Teammates must report all suspected or actual violations of DaVita's Code of Conduct, Compliance Policies and Procedures or applicable laws or regulations. Reports can be made to DaVita senior management, a DaVita manager, the Compliance Department (Team Quest), the Legal Department (the Justice League of DaVita) or the Compliance Hotline (888-458-5848 or DaVitaComplianceHotline.com). DaVita has a Non-Retaliation policy and will not tolerate any form of retaliation against anyone who files a compliance report in good faith. Questions regarding any Compliance Policy may be directed to Team Quest via the QUESTionLine at 855-687-9645 or QUESTionLine@davita.com.

ADDENDUM TO DAVITA HEALTHCARE PARTNERS INC.'S

FALSE CLAIMS ACT AND DETECTING FRAUD AND ABUSE (DRA 2005 UPDATE)

THE CODE OF CONDUCT, AND THE

TEAMMATE HANDBOOK

This Addendum is intended to supplement the False Claims Act and Detecting Fraud and Abuse (DRA 2005 Update) policy (the "Policy") of DaVita HealthCare Partners Inc. ("DaVita"), in part for purposes of compliance with the Deficit Reduction Act of 2005 (the "DRA"). Pursuant to the DRA, DaVita is required to provide to all teammates of DaVita and DaVita's subsidiary organizations, and to any contractor or agent of DaVita and DaVita's subsidiary organizations, detailed information regarding: (a) the respective roles of the federal False Claims Act (the "Federal FCA"), the federal Program Fraud Civil Remedies Act ("PFCRA"), and analogous state laws (collectively, the "State FCAs") in preventing and detecting fraud, waste, and abuse in Federal health care programs; (b) whistleblower protections under the Federal FCA and the State FCAs, respectively; and (c) DaVita's policies and procedures for detecting and preventing fraud, waste, and abuse. This Addendum provides detailed information regarding requirements (a) and (b). For information regarding DaVita's internal policies and procedures for detecting and preventing fraud, waste, and abuse, please see the Policy and the additional policies and procedures identified therein.

SUMMARY OF FEDERAL FALSE CLAIMS ACT

The Federal FCA (*see* 31 U.S.C. §§ 3729 – 3733) was originally enacted in 1863 because Congress was concerned that contracted suppliers of goods to the Union Army during the Civil War were defrauding the Union Army. The law was designed to enhance the government's ability to identify and recover losses it suffers due to fraud. Based on the Federal FCA, the government has recovered billions of dollars through litigation or settlement of allegations that corporations and individuals violated the statute and improperly obtained federal health care program funds. Over the life of the statute, the Federal FCA has been amended several times and interpreted on hundreds of occasions by federal courts. The purpose of this summary is to explain the most significant elements of the Federal FCA and how it works.

Liability under the Federal FCA

In very general terms, the Federal FCA imposes liability on any person who knowingly submits a false claim to the Federal Government, causes another to submit a false claim to the Federal Government, or knowingly makes a false record or statement to get a false claim paid by the Federal Government. The Federal FCA also imposes liability for "*reverse false claims*," which are false claims

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Federal Government. Once the Federal Government intervenes, the Federal Government and the defendant can ask the Court to limit the relator's participation in the litigation.

d. Award to the Relator

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in lieu of damages sustained by the United States because of such claim or statement. In contrast to the Federal FCA, under PFCRA, the determination of whether a claim is false and the imposition of fines and penalties are made by the federal agency as opposed to the federal court system (with the exception of potential judicial review of the agency's findings). *See* 31 U.S.C. §§ 3801, et seq.

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TITLE:

Whistleblower Protections: Alabama law protects public employees who report potential violations of laws against retaliation. Ala. Code §§ 36-25-24 and 36-26A-1 et seq.

Alaska

State-enacted civil False Claims Act? No

State-enacted civil False Claims Act has qui tam provisions? No

Non-retaliation protection? Yes

Deemed compliant by OIG? No

False Claims: Although Alaska does not have a specific state FCA, it has adopted a generally applicable medical assistance fraud statute that makes it unlawful for a person to submit false and fraudulent claims to the Alaska Medicaid program. Alaska Stat. § 47.05.210.

Penalties: The authorized sanctions for violating the statute include, but are not limited to:

- Recoupment of the overpayments;
- Mandatory claims review before payment; and
- Termination of participation in the Alaska Medicaid program.

Alaska Stat. § 47.05.240, Alaska Admin. Code tit. 7 §§ 43.950, 43.955.

Bringing an Action: The Alaskan Medicaid fraud laws do not contain *qui tam* or whistleblower provisions. However, other Alaska statutes allow for actions in the name of state, political subdivisions, or public corporations. Alaska Stat. § 09.10.120.

Statute of Limitations: Actions brought pursuant to Alaska's medical assistance fraud statute must be brought in the name of or for the benefit of the state, within six years of the discovery the facts constituting the fraud. Alaska Stat. § 09.10.120.

Whistleblower Protections: Alaskan statutes include whistleblower protection provisions for public employees. The statutes do not address whistleblower protection provisions related to employees generally. Alaska Stat. § 39.90.100.

Arizona

State-enacted civil False Claims Act? No

State-enacted civil False Claims Act has qui tam provisions? No

Non-retaliation protection? Yes

Deemed compliant by OIG? No

False Claims: Arizona law prohibits false and fraudulent claims from being submitted to the state

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- Knowingly participating in or permitting the participation of any individual previously found guilty of Medicaid fraud, theft of public benefits or abuse of adults.

Ark. Stat. §§ 20-77-901 et seq

Penalties: Penalties include full restitution and a civil penalty of not less than $5,000 and not more than $10,000 for each violation, plus three times the amount of all payments found to have been fraudulently received. Damages may be reduced to no less than two times the damages sustained by the state and no civil penalty if mitigating factors are revealed. Ark. Stat. § 20-77-903. Criminal penalties and fines may also be imposed. However, both criminal and civil penalties shall not be applied to the same payment received or claim made by any person under the Arkansas Medicaid Program or its fiscal agents. Ark. Code Ann. § 5-55-

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- Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state in connection with the Colorado Medical Assistance Act who lawfully may not sell or pledge the property;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state in connection with the Colorado Medical Assistance Act, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state in connection with the Colorado Medical Assistance Act;
- Conspires to commit one of the violations described in the bullet points above.

C.R.S. §§ 25.5-4-305.

Penalties: A person who violates the Colorado Medical Assistance Act is liable for civil penalties in amounts that are equivalent to the civil penalties allowed under the Federal FCA, plus three times the amount of damages that the state sustains because of the act of the person. However, if a court determines that the person who committed the violation self-reported the violation within 30 days after discovery and before a criminal prosecution, civil action, administrative action has begun (and before the person's actual knowledge of a governmental investigation into the same), the amount of civil penalties may be reduced to not less than twice the amount of damages the state sustained. Civil penalties may also be assessed, such as for the costs of any civil action the state brought to recover any penalties or damages. C.R.S. § 25.5-4-305.

Bringing an Action: *Qui tam* actions are allowed under the CMFCA. C.R.S. § 25.5-4-306(2). Whistleblowers may recover between 15% and 25% of any proceeds from the action or settlement if the state intervenes in the case, and between 25% and 30% if the state decides not to intervene. C.R.S. § 25.5-4-306(4). The relator may also receive an amount of reasonable expenses, and attorney fees and costs.

Statute of Limitations: A civil action under this act may not be brought after the later of (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 official of the state charged with responsibility to act in the circumstances, but in no event more than ten years after the date on which the violation is committed. C.R.S. § 25.5-4-307.

Whistleblower Protections: Health care providers are prohibited from taking disciplinary action against a health care worker who makes a good faith report or disclosure regarding patient safety information or quality of patient care. C.R.S. § 8-2-123. In addition, a private enterprise that has a contract with a state agency is prohibited from taking disciplinary action against an employee who has disclosed information which, if not disclosed, could result in the waste of public funds, coul fe e has cplheale3x53(epor)7.5h(i)50.1(on)4ng (i)4(i)

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False Claims: Connecticut recently enacted its Connecticut False Claims Act ("CFCA"), which applies to medical assistance programs administered by the Department of Social Services (DSS). With respect to goods and services rendered through any DSS medical assistance program, the CFCA prohibits anyone from:

- Knowingly presenting, or causing to be presented to a state employee or officer, a false or fraudulent claim for payment or approval;
- Knowingly making, using, or causing to be made or used, a false record or statement to secure payment or approval of a false or fraudulent claim under these programs;
- Conspiring to defraud the state by securing the allowance or payment of a false or fraudulent claim;
- Having possession, custody, or control of property or money used, or to be used, by the state relative to these programs, and, with intent to defraud the state or willfully conceal the property, deliver or cause to be delivered less property than the amount for which the person receives a receipt or certificate;
- Being authorized to make or deliver a document certifying receipt of property used, or to be used, by the state relative to these programs and, with intent to defraud the state, make or deliver the document without completely knowing that the information on it is true;
- Knowingly buying, or receiving as a pledge of an obligation or debt, public property from a state employee or officer who may not legally sell or pledge the property; and
- Knowingly making, 029 Tw 1.231 0 Td [(K)-43.3(now)11.7(i)-269.2-56.5(i)-26.t0 Td ( )Tjnly sele Knt.8(v)97.4(e3C5

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TITLE: Summary of Federal False Claims Act and Analogous State Laws

- Is a beneficiary of an inadvertent submission of a false claim to the State, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the State within a reasonable time after discovery of the false claim.

Haw. Rev. Stat. §661-21.

Penalties: A person found to be in violation of the Hawaii statute is liable for civil penalties of not less than $5,000 and not more than $10,000, plus three times the amount of damages sustained by the state. Damages may be reduced to no less than two times the amount of damages sustained by the state, **if** the person committing the violation self-reported within 30 days, did not have actual knowledge of the existence of an investigation into the violation, and fully cooperated with any investigation. Haw. Rev. Stat. § 661-21.

Bringing an Action: Hawaii law provides for *qui tam* actions. Haw. Rev. Stat. §661-25. If the attorney general proceeds with a *qui tam* action, the plaintiff will receive between 15% and 25% of the proceeds recovered. However, if the case is based primarily on disclosures other than those of the plaintiff, the plaintiff will not receive more than 10%. If the Department does not proceed with a *qui tam* action, the plaintiff will be awarded between 25% and 30% of the proceeds or settlement. If the plaintiff planned or initiated the violations, he/she will receive a reduced reward. Haw. Rev. Stat. §661-27.

Statute of Limitations: In Hawaii, a civil suit must be brought within six years after the false claim is discovered or should have been discovered, but no more than ten years after the violation was committed. Haw. Rev. Stat. §661-24.

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claims previously found to have been obtained contrary to a statute, rule, regulation, or provider agreement. Penalties also include exclusion from state health care programs (e.g., Medicaid), a civil penalty of up to $1,000 per violation, and referral to the Medicaid Fraud Unit. Idaho Code Ann. § 56-209h(6)(h).

Bringing an Action: Idaho law does not provide for *qui tam* actions.

Statute of Limitations: Under Idaho law, the statute of limitations for an action for relief on the ground of fraud or mistake is three years. The cause of action in such a case does not accrue until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake. Idaho Code Ann. § 5-

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30% of the proceeds or settlement. If the plaintiff is found to have planned or initiated any violations of the Act, the court may reduce the plaintiff's reward. 740 Ill. Comp. Stat. 175/4.

Statute of Limitations: Under the IL Act, a civil lawsuit must be brought within the later of 1) six years from

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investigation, a criminal prosecution, a civil action, or an administrative action concerning the violation at the time the person provided information to state officials. IC § 5-11-5.5-2.

Bringing an Action: Indiana law allows *qui tam* actions. IC § 5-11-5.5-4. If a *qui tam* action is brought, the plaintiff will receive between 15% and 25% of the proceeds recovered or the settlement. If the case is based on disclosures other than those of the plaintiff, the plaintiff will not receive more than 10%. If the Attorney General does not proceed with a *qui tam* action, the plaintiff will be awarded between 25% and 30% of the proceeds or settlement. IC § 5-11-5.5-6.

Statute of Limitations: Under the Indiana False Claims and Whistleblower Protection Act, a civil lawsuit may be brought within six years after the date the violation was discovered, or not later than three years after the date when facts material to the cause of action are discovered or reasonably should have been discovered, but no more than ten years after the violation was committed. IC § 5-11-5.5-9.

Whistleblower Protections: An employee will be entitled to relief if discharged, demoted, suspended, threatened, harassed or otherwise discriminated against in the terms and conditions of employment by the employee's employer because of his/her objection to a false claims violation or omission or his/her involvement in a false claims action, including initiating, testifying assisting or participating in an action. An employee is entitled to all relief necessary to make the employee whole. This may include reinstatement with the same seniority status, two times the amount of back pay plus interest, and compensation for any special damages sustained, including costs and expenses of litigation and reasonable attorney's fees. IC § 5-11-5.5-8.

Iowa

State-enacted civil False Claims Act? Yes

State-enacted civil False Claims Act has qui tam provisions? Yes

Non-retaliation protection? Yes

Deemed compliant by OIG? Yes

Approved by OIG? Yes

False Claims: A person violates the Iowa False Claims Act if he/she is:

- Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- Conspires to commit a violation of these acts;
- Has possession, custody, or control of property or money used, or to be used, by the state and knowingly delivers, or causes to be delivered, less than all of that money or property;
- Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and, intending to defraud the state, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state, or a member of the Iowa national guard, who lawfully may not sell or pledge property; or
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the 9 026.7(7.3(t)-47.7(

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sustains because of the act of that person. Depending on certain facts, the court may assess not less than two times the amount of damages which the state sustains. IA Code § 685.2.

Bringing an Action: Iowa law allows *qui tam* actions. IA Code § 685.3. If a *qui tam* action is brought, the plaintiff shall receive at least 15% but not more than 25% of the award. If the court finds the action is based primarily on specific information other than the information provided by the *qui tam* plaintiff, the court can award an amount it considers appropriate, but no more than 10% of the proceeds. If the state does not proceed with the action, the *qui tam* plaintiff will receive between 25% and 30% of the proceeds, plus expenses. IA Code § 685.3.

Statute of Limitations: Plaintiffs may not file their complaints more than 10 years after the date on which the violation occurred. IA Code § 685.4.

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also liable to the state or such affected political subdivision for all reasonable costs and attorney fees incurred in a civil action brought to recover any of those penalties or damages. K.S.A. § 75-7503. Under certain circumstances, the court may assess not more than two times the amount of damages and no civil penalty shall be imposed. K.S.A. § 75-7503. Violation of the Kansas Medicaid Fraud Control Act is a criminal offense punishable by substantial fines and imprisonment. K.S.A. § 21-4503a.

Bringing an Action: Kansas law does not provide for *qui tam*

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Bringing an Action: Kentucky law does not provide for *qui tam* actions.

Statute of Limitations: Kentucky's Control of Fraud and Abuse laws contain no explicit statute of limitations. However, under Kentucky law, causes of action for fraud must be brought within five years.

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Deemed compliant by OIG? No

False Claims: Under Maryland's False Health Claims Act, effective October 2010, a person may not:

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of Michigan charged with the responsibility to act in the circumstances, but in no event more than ten years after the date on which the violation was committed. Mich. Comp. Laws § 400.614.

Whistleblower Protections: The MI Act prohibits employers from discharge, demoting, suspending, threatening, harassing, or in any other manner discriminating against an employee in the terms and conditions employment because the employee engaged in lawful acts including initiating, assisting in, or participating in the furtherance of an action under the MI Act. This does not apply to an employee who brought a frivolous claim, planned and initiated the conduct, or is convicted of criminal conduct arising from such violation, as determined by the court. An employer who violates this provision is liable to the employee for: 1) reinstatement to the employee's position without loss of seniority, 2) two times the amount of lost back pay plus interest; 3) compensation for any special damages, and 4) any other relief necessary to make the employee whole. Mich. Comp. Laws § 400.610c.

Minnesota

State-enacted civil False Claims Act? Yes

State-enacted civil False Claims Act has qui tam provisions? Yes

Non-retaliation protection? Yes

Deemed compliant by OIG? Yes

Approved by OIG? Yes

False Claims: A person violates the Minnesota False Claims Act ("MN Act") if he/she:

- Knowingly presents, or causes to be presented, a false or fraudulent claim for repayment or approval;
- Knowingly makes or uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- Has possession, custody or control of property or money used, or to be used, by the State or a political subdivision and knowingly delivers or causes to be delivered less than all of that money or property;
- Is authorized to make or deliver a document certifying receipt for money or property used, or to be used, by the State or a political subdivision and, intending to defraud the State or a political subdivision, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the State or a political subdivision who lawfully may not sell or pledge the property;
- Knowingly makes or uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the State or a political subdivision, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State or a political subdivision; or
- Conspires to commit one of the above-specified violations.

Minn. Stat. §15C.02.

Penalties: Any person found to be in violation of the MN Act is liable for a civil penalty of no less than $5,500 and no more than $11,000 per violation, plus three times the amount of damages sustained by the State and expenses incurred in bringing the civil action, including attorney's fees and costs. Damages may be reduced to no less than two times the amount of damages sustained by the State, **if** the person committing the violation self-reported within 30 days, fully cooperated with any investigation, and, at the time the person furnished the state or the political subdivision with information about the violation, no criminal prosecution, civil action, or administrative action had been commenced under the MN Act and the person did not have actual knowledge of the existence of an investigation into the same. Minn. Stat. § 15C.02.

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TITLE:

State-enacted civil False Claims Act? Yes

State-enacted civil False Claims Act has qui tam provisions? No

Non-retaliation Protection? Yes

Deemed compliant by OIG? No

False Claims: While Missouri has a Medicaid False Claims Act (the Missouri Health Care Payment Fraud and Abuse Act), Missouri 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 several generally applicable Medicaid anti-fraud statutes that make it unlawful for a person to submit false and fraudulent claims to the Missouri Medicaid program. A person violates Missouri statutes relating to Medicaid fraud enforcement if he/she shall knowingly make or cause to be made a false statement or false representation of a material fact in order to receive a health care payment, including but not limited to:

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- Charges, solicits, accepts or receives anything of value in addition to the amount legally payable under the medical assistance program in connection with a provision of a good or service to recipient knowing that such is not legally payable; or
- Knowingly fails to maintain records necessary to fully disclose the nature of all goods and services for which a claim was submitted or paid.

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political subdivision less money or property than the amount of which the person has possession, custody, or control;

- Is authorized to prepare or deliver a document that certifies receipt of money or property used or to be used by the State or a political subdivision and knowingly prepares or delivers such a document without knowing that the information on the document is true;
- Knowingly buys, or receives as a pledge or a security for an obligation or debt, public property from a person who is not authorized to sell or pledge the property;

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behalf of the employee in furtherance of an action under the NH Act. Any employee so discriminated against will be entitled to relief including reinstatement with the same seniority status, two times the amount of back pay with interest, and compensation for any special damages including litigation costs and reasonable attorneys' fees. N.H. Rev. Stat. Ann. § 167:61-c.

New Jersey

State-enacted civil False Claims Act? Yes

State-enacted civil False Claims Act has qui tam provisions? Yes

Non-retaliation protection? Yes

Deemed compliant by OIG? Yes

Approved by OIG? No

False Claims: A person violates New Jersey False Claims Act if he/she:

- Knowingly presents or causes to be present.4(es)20.44Oor_C2_0 1(ov)/6.5(K)-43.3(now)11.7(.b)-77.4(of)-26.8he/

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TITLE:

Whistleblower Protections: The NM Act protects against retaliation from employers for employees who initiate, assist or participate in an investigation under the NM Act. It does not apply to an employee who brings a frivolous action. N.M. Stat. § 27-14-12.

New York

State-enacted civil False Claims Act? Yes

State-enacted civil False Claims Act has qui tam provisions? Yes

Non-retaliation protection? Yes

Deemed compliant by OIG? Yes

Approved by OIG? Yes

Civil and Administrative Laws

False Claims: New York City has a False Claims Act. The New York City False Claims Act allows whistleblowers to bring suit in the name of the City of New York where a wrongdoer engages in conduct that defrauds the state or local government of taxpayer dollars. Violators are liable to the city for three times the amount of damages as well as a civil penalty between $5,000 and $15,000 for each violation. Title 7, Ch. 8, gwT 7.7(of)29.2(d6.8(at)w 3.69<(801 [(r)7.3(14 11.7(l)-26C)11.7(h.26.8(e 7,(d6.8(a2460 Td ( )Tj EMTEM

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c. Third degree grand larceny involves property valued over $3,000. It is a Class D felony.

d. Second degree grand larceny involves property valued over $50,000. It is a Class C felony.

e. First degree grand larceny involves property valued over $1 million. It is a Class B felony.

Penal Law Article 175, False Written Statements. Four crimes in this Article relate to filing false information or claims that have been applied in Medicaid fraud prosecutions.

a. 175.05, Falsifying business records in the second degree involves entering false information, omitting material information or altering an enterprise's business records with the intent to defraud. It is a Class A misdemeanor.

b. 175.10, Falsifying business records in the first degree includes the elements of the 175.05 offense and includes the intent to commit another crime or conceal its commission. It is a Class E felony.

c. 175.30, Offering a false instrument for filing in the second degree involves presenting a written instrument (including a claim for payment) to a public office knowing that it contains false information. It is a Class A misdemeanor.

d. 175.35, Offering a false instrument for filing in the first degree includes the es[illegible]

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b. Health care fraud in the 4th degree is filing false claims and annually receiving over $3,000 in aggregate. It is a Class E felony.

c. Health care fraud in the 3rd degree is filing false claims and annually receiving over $10,000 in aggregate. It is a Class D felony.

d. Health care fraud in the 2nd degree is filing false claims and annually receiving over $50,000 in aggregate. It is a Class C felony.

e. Health care fraud in the 1st degree is filing false claims and annually receiving over $1 million in aggregate. It is a Class B felony.

Whistleblower Protections

Whistleblower Protections: The NY Act also provides protection for employees, contractors, or agents of any private or public employer who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the NY Act. Remedies include reinstatement with comparable employee, contractor, or agent would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. N.Y. State Fin. Law § 191.

New York Labor Law 740. An employer may not take any retaliatory action against an employee if the employee discloses information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that the employer (1) is in violation of a law that creates a substantial and specific danger to the public health and safety; or (2) has committed health care fraud (as defined in Penal Law Article 177). The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation.

If an employer takes a retaliatory action against the employee, the employee may sue in State court for reinstatement to the same or equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in badoyee that as.

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North Dakota

State-enacted civil False Claims Act? No

State-enacted civil False Claims Act has qui tam provisions? No

Non-retaliation protection? Yes

Deemed compliant by OIG? No

False Claims: North Dakota has not yet enacted a false claims act. However, it is a violation of North Dakota law, if one, among other violations:

- Presents or causes to be presented for payment any false or fraudulent claim for care or services;
- Submits or causes to be submitted false information for the purpose of obtaining greater

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TITLE: Summary of Federal False Claims Act and Analogous State Laws

Rhode Island

State-enacted civil False Claims Act? Yes

State-enacted civil False Claims Act has qui tam provisions? Yes

Non-retaliation protection? Yes

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the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment. R.I. Gen. Laws § 9-1.1-4.

Statute of Limitations: Under the State False Claims Act, a civil action 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 official of the State charged with responsibility to act in the circumstances, but in no event more than ten years after the date on which the violation is committed, whichever occurs last. R.I. Gen. Laws § 9-1.1-5.

Whistleblower Protections: Any employee, contractor, agent, or associated others who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under the State False Claims Act, shall be entitled to all relief necessary to make the employee, contractor, agent, or associated others whole. Such relief shall include reinstatement with the seniority status such employee, contractor, agent, or associated others would have had but for the discrimination, 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 attorneys' fees. R.I. Gen. Laws § 9-1.1-4(g).

South Carolina

State-enacted civil False Claims Act? No

State-enacted civil False Claims Act has qui tam provisions? No

Non-retaliation protection? Yes

Deemed compliant by OIG? No

False Claims and Penalties: South Carolina does not have a state-enacted false claims act. However, South Carolina's state medical false claims laws provide criminal, civil, and administrative penalties and sanctions for health care providers violating its laws.

A person who knowingly causes to be presented a false claim for payment to an insurer transacting business in South Carolina, to a health maintenance organization transacting business in South Carolina, or to any person, including the State of South Carolina, providing benefits for health care in South Carolina, whether these benefits are administered directly or through a third person, or who knowingly assists, solicits, or conspires with another to present a false claim for payment as described above, is guilty of:

- A felony if the amount of the claim is at least $5,000 and the person can be imprisoned up to ten years and fined up to $5,000;
- A felony if the amount of the claim is more than $1,000 but less than $5,000, and the person can be imprisoned up to five years and fined;
- A misdemeanor amount of the claim is $1,000 or less; and
- The person must be fined or imprisoned.

S.C. Code Ann § 38-55-170.

It is a misdemeanor for a medical provider to knowingly and willfully make or cause to be made a false claim, statement, or representation of a material fact: in an application or request for a benefit, payment, or reimbursement from a state or federal agency which administers or assists in the administration of the state's medical assistance or Medicaid program, or on a report, certificate or similar document submitted to a state or federal agency which administers or assists in the administration of the state's Medicaid program in order for a provider or facility to qualify or remain qualified under the state's Medicaid program. Each false claim or representation is considered a separate offense. It is illegal for a provider to knowingly and willfully conceal or fail to disclose any material fact, event or transaction which affects the provider's initial or continued entitlement to payment, reimbursement, or benefits under the state's Medicaid plan; or amount of payment, reimbursement, or benefit to which the provider may be entitled for services, goods,

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or assistance rendered. Each fact, event, or transaction concealed or not disclosed constitutes a separate offense. A person guilty can be imprisoned for three years and fined $1,000 for each offense. S.C. Code Ann § 43-7-60.

It is a misdemeanor for (1) a person to knowingly and willfully to make or cause to be made a false statement or representation of material fact on an application for assistance, goods, or services under the state's Medicaid program when the false statement or representation is made for the purpose of determining the person's entitlement to assistance, goods, or services; (2) any applicant, recipient, or other person acting on behalf of the applicant or recipient knowingly and willfully to conceal or fail to disclose any material fact affecting the applicant's or recipient's initial or continued entitlement to receive assistance, goods, or services under the state's Medicaid program; (3) a person eligible to receive benefits, services, or goods under the Medicaid program to sell, lease, lend, or otherwise exchange rights, privileges, or benefits to another person. A person guilty can be imprisoned for three years and fined $1000. S.C. Code Ann. §§ 43-7-60, 43-7-70.

Bringing an Action: The S.C. Attorney General may bring an action to recover damages equal to three times the amount of an overstatement or overpayment and the court may impose a civil penalty of two thousand dollars for each false claim, representation, or overstatement made to a state or federal agency which administers funds under the state's Medicaid program. The state agency which administers the Medicaid program may impose other administrative sanctions against the provider authorized by law. South Carolina law does not provide for *qui tam* actions. S.C. Code Ann §§ 43-7-60, 43-7-90.

Statute of Limitations: There is no explicit statute of limitations in South Carolina's medical false claims laws. However, South Carolina law maintains a three year statute of limitations for general fraud actions. S.C. Code Ann § 15-3-530(7).

Whistleblower Protections: Government employers cannot discharge, suspend, demote, decrease t decreast EMC 2(ent)-

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S.D. Codified Laws § 22-45-2.

In addition, each application to participate as a provider in the Medicaid program, each report stating income or expense upon which rates of payments are or may be based, and each invoice for payment for

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- Makes, presents or causes to be made or presented a claim that is wholly or partially false, a claim for services not rendered, misrepresentations of the type or quantity of services rendered, representing charges at a higher rate than those charged by the provider, services not medically necessary, substandard services rendered, a claim that was previously paid, a claim for services covered by one or more private sources, unbundling services into artificial components or separate procedures;
- Fails to credit the state for payments received from other sources;
- Recovers or attempts to recover payment in violation of the provider agreement from a recipient under a medical benefit program or the recipient's family;
- Falsifies or alters with the intent to deceive, any report or document required by state or federal law, rule, or Medicaid provider agreement;
- Retains any unauthorized payment as a result of acts described by this section; or
- Aides or abets the commission of any act prohibited by this section.

Utah Code Ann. §§ 26-20-1 – 26-20-7.

Penalties: A person who violates the Utah Act is subject to criminal penalties, shall be required to make full restitution of all damages sustained by the state, pay the costs associated with enforcing the Utah Act, pay a civil penalty equal to three times the amounts of damages sustained by the state – not less than $5,000 or more than $10,000 for each claim, or at the discretion of the court, pay to the state a civil penalty of up to $2,000 for each claim filed or act done in violation of this act. Utah Code Ann. §§ 26-20-9 – 26-20-9.5.

Bringing an Action: The State may conduct an investigation of suspected violations. The Utah Act does not provide for *qui tam* actions. Utah Code Ann. § 26-20-14.

Statute of Limitations: Under the Utah Act, a lawsuit must be brought within the later of 1) six years after the violation was committed, or 2) three years after the date the violation was discovered, but no more than ten years after the violation was committed. Utah Code Ann. § 26-20-15.

Whistleblower Protections: Under the Utah Protection of Public Employees Act, employees of the state or political subdivisions cannot be discharged, threatened, disciplined or discriminated against for reporting to a public body the existence or suspected existence of waste of public funds, property or manpower; or for a violation or suspected violation of state or federal law; or for refusing to comply with a directive the employee reasonably believes to be illegal. Employees are not protected if they fail to give written notice of the violation to the employer, unless they reasonably believe notice to be futile; fail to comply with administrative reporting procedures; or make the report knowing that it is malicious, false or frivolous. Violating employers can be fined up to $500. Utah Code Ann. §§ 67-21-3 – 67- 0.1(ous)20.5(,)v.8(pl)-26.8(i)-47.7(o cF47.2

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- In any way knowingly receive, attempt to receive, or aid and abet in the receipt of unauthorized payment as provided herein.

Vt. Stat. Ann. Tit. 33, § 141.

Penalties: Violation of the above Vermont false claims provisions may result in suspension from the

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TITLE:

TITLE: Summary of Federal False Claims Act and Analogous State Laws

- Knowingly make a false statement or false representation of a material fact to a health care payer for use in determining rights to a health care payment;
- Conceal the occurrence of any event affecting his or her initial or continued right under a contract, certificate, or policy of insurance to have a payment made by a health care payer for a specified health care service, or conceal or fail to disclose any information with intent to obtain a health care payment to which the person or any other person is not entitled, or to obtain a health care payment in an amount greater than that which the person or any other person is entitled; or
- For a provider to willfully collect or attempt to collect an amount from an insured knowing that to be in violation of an agreement or contract with a health care payor to which the provider is a party.

Wash. Rev. Code § 48.80.030.

Penalties: A person who violates the health care false claims act statute is guilty of a class C felony. Wash. Rev. Code § 48.80.030.

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- Enters into an agreement, combination or conspiracy to obtain or aid another to obtain the payment of a false, fraudulent or fictitious claim.

W.Va. Code §§ 9-7-4, 9-7-5.

Penalties: A person or entity that violates West Virginia law may be subject to criminal penalties including imprisonment from one to ten years and a fine up to $10,000. A person or entity may be liable to the department of welfare for civil penalties of three times the amount of benefits or allowances to which the person or entity was not entitled, and liable for attorney's fees, and litigation costs. W.Va. Code §§ 9-7-4 – 9-7-6.

Bringing an Action: The Medicaid fraud control unit in the West Virginia department of welfare is authorized to bring an action. W.Va. Code § 9-7-6. West Virginia does not have provisions for *qui tam* actions.

Statute of Limitations: West Virginia laws addressing Medicaid fraud and abuse do not provide an explicit statute of limitations. However, West Virginia laws limit actions concerning fraud to two years after the cause of action accrues. W.Va. Code § 55-2-12.

Whistleblower Protections: West Virginia law pertaining to Medicaid fraud and abuse does not contain a whistleblower provision. However, West Virginia law does protect state employees from state government employers discharging, threatening, discriminating or retaliating against the employee, or changing the employee's compensation terms for an actual or planned good faith report of wrongdoing, or who participate in investigations, hearings, inquiries or trials involving wrongdoing or waste. The employee may sue for injunctive relief and damages including reinstatement, back pay, court cost and attorney's fees. Employers and public officials who violate this law will be punished by a civil fine of up to $500. Unelected officials may be suspended from public service for up to six months. W. Va. Code § 6C-1-1 – 6C-1-8.

Wisconsin

State-enacted civil False Claims Act? Yes

State-enacted civil False Claims Act has qui tam provisions? Yes

Non-retaliation protection? Yes

Deemed compliant by OIG? Yes

Approved by OIG? No

False Claims: A person violates Wisconsin law governing medical assistance fraud if he/she:

- Knowingly presents or causes to be presented to any officer, employee, or agent of this state a false claim for medical assistance.
- Knowingly makes, uses, or causes to be made or used a false record or statement to obtain approval or payment of a false claim for medical assistance.
- Conspires to defraud the state by obtaining allowance or payment of a false claim for medical assistance, or by knowingly making or using, or causing to be made or used, a false record or statement to conceal, avoid, or decrease an obligation

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Penalties: A person who violates Wisconsin law is subject to criminal penalties, is liable for three times the amount of actual damages sustained by the state, and shall forfeit not less than $5,000 nor more than $10,000 for each violation. Damages can be reduced to no less than two times the damages sustained. Wis. Stat. Ann. § 20.931(2).

Bringing an Action: The Wisconsin Attorney General is authorized to bring an action. Wisconsin law allows for *qui tam* actions. If a *qui tam* action is brought, the plaintiff will receive between 15% and 25% of the proceeds recovered or the settlement. If the case is based on disclosures other than those of the plaintiff, the plaintiff will not receive more than 10%. Wis. Stat. Ann. § 20.931(11).

Statute of Limitations: A civil action may be brought based on acts occurring prior to October 27, 2007, if the action is brought within the period specified in **Wis. Stat. Ann. § 893.981. Wis. Stat. Ann. § 20.931(15). This section states that an action must be commenced within ten years after the cause of action or claim accrues or it will be barred. Wis. Stat. Ann. § 893.981.**

Whistleblower Protections: This statute protects any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against by his or her employer because of lawful actions taken by the employee, on behalf of the employee, or by others in furtherance of an action or claim filed under the Act, including investigation for, initiation of, testimony for, or assistance in an action or claim filed or to be filed. The employee is entitled to all necessary relief to make the employee whole, including reinstatement, double back pay, interest on the back pay, and special damages including costs and attorney fees. Wis. Stat. Ann. § 20.931(14).

State employees are protected from any retaliatory action taken by an appointing authority, agent of an appointing authority or supervisor because of lawful disclosures made by the employee. The employee is not protected if they knows or anticipate that the disclosure is likely to result in the receipt of anything of value, or if they knowingly make a false statement or illegal disclosures. Wis. Stat. Ann. § 230.83

Wyoming

State-enacted civil False Claims Act? Yes

State-enacted civil False Claims Act has qui tam provisions? No

Non-retaliation protection? Yes

Deemed compliant by OIG? No

False Claims: A person violates the Wyoming Medicaid False Claims Act if he/she:

- Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- Is a beneficiary of an inadvertent submission of a false claim to any employee, officer, or agent of the state or a political subdivision of the state, or to any contractor, grantee, or other recipient of state funds or funds of any political subdivision of the state who subsequently discovers the falsity of the claim and fails to disclose the false claim and make satisfactory arrangements for repayment to the state or the affected political subdivision within 90 days after discovery of the false claim; or
- Conspires to commit one of the acts specified above.

Wyo. Stat. Ann. § 42-4-303(a).

Penalties: A person who has violated the statute above is liable for a civil penalty of no less than $1,000 and no more than $10,000 for each violation, three times the amount of actual damages, and the cost incurred as a result of a civil action brought to recover any such penalty or damages. Wyo. Stat. Ann. § 42-4-303(a). Damages may be reduced to no more than two times the damages sustained by the State and no civil penalty, if the person committing the violation furnished officials of the State who are responsible for investigating false claims violations with all information known to that person about the

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TITLE: