds False Claims Act, provides for civil sanctions as well, and the fines imposed for civil violations may be additive to the criminal penalties.

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### **Whistleblower Protections and Private or *Qui Tam* Actions under the Arkansas Medicaid Fraud Act**

A person who provides information which leads to the detecting and bringing to trial and punishment persons guilty of violating the Medicaid fraud laws may receive a reward for doing so, at the court's discretion. The amount may be up to ten percent of the aggregate penalty recovered, or in any case not more than one hundred thousand dollars, as the court may deem just.

The Attorney General may petition the court on behalf of a person who provides such information in an amount commensurate with the quality of information determined by the court to have been provided. If the Attorney General does not request the reward for information from the court on behalf of a person who has provided information, he or she may pursue the reward on his or her own behalf, but neither the state nor any defendant within the action shall be liable for expenses incurred in such suit.

These are summaries of very complex laws. Many of these laws have been further interpreted by state and Federal courts over the years. Thus, the application of any of these laws to any given situation will vary. Also, there are a variety of other state and Federal laws that prohibit (with civil and criminal consequences) the filing of false claims and the making of false statements. The Corporate Compliance Officer can provide you with more thorough discussions of any of these laws, or their application to any situation you may encounter. These laws all serve the important function of protecting the Federal and state health care programs from fraud, waste, and abuse and allow those funds to go to protect the beneficiaries of these programs. These beneficiaries are the patients of BAPTIST HEALTH, and BAPTIST HEALTH supports the goals of these laws and requires all employees, medical staff members, contractors and agents to comply with these laws, as part of our mission of providing services to our patients.

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As reflected in Baptist Health’s Code of Ethical Conduct, at any time any employee or medical staff member becomes aware of any actual or threatened violation of any Baptist Health policy or of any applicable law (including but not limited to the Federal and State false claims and statements laws), regulation or standard of conduct, such Baptist Health employee, medical staff member **must** report the situation to the person’s supervisor, Human Resources, Pastoral Care or the Corporate Compliance Officer. Questions about suspected violations may also be made to Baptist Health's Compliance Hotline (800-991-0888). Baptist Health will protect the privacy of the caller. Baptist Health will not take any adverse action against any Baptist Health employee, medical staff member, or contractor or agent who reports, in good faith, any violation, actual or threatened, regardless of whether the situation giving rise to the report is ultimately determined not to have any factual basis. If any Baptist Health employee, medical staff member, or contractor or agent knows of any actual or threatened violation of any applicable law, regulation or standard and fails to report the situation, such employee or medical staff member may be subject to disciplinary action.

### **BAPTIST HEALTH Policies and Procedures for Detecting and Preventing Fraud**

The Corporate Compliance Plan addresses the Seven Elements of an Effective Compliance Program as described by the Office of Inspector General. These elements define how “Baptist Health prevents non-compliance, detects it if it happens to occur, and takes appropriate corrective action to ensure such behavior does not recur”.