Introduction

The federal and state governments have enacted laws, Section 6032 of the Deficit Reduction Act of 2005, effective January 1, 2005 and Chapter 36, Medicaid Fraud Prevention Act of the Human Resources Code, effective September 1, 2005 requiring entities such as SCC Healthcare Group (SCC) that receive Medicaid funds in excess of $5 million annually to establish policies providing detailed information about fraud, waste and abuse in Federal and State healthcare programs. SCC has disseminated these policies to its employees, agents and contractors. Additionally, the employees, agents and contractors must, in performing work for SCC, adopt and abide by the policies. SCC’s policy on this topic is provided below. The policy may be accessed at www.scc-texas.com.

Policy Statement

It is the policy of SCC to comply with all applicable Federal and State laws pertaining to fraud, waste and abuse in Federal health care programs including Section 6032 of the Deficit Reduction Act of 2005, effective January 1, 2005 and Chapter 36, Medicaid Fraud Prevention Act of the Human Resources Code, effective September 1, 2005 and to disseminate information to its employees, including management, and to its contractors and agents regarding:

- Federal law and administrative remedies and State laws related to false claims and statements, and whistleblower protections under such laws, and the role of such laws in preventing and detecting fraud, waste and abuse in Federal health care programs, and
- SCC’s policies and procedures for detecting and preventing fraud, waste and abuse, and related whistleblower protections pertaining to the laws discussed in this policy.

SCC has developed this Fraud, Waste and Abuse (FWA) Compliance Policy to be a comprehensive statement of the responsibilities and obligations of all employees regarding submissions of information on which payment is made to the Centers for Medicare and Medicaid Services, or CMS (for Medicare), the Office of Health and Human Services Commission, or HHSC (for Medicaid), and other government payors for services rendered by SCC and any of its contractors. In addition, this policy is intended to apply to business arrangements with physicians, vendors, subcontractors, hospitals, brokers, agents, and other persons who may be subject to federal or state laws relating to FWA.
Detecting and preventing FWA is the responsibility of everyone, including employees, members, providers, and sub-contractors. The company has written policies and procedures to address the prevention, detection, and investigation of suspicious activity. SCC also conducts compliance training and posts their FWA policies and procedures on the SCC Intranet site.

**Definitions of FWA**

**Fraud** – An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself/herself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

**Waste and Abuse** – Incidents or practices that are inconsistent with legal, ethical, accepted and sound business, fiscal or medical practices that result in unnecessary cost to health programs, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes Medicare and Medicaid practices that result in unnecessary costs to a health program.

Examples of potential FWA; this list is not conclusive:

- Falsifying Claims
- Alteration of Claim
- Incorrect coding
- Double Billing
- Billing for services not provided
- Misrepresentation of services/supplies
- Substitution of services
- Administrative/Financial/Broker
- Kickback/Stark violations
- Fraudulent credentials
- Embezzlement
- Under-utilization and Over-utilization

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**Summary of Federal and State Laws Related To Fraud, Waste and Abuse In Federal Health Programs**

**Federal Laws**

**False Claims Act (31 U.S.C. §§ 3729-3733)**

The False Claims Act (FCA) provides, in pertinent part, that:

(a) Any person who (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval; (2)
knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the government; (3) conspires to defraud the Government by getting a false or fraudulent claim paid or approved by the Government;...(7) knowingly makes, uses, or causes 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, is liable to the United States Government for a civil penalty of not less than $5,000, and not more than $10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person....

(b) For purposes of this section, the terms “knowing” and “knowingly” mean that a person, with respect to information (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information, and no proof of specific intent to defraud is required.

31 U.S.C. § 3729. While the False Claims Act imposes liability only when the claimant acts “knowingly,” it does not require that the person submitting the claim have actual knowledge that the claim is false. A person who acts in reckless disregard or in deliberate ignorance of the truth or falsity of the information also can be found liable under the Act. 31 U.S.C. § 3729(b).

In summary, the False Claims Act imposes liability on any person who submits a claim to the federal government that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The False Claims Act also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. An example of this may include a government contractor who submits records that he knows (or should know) is false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to which he may not be entitled and then uses false statements or records in order to retain the money. An example of this so-called “reverse false claim” may include a hospital who obtains interim payments from Medicare throughout the year, and then knowingly files a false cost report at the end of the year to avoid making a refund to the Medicare program.

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 “qua tam relators,” may share in a percentage of the proceeds from a 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 be not less that 25 percent and not more than 30 percent.
The FCA provides protection to *qui tam* relators who are discharged, demoted, suspended, threatened harasses or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an relator would have had but for the discrimination, two times the amount of back pay, interest on any back pay, and compensation for any special damages as a result of the discrimination, including litigation costs and reasonable attorneys’ fees.

**Administrative Remedies for False Claims (31 U.S.C, §§ 3801 – 3812)**

Federal law also provides for administrative remedies for situations in which a person or entity submits a claim if the claimant has reason to know such claims are false or are supported by materially false statements. “Administrative remedies’ means that a Federal agency is responsible for enforcement and conducts the investigation and proceedings, determines whether the claim is false and imposes fines and penalties, instead of prosecution of the matter in the Federal court system. The law applies to all claims made to the Federal government including Medicaid claims because Medicaid is partially funded by the Federal government. Unlike the FCA, a violation of this law occurs when a false claim is submitted, not when it is paid. The consequences of violating this law is that the violator will be subject to a civil penalty of up to $5,000 for each false claim and an assessment of damages up to twice the amount of the claim. There is no *qui tam* (private enforcement) provision under this law. Under the administrative process, the Federal agency conducts an investigation of the allegations, the matter is sent to the U.S. Attorney General who may send it on to an administrative law judge for a hearing. If an administrative hearing is conducted, it is similar to court proceedings (with the right to counsel, to know the evidence, to confront and cross-examine witnesses and to offer a defense). There is also an appeal process. The penalty or assessment against the violator, if upheld, is then recovered by the U.S. Attorney General.

**Texas State Laws**

Texas’s false claims laws fall into two categories: civil and administrative; and criminal laws. Remedies for violations of the Texas equivalent of the FCA include restitution, fines of $1,000 to $10,000 for each unlawful act committed by a person that does not cause injury to a person; $5,000 to $15,000 for each unlawful act committed by a person that causes injury to a person; and two times the value of the false claim. Criminal penalties can range from a misdemeanor to a felony in the first degree when amounts of $200,000 or more are involved.

Texas equivalent of the FCA does not appear to contain “whistleblower” protections similar to the federal equivalent, but there are certain public policy exceptions to terminate at will employment recognized in case law which can add a measure of protection.
Texas False Claims Act (Texas Human Resources Code, Chapters 32 and 36)

The Texas Medicaid Fraud Prevention Act at Texas Human Resources Code Chapter 36 provides that a person commits a violation of this act if a person: (a) makes a false statement or misrepresents a material fact to obtain a benefit or payment; (b) conceals an event or fact that affects the initial or continued right to a payment or benefit; (c) applies for or receives a benefit or payment on behalf of a recipient and converts some or all of the benefit or payment for use other than on behalf of the recipient; (d) makes, causes to be made, induces or seeks to induce the making of a false statement or misrepresentation regarding the conditions or operation of a facility to obtain certification or recertification or any other information required to be provided to the Medicaid program; (e) accepts or charges any gift, money or other consideration, other than the Medicaid payment, as a condition for the provision of services to a Medicaid recipient; (f) presents a claim for payment of services rendered by a person who is not licensed; (g) makes a claim for a service that has not been ordered by an appropriate practitioner, is substandard or inadequate, or for a product that has been mislabeled or adulterated; (h) makes a claim for payment and fails to indicate the type of license or identification number of the provider who actually rendered the services; or (i) enters into a conspiracy to defraud the state by obtaining an unauthorized payment or benefit.

If a person violates the Act, he or she could be subject to the following: (a) suspension or revocation of the provider agreement, permit license or certification; (b) exclusion from the Medicaid program for a period of no less than 10 years; (c) disciplinary action by a state licensing board; (d) restitution for the value of any money or benefit received; (e) civil penalty from $1,000 to $15,000 depending on the unlawful act; and (f) penalties of up to two times the value of the unlawful payment or benefit received.

A private citizen may file an action under the Texas Medicaid Fraud Prevention Act; the Texas Attorney General must be notified and given the opportunity to pursue the case. If the Attorney General proceeds with an action under this subchapter, the person bringing the action may be entitled to receive a percentage of the proceeds recovered by the State. If the Attorney General declines to pursue the case, the case must be dismissed.

A person who reports a violation of the Act or otherwise acts in furtherance of an action brought under the Act cannot be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against. A person who is subject to such discrimination may bring an action in the appropriate district court for relief and is entitled to (a) reinstatement with the same seniority status the person would have had but for the discrimination; and (b) not less than two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees.

Texas Human Resources Code Chapter 32 states that it is unlawful for a person: (a) to present or cause to be presented a claim that contains a statement or representation the person knew or should have known to be false; (b) to offer to pay or agree to accept,
directly or indirectly, overtly or covertly any remuneration in cash or in kind to or from another for securing or soliciting a patient or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency; (c) to solicit or receive, directly or indirectly, overtly or covertly any remuneration in cash or in kind for referring an individual to a person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program; (d) to solicit or receive, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for purchasing, leasing, or ordering, or arranging for or recommending the purchasing, leasing, or ordering of, any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program; (e) to offer or pay, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to refer an individual to another person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program; (f) to offer or pay, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to purchase, lease, or order of, any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program; and (g) to provide or offer an inducement to an individual, including a recipient, provider or employee of a provider, for the purpose of influencing a decision regarding selection of a provider or receipt of a good or service under the medical assistance program or for the purpose of otherwise influencing a decision regarding the use of goods or services provided under the medical assistance program.

A person who commits a violation under Chapter 32, Texas Human Resources Code, is liable for: (a) the amount paid as a result of the violation, including interest; (b) administrative penalties not to exceed twice the amount paid, plus an amount not less than $5,000 and not more than $15,000 for each violation; and (c) exclusion from the Medicaid program for 3 to 10 years depending on the violation. (d) An intentional violation of Chapter 32 could constitute a state jail felony.

There is no private cause of action under Chapter 32. However, the Texas Health and Human Service Commission has the discretion to grant an award to an individual who reports activity that constitutes fraud or abuse of funds in the state Medicaid program or reports overcharges in the program. The disclosure must result in the recovery of an overcharge or in the termination of the fraudulent activity or abuse of funds.
Preventative Measures:

SCC has a corporate compliance program that pertains to the prevention and detection of false claims, statements and impermissible financial transactions which could result in health care fraud and abuse. This committee consists of the President, Chief Financial Officer, Director of Rehabilitation Services, Director of Clinical Services, Vice-President of Lone Star Pharmacy, and the Director of Corporate Compliance. The committee is charged with ensuring that each entity of the corporation and its employees complies with all federal, state and local laws. Each employee of SCC is held to Employee Standards of Conduct and is expected to abide by these standards. Any employee who believes that someone has violated one or more of these rules, laws, regulations or standards of care or conduct are compelled to report. The constant surveillance of these issues has become an employee’s responsibility and an important part of their job.

Education

All facilities and corporate office personnel are provided education through a number of initiatives to include: providing in-person and on-line individual or group training designed to prevent fraud, waste and abuse associated with Federal health care programs and annual mandatory required training; accessing and using internet websites containing billing compliance topics; disseminating educational information supplied by Medicare and Medicaid through e-mails, mailings and links to regulatory monthly bulletins to heighten compliance awareness; facility and corporate postings to provide awareness; and attending any area or out-of area seminars on related compliance topics.

Reporting Mechanisms

Any employee with a concern should follow their normal chain of command and report any and all concerns that relate to suspected fraud, waste and abuse. SCC has a corporate compliance officer, Harold Hammond, who can be reached at (972) 303-7529. All reports of Abuse, Waste and Fraud must be reported to the corporate compliance officer.

Background Checks

The facility and corporate human resources departments perform criminal background checks on individuals before an offer of employment is made. Criminal Background checks are performed using the Texas Department of Public Safety database. In addition, if an individual comes from another state and seeks employment then the individual is checked using a national database to verify any convictions that were obtained in the state the individual came from before Texas. An offer of employment may not be made if the
individual has a barrable conviction, as listed in Texas Health and Safety Code, Chapter 250.006(a)(b)(c)(d) or such conviction would not be in the best interest of the company or of the residents we serve. In addition, reference checks from two sources are obtained during this hiring process. Appropriate action is taken with regard to anyone with barrable/undesirable convictions or negative reference checks.

The facility and corporate human resources departments perform background checks on specific employees such as certified nurse aides and unlicensed employees against the Texas Department of Aging and Disability Services’ Nurse Aide Registry (NAR) and Employee Misconduct Registry (EMR). These checks will reveal whether or not an individual has committed any acts of abuse, neglect, exploitation, misappropriation, or misconduct that would prevent this individual from being hired. If the individual has worked as a nurse aide in another state and has come to Texas for employment then the individual is checked in that state’s nurse aide registry before the individual is approved to work in a SCC facility. Appropriate action is taken with regard to anyone appearing on these lists.

The facility and/or corporate human resources departments also check all employees, vendors, volunteers, medical providers and anyone who does business with SCC against both the Federal and State exclusion lists (U.S. Health and Human Services Office of Inspector General and the Texas Health and Human Services Commission Office of Inspector General) to verify if these individuals or entities have been convicted or referred for health care fraud. Appropriate action is taken with regard to anyone or entity appearing on these lists.

The facility human resources departments and the corporate credentialing program check all licensed medical providers with their respective licensing boards upon hire or engagement and annually to ensure that each license is current and in good standing with their licensing board. Appropriate action is taken in regards to any individual that is not current or in good standing with their licensing board.

**Review of Contracts**

SCC corporate reviews all contracts and engagements to ensure that any entity doing business with SCC is aware of the Fraud, Waste and Abuse Laws and requirements and has agreed to abide by the these rules and regulations.

**Detection Measures:**

**Billing and Coding Edits**

SCC has implemented various billing and coding edit software packages (User-Defined Edit), such as American Healthtech, in detecting billing and coding which is not compliant with rules associated with Federal health care programs.
Audits

SCC’s Corporate Compliance Audit Program consists of a corporate compliance officer, an internal auditor and other corporate staff that perform audits of medical record documentation to ensure compliance with the billing requirements of federal health care programs. These audits, in addition, include internal audits designed to detect fraud, waste, and abuse. The Corporate Compliance committee meets and directs audits/corrections on high-risk areas such as those identified in the U.S. Office of Inspector General’s Annual Work Plan and in Medicare’s Focused Medical Reviews.

In addition, SCC has engagements with external auditors that also perform audits that are designed to detect fraud, waste and abuse associated with federal health care programs.

Investigations

If an employee discovers an event that is similar to one of the examples described above (“False Claim”) an employee is required to report the event through the appropriate chain of command which may include a supervisor, manager, facility administrator, director or corporate officer. These individuals are required to report the event immediately to the corporate compliance officer at the number stated above 972-303-7529. However, if an employee feels uncomfortable reporting a possible False Claim violation through the chain of command then the employee can report directly to the corporate compliance officer. If not, then the employee can report directly to an applicable federal or state authority whose number is also posted at each facility and at the corporate office. In most instances, SCC believes that it is a better option to report internally because it allows SCC to quickly address potential issues. SCC will not retaliate against any employee for informing SCC or any federal or state authority of a possible False Claim violation.

The corporate compliance officer will perform investigations based upon reports of possible fraud, waste and abuse associated with Federal health care programs. All reports of fraud, waste and abuse will be reported immediately to the Corporate Compliance Committee. When appropriate, the corporate compliance officer will involve outside agencies depending upon the allegations. Appropriate action will be taken regarding the findings of all investigations involving False Claim violations.

SCC Whistleblower Protections:

A whistleblower as defined by this policy is an employee who reports an activity that he/she considers to be illegal or dishonest to one or more parties. The whistleblower is not responsible for investigating the activity or for determining fault or corrective measures; appropriate management officials are charged with these responsibilities.

If an employee has knowledge or a concern of illegal or dishonest fraudulent activity, the employee is to contact his/her immediate supervisor or the corporate compliance officer. The employee must exercise sound judgment to avoid baseless allegations. An employee
who intentionally files a false report of wrongdoing will be subject up to and including termination.

Whistleblower protections are provided in two important areas—confidentiality and against retaliation. Insofar as possible, the confidentiality of the whistleblower will be maintained. However, identity may have to be disclosed to conduct a thorough investigation, to comply with the law and to provide accused individuals their legal rights of defense. SCC will not retaliate against a whistleblower. This includes, but is not limited to, protection from retaliation in the form of an adverse employment action such as termination, compensation decreases, or poor work assignments and threats of physical harm. Any whistleblower who believes he/she is being retaliated against must contact the corporate compliance officer immediately. The right of a whistleblower for protection against retaliation does not include immunity for any personal wrongdoing that is alleged and investigated. All reported concerns and claims of retaliation will be investigated and any individual whom SCC believes has engaged in acts of retaliation will be subject to appropriate corrective action.