FALSE CLAIM ACT

The University of North Carolina Health Care System is obligated, by law, to share with its suppliers information related to the Federal False Claims Act.

This information to follow is designed to be a helpful, yet comprehensive, understanding of the rights, responsibilities and obligations of UNC Health Care System and its supply base.

Federal Civil False Claims Act
For
All Suppliers and Contractors
to
The University of North Carolina Health Care System

The Federal Civil False Claims Act, its associated regulations, and guidelines provide standards to protect the United States government from fraud and abuse, as it has since it was originally enacted in 1863. The University of North Carolina Health Care System ("UNC HCS") has identified your company as a supplier or contractor which provides goods or services to UNC HCS.

All supplies and contractors to UNC HCS are advised that a general overview of the provisions of the Federal Civil False Claims Act are made available to them vis-à-vis this notice, as week as you are directed to the following web site and related link, in order to access UNC HCS policy respective of this issue: http://www.unchealthcare.org/site/purchasing/falseclaims.pdf/view. Correspondingly, UNC HCS is required to make readily available and to disseminate the required written policies to not only employees, but contractors, agents and such contractors' and agents' respective employees. The most efficient means of this notification is this cover letter, accompanying general overview, and direction to the UNC HCS Purchasing Department policy information.

UNC HCS is taking a very aggressive approach to the dissemination of this information and its importance, as well as in administering and communicating its position on this issue. Therefore, we have directed this letter to all suppliers and contractors which currently reside in its database of vendors.

We ask that you carefully review these guidelines and visit the referenced website for further information on UNC HCS policies regarding the prevention of fraud, abuse and waste. Additionally, the American Recovery and Reinvestment Act included provisions that will modify the Business Associates process for entities that are considered business associates under the HIPAA regulations. In the near future we will update or amend all business associates agreements to comply with any new requirements.

Respectfully,

On behalf of The University of North Carolina Health Care System
Date: October 12, 2010

Jeff Yardley, C.P.M.
Purchasing Manager
UNC Hospitals

I. FEDERAL LAWS

A. FEDERAL CIVIL FALSE CLAIMS ACT

The federal civil False Claims Act, 31 U.S.C. § 3729, *et seq.*, ("FCA") was originally enacted in 1863 to combat fraud perpetrated by defense contractors against the United States government during the Civil War. The current version of the FCA was enacted in 1982 and was amended in 1986; however, the FCA's purpose, to protect the United States government from fraud and abuse, remains unchanged. As discussed herein, the FCA's application to state agencies, such as the University of North Carolina at Chapel Hill and the UNC Health Care System, is limited.

The FCA prohibits any "person" from:

- Knowingly submitting a false or fraudulent claim for payment to the federal government or causing such a claim to be submitted,
- Knowingly making or using a false record or statement to secure payment from the federal government for a false or fraudulent claim or causing such a false record or statement to be made or used, or
- Conspiring to get a false or fraudulent claim paid by the federal government.

The FCA specifically states that a person acts "knowingly" when that person: (1) has actual knowledge of the information, (2) deliberately ignores the truth or falsity of the information, or (3) recklessly disregards the truth or falsity of the information. The FCA also defines the term "claim" as any request or demand for money or property where the United States government provides any portion of the money or property which is requested or demanded.

A person who has violated the FCA must repay all of the falsely-obtained reimbursement and is liable for a civil penalty of up to $11,000 and three times the amount of actual damages the federal government sustained for each false claim that was submitted. In addition, a person who has violated the FCA may be terminated from participation in federal health care programs, including the Medicare and Medicaid programs.

Both the United States Attorney General and private citizens may bring lawsuits alleging a violation of the FCA. When brought by private citizens, these actions are known as *qui tam* lawsuits, and the citizens who file these suits are known as "relators" or "whistleblowers." When a relator brings a *qui tam* action, the United States government may choose to intervene in the lawsuit and exercise primary responsibility for prosecuting, dismissing, or settling the claim. If the government declines to intervene, the relator can pursue the suit individually. As a reward for filing the action, a *qui tam* relator may receive between fifteen and thirty percent of the sum recovered for the government, in addition to attorneys' fees and other expenses. Alternatively, if a court determines that a relator's suit was frivolous, clearly vexatious, or brought primarily to harass the defendant, the relator will have to reimburse the defendant for the fees and costs it spent defending the lawsuit.

The FCA offers "whistleblower protection" to employees who bring suit pursuant to the FCA. If these employees are discharged, demoted, suspended, threatened, harassed, or discriminated against because of their involvement in an FCA claim, the employee may bring suit against his or her employer. A court may then determine that the employee is entitled to reinstatement, twice the amount of back pay plus interest, attorneys' fees, and other costs and expenses.

As previously noted, the FCA has limited application to state agencies, including the University of North Carolina at Chapel Hill and the UNC Health Care System. While state agencies may be subject to FCA lawsuits filed by the United States Attorney General, the United State Supreme Court has determined that state agencies cannot be sued by relators.

B. FEDERAL PROGRAM FRAUD CIVIL REMEDIES ACT

The Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801, *et seq*., ("PFCRA") imposes administrative remedies against a person who presents or causes to be presented a claim or written statement that the person knows or has reason to know is false to certain federal agencies, including the United States Department of Health and Human Services. The PFCRA states that a person "knows or has reason to know" that a claim or statement is false if the person: (1) has actual knowledge that the claim or statement is false, fictitious, or fraudulent, (2) deliberately ignores the truth or falsity of the claim or statement, or (3) acts in reckless disregard of the truth or falsity of the claim or statement. The PFCRA, like the FCA, defines a "claim" as any request or demand for money or property where the United States government provides any portion of the money or property which is requested or demanded.

A person who violates the PFCRA may be assessed civil money penalties of up to $5,000 per false claim and as much as twice the amount of each claim. The PFCRA generally applies to claims valued at less than $150,000. Alleged violations of the PFCRA are investigated by the agency to which the false claim was submitted, and enforcement actions may be brought only with the approval of the United States Attorney General.

II. STATE LAW

A. NORTH CAROLINA MEDICAL ASSISTANCE PROVIDER FALSE CLAIMS ACT

The North Carolina Medical Assistance Provider False Claims Act, N.C.G.S. § 108A-70.10, *et seq.*, ("NC FCA") forbids North Carolina Medical Assistance Program providers (e.g., Medicaid providers) from:

- Knowingly submitting a false or fraudulent claim for payment or approval to the Medical Assistance Program or causing such a claim to be submitted, or

- Knowingly making or using a false record or statement to secure payment from the Medical Assistance Program for a false or fraudulent claim or causing such a false record or statement to be made or used.

The NC FCA specifically states that a provider acts "knowingly" when that provider: (1) has actual knowledge of the information, (2) deliberately ignores the truth or falsity of the information, or (3) recklessly disregards the truth or falsity of the information. The NC FCA defines the term "claim" as an application for payment or approval that is submitted to the Medical Assistance Program and that identifies a service, good, or accommodation as reimbursable under the Medical Assistance Program.

A provider who has violated the NC FCA may be liable for a civil money penalty of up to $11,000 plus three times the amount of damages sustained by the Medical Assistance Program for each false claim that was submitted. The provider will also be liable for investigatory and court costs, as well as interest on the damages amount.

Lawsuits brought pursuant to the NC FCA can only be instituted by the North Carolina Attorney General. Thus, unlike the federal FCA, private citizens may not file actions against providers under the NC FCA.

The NC FCA, like its federal counterpart, does provide "whistleblower protection" to employees who assist in the investigation or pursuit of an NC FCA claim. If these employees are discharged, demoted, suspended, threatened, harassed, or discriminated against because they aided in the furtherance of an NC FCA investigation or suit, the employee may bring a claim against his or her employer. A court may determine that the employee is entitled to reinstatement, twice the amount of back pay plus interest that the employee is due, attorneys' fees, and other costs and expenses.

B. PROHIBITION AGAINST SUBMISSION OF FALSE CLAIMS TO INSURERS

Section 58-2-161 of the North Carolina General Statutes levies civil and criminal penalties against any person who, with the intent to injure, defraud, or deceive an insurer or insurance claimant:

- Presents or causes to be presented a statement or claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning a material fact, or
- Assists, solicits, or conspires with another person to prepare or make a statement or claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning a material fact.