Our Lady of Lourdes Health Care Services, Inc. & Affiliates including
Our Lady of Lourdes Medical Center
Lourdes Medical Center of Burlington County
Administrative and General Policy

POLICY NUMBER: LHS AS0049CCP

NURSING CODE:

Corporate Compliance Policy Concerning the False Claims Acts, Anti-Retaliation Protections, and Detecting and Responding to Fraud

ACCOUNTABILITY:

President and Chief Executive Officer

OBJECTIVES:

RELATION TO MISSION:

Our Lady of Lourdes Health Care Services, Inc. (“OLLHCS, Inc.”), a Catholic health system and member of Catholic Health East, dedicated to its Franciscan Tradition of serving all, will demonstrate the value of **Stewardship** by setting forth a policy to satisfy the requirements of Section 6032 of the Deficit Reduction Act of 2005 by providing all trustees, officers, managers, supervisors, associates, medical staff, house staff, contractors, volunteers, students, and others (“stakeholders”) with: information regarding certain federal and state laws relating to false claims and statements; protections against reprisal or retaliation for those who report wrongdoing; and OLLHCS, Inc.’s policies and procedures for detecting and preventing fraud, waste, and abuse.

RELATION TO OPERATION:

It is the policy of OLLHCS, Inc.: to comply with all federal and state laws; to implement and enforce procedures for detecting and preventing fraud, waste, and abuse as to payments to OLLHCS, Inc. from federal or state healthcare programs; and to provide protections for those who report actual or suspected wrongdoing.

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Corporate Compliance Policy Concerning the False Claims Acts, Anti-Retaliation Protections, and Detecting and Responding to Fraud

I. SCOPE

This policy applies to all OLLHCS, Inc. stakeholders.

II. BACKGROUND

A) Under Section 6032 of the Deficit Reduction Act ("DRA"), every entity that receives at least $5 million in Medicaid payments annually must establish written policies for all associates of the entity and of any employees of a contractor or agent of the entity, detailing information about false claims, false statements and whistleblower protections under applicable federal and state fraud and abuse laws.

B) These written policies must include specific discussions of the law and detailed information regarding the entity's policies and procedures for detecting and preventing fraud, waste and abuse, as well as the rights of associates to be protected as whistleblowers.

III. POLICY:

A) As required by the DRA, it is the policy of OLLHCS, Inc. to provide detailed information to all stakeholders about federal and state False Claims Acts and OLLHCS, Inc.'s policies and procedures for detecting and preventing fraud, waste, and abuse.

B) Information included in this policy:

1) A summary of the federal False Claims Act
2) A summary of administrative remedies found in the Program Fraud Civil Remedies Act
3) A summary of laws of the state of New Jersey that impose civil or criminal penalties for false claims or statements
4) A summary of the New Jersey False Claims Act
5) A summary of protections for associates who report suspected violations of these federal and state laws (i.e., whistleblowers)

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6) The role of such laws in preventing and detecting fraud, waste, and abuse in federal and state health care programs
7) OLLHCS, Inc.'s existing policies and procedures for detecting and preventing fraud waste, and abuse.

Detailed descriptions of these points follow.

C) FEDERAL FALSE CLAIMS ACT

Civil False Claims Act, 31 U.S.C. §§ 3729 – 3733

1) Summary

The False Claims Act ("FCA") is a federal law that imposes civil liability on organizations and individuals for knowingly submitting to the federal government false or fraudulent claims for payment. The FCA applies to all federal programs, from military procurement contracts to welfare benefits to health care benefits.

2) Prohibitions of Federal False Claims Act

The False Claims Act prohibits, among other things:

(a) knowingly presenting or causing to be presented to the federal government false or fraudulent claims for payment or approval;
(b) knowingly making or using, or causing to be made or used, false records or statements to have false or fraudulent claims paid or approved by the government;
(c) conspiring to defraud the government by having false or fraudulent claims allowed or paid; and
(d) knowingly making or using, or causing to be made or used, false records or statements for concealing, avoiding, or decreasing obligations to pay or transmit money or property to the government.

"Knowingly" means 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

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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.

3) Enforcement

The United States Attorney General may bring civil actions for violations of the False Claims Act. As with most other civil actions, the government must establish its case by presenting a preponderance of the evidence rather than by meeting the higher burden of proof that applies in criminal cases.

4) *Qui Tam* Actions Brought by "Whistleblowers"

(a) The False Claims Act permits a person with knowledge of fraud against the United States Government to file a lawsuit on behalf of the government against the business that committed the fraud.

(b) If the fraud has not previously been publicly disclosed, any person, including associates and competitors, may bring a *qui tam* action regardless of whether he or she has "direct" or first-hand knowledge of the fraud.

(c) The case is initiated by filing the complaint and all available material evidence under seal with the federal court. If the government proceeds with the case, the person who filed the action will receive between 15% and 25% of any recovery, depending upon the contribution of that person to the prosecution of the case. If the government does not proceed with the case, the person who filed the action will be entitled to between 25% and 30% of any recovery, plus reasonable expenses and attorneys' fees and costs.

5) Penalties under False Claims Act

A person or entity found liable under the Civil False Claims Act is subject to a civil money penalty of between $5,500 and $11,000 plus three times the amount of damages that the government sustained because of the illegal act. In health care cases, the amount of damages sustained is the amount paid for each false claim that is filed.

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6) Self Disclosure

The FCA includes a provision that reduces the penalties for providers who promptly self-disclose suspected FCA violations.

When assessing penalties the court will take into consideration:

(a) Whether the self-disclosed information was submitted within 30 days of learning of the violation.
(b) Whether the organization cooperates throughout the government's investigation.
(c) Whether the government had not already begun their own investigation of the reported violation.

7) Recent changes

Substantive and procedural amendments to the FCA were enacted in 2009 and 2010 in the Fraud Enforcement and Recovery Act of 2009 ("FERA"), the Patient Protection and Affordable Care Act ("PPACA"), and the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). All of these amendments will make it easier for the government and *qui tam* relators to conduct investigations and obtain recoveries under the FCA in the future.

D) PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

31 U.S.C. §§ 3801 – 3812

1) Summary

The Program Fraud Civil Remedies Act of 1986 ("PFCRA") authorizes federal agencies such as the Department of Health and Human Services to investigate and assess penalties for the submission of false claims to the agency. The conduct prohibited by the PFCRA is similar to that prohibited by the False Claims Act. For example, a person may be liable under the PFCRA for making, presenting, or submitting, or causing to be made, presented, or submitted, a claim that the person knows or has reason to know:

(a) is false, fictitious, or fraudulent;
(b) includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;
(c) includes or is supported by any written statement that –
  i. omits a material fact;
  ii. is false, fictitious, or fraudulent as a result of such omission; and
  iii. is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or
(d) is for payment for the provision of property or services which the person has not provided as claimed.

2) Enforcement

If a government agency suspects that a false claim has been submitted, it can appoint an investigating official to review the matter. The investigating official may issue a subpoena to further the investigation, or may refer the matter to the Department of Justice for proceedings under the False Claims Act. If, based on the investigating official's report, an agency concludes that further action is warranted, it may issue a complaint regarding the false claim.

3) Penalties under Program Fraud Civil Remedies Act

(a) A violation of this section of the PFCRA is punishable by a $5,000 civil penalty for each wrongfully filed claim plus an assessment of twice the amount of any unlawful claim that has been paid.
(b) In addition, a person or entity violates the PFCRA if they submit a written statement which they know or should know:
  (i) asserts a material fact that is false, fictitious or fraudulent; or
  (ii) omits a material fact that they had a duty to include, the omission caused the statement to be false, fictitious, or fraudulent, and the statement contained a certification of accuracy.

A violation of this section of the PFCRA carries a civil penalty of up to $5,000 in addition to any other remedy allowed under other laws.

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E) NEW JERSEY HEALTH CARE CLAIMS FRAUD ACT

New Jersey Code of Criminal Justice Title 2C:21-4.2 and 4.3; N.J.S. 2C:51.5

1) Summary

On January 15, 1998, the new crime of health care claims fraud was established under the New Jersey Health Care Claims Fraud Act. The NJ Health Care Claims Fraud Act is intended to enable more effective criminal prosecution of individuals who knowingly or recklessly submit false or fraudulent claims for payment for health care services.

2) Key Features of NJ Health Care Claims Fraud Act

The NJ Health Care Claims Fraud Act defines:

(a) "Health care claims fraud" as
"making, or causing to be made, a false, fictitious, fraudulent, or misleading statement of material fact in, or omitting a material fact from, or causing a material fact to be omitted from, any record, bill, claim or other document, in writing, electronically or in any other form, that a person attempts to submit, submits, causes to be submitted or attempts to cause to be submitted for payment or reimbursement for health care services."

(b) "Practitioner" as
"a person licensed in this State to practice medicine and surgery, chiropractic, podiatry, dentistry, optometry, psychology, pharmacy, nursing, physical therapy, or law; any other person licensed, registered or certified by any State agency to practice a profession or occupation in the State of New Jersey or any person similarly licensed, registered, or certified in another jurisdiction."

3) Degrees of Offense under the NJ Health Care Claims Fraud Act

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The degree of offense committed under the NJ Health Care Claims Fraud Act depends principally on whether the perpetrator is a practitioner and whether the offense was **knowingly** committed or **recklessly** committed.

Liability can attach in each case, but the level of penalty varies considerably.

(a) A Practitioner is guilty of a crime of the second degree if he or she knowingly commits health care claims fraud in the course of providing professional services.

(b) A Practitioner is guilty of a crime of the third degree if he or she recklessly commits the offense.

(c) A non-practitioner is guilty of a crime of the third degree if he or she knowingly commits health care claims fraud.

(d) A non-practitioner is guilty of a crime of the fourth degree if the person recklessly commits the offense.

The NJ Health Care Claims Fraud Act provides that a person acts "recklessly" with respect to a material element of the crime if he or she "consciously disregards a substantial and unjustifiable risk that the material element exists and will result from [the] conduct."

4) Penalties under NJ Health Care Claims Fraud **Act**

Although the NJ Health Care Claims Fraud Act does not provide for a specific penalty, under New Jersey criminal law:

(a) A conviction of a second degree offense carries a fine of up to $100,000, and five to ten years imprisonment.

(b) A third degree offense is generally punishable with a fine of up to $7,500, and from three to five years imprisonment.

(c) A fourth degree offense is generally punishable with a fine of up to $7,500 and up to eighteen months imprisonment.

F) NEW JERSEY MEDICAL ASSISTANCE AND HEALTH SERVICES ACT – CRIMINAL PENALTIES

N.J.S. 30:4D-17(a)-(d)

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The New Jersey Medical Assistance and Health Services Act provides criminal penalties for individuals and entities engaging in fraud or other criminal violations relating to Title XIX-(Medicaid) funded programs. The crimes and punishments include: (a) fraudulent receipt of payments or benefits: fine of up to $10,000, imprisonment for up to 3 years, or both; (b) false claims, statements or omissions, or conversion of benefits or payments: fine of up to $10,000, imprisonment for up to 3 years, or both; (c) kickbacks, rebates and bribes: fine of up to $10,000, imprisonment for up to 3 years, or both; and (d) false statements or representations about conditions or operations of an institution or facility to qualify for payments: fine of up to $3,000, or imprisonment for up to 1 year, or both. Criminal prosecutions are generally handled by the Medicaid Fraud Section within the Office of Insurance Fraud Prosecutor, in the N.J. Division of Criminal Justice.

G) NEW JERSEY MEDICAL ASSISTANCE AND HEALTH SERVICES ACT – CIVIL REMEDIES

N.J.S. 30:4D-7.h; N.J.S. 30:4D-17(e)-(i); N.J.S. 30:4D-17.1.a

In addition to the criminal sanctions discussed above, violations of N.J.S. 30:4D(a)-(d) can also result in the following civil sanctions: (a) unintentional violation: recovery of overpayments and interest; (b) intentional violation: recovery of overpayments, interest, up to triple damages, and payment in the sum of not less than and not more than the civil penalty allowed under the federal False Claims Act (31 U.S.C. s.3729 et seq.), currently between $5,500 and $11,000 for each false claim, as it may be adjusted for inflation pursuant to the federal Civil Penalties Inflation Adjustment Act of 1990, (Pub. L. 101-410), for each excessive claim for assistance, benefits, or payments._Recovery actions are generally pursued administratively by the Division of Medical Assistance and Health Services, with the assistance of the Division of Law in the N.J. Attorney General's Office, and can be obtained against any individual or entity responsible for or receiving the benefit or possession of the incorrect payments.

In addition to recovery actions, violations can result in the exclusion of an individual or entity from participation in all healthcare programs funded in whole or in part by the N.J.

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Division of Medical Assistance and Health Services. Recovery and exclusion can also be obtained as part of a criminal prosecution by the Medicaid Fraud Section of the N.J. Division of Criminal Justice.

H) NEW JERSEY FALSE CLAIMS ACT

N.J.S.A. 2A:32C-1 to 2A:32C-18 (2009)

The New Jersey False Claims Act is comparable to the federal False Claims Act, making it unlawful for a person to knowingly make false or fraudulent claims, including to: present or cause to be presented to an employee, officer or agent of the State of New Jersey, or any contractor, grantee or other recipient of State funds, a false or fraudulent claim for payment or approval; make, use or cause to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the State; conspire to defraud the State by getting a false or fraudulent claim allowed or paid; or knowingly make, use, or cause to be made or used, a false record or statement to conceal, avoid, increase or decrease an obligation to pay or transmit money or property to the State. Liability under the New Jersey FCA results in a civil penalty equal to the civil penalty under the federal FCA (currently between $5,500 and $11,000) for each act constituting a violation, plus three times the amount of the damages sustained by the State (or two times the amount of damages if the person committing the violations provides full information and cooperation to the government officials investigation the false claims violations).

In addition to its substantive provisions, the New Jersey FCA provides that private parties may bring actions in the name of the State for violations of the FCA. These private parties may share in a percentage of the proceeds from an action or settlement. With some exceptions, when the government has intervened in the lawsuit, this law provides that the private party shall receive at least 15 % but not more than 25 % of the proceeds depending upon the extent to which the person substantially contributed to the prosecution of the action. When the government does not intervene, the private party is entitled to receive an amount that the court decides is reasonable, which shall be not less than 25 % and not more than 30 %.

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A civil action under the New Jersey FCA may not be brought on the later of the two following dates: (1) more than 6 years after the date on which the violation is committed; or (2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the New Jersey official charged with responsibility to act in the circumstances. In no event, however, may an action be brought under the New Jersey FCA more than 10 years after the date on which the violation is committed.

Violations of the New Jersey FCA may also give rise to liability under N.J.S. 30:4D-17(e) noted above.

I) PROTECTION FOR WHISTLEBLOWERS

1) FEDERAL FALSE CLAIMS ACT

Civil False Claims Act, 31 U.S.C. §§ 3729 – 3733

Anyone initiating a *qui tam* case may not be discriminated or retaliated against in any manner by their employer. The employee is authorized under the FCA to initiate court proceedings to make themselves whole for any job related losses resulted from any such discrimination or retaliation. These protections include:

- **(a)** reinstatement and damages of double the amount of lost wages if the employee is fired; and
- **(b)** any other damages sustained if the employee is otherwise discriminated against.

Anyone who believes that he or she has been subject to any such retribution or retaliation should also report this to the Lourdes Compliance Hotline, 1-877-215-5697. (See OLLHCS, Inc.'s Policy *Corporate Compliance Hotline Reporting* - AS0007CCP)

2) NEW JERSEY FALSE CLAIMS ACT

N.J. S. 2A:32C-1 to 32C-17 (2008))

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The New Jersey False Claims Act provides protection to private parties who are discharged, demoted, suspended, threatened, harassed, denied promotion or in any other manner discriminated against in the terms and conditions of their employment as a result of their disclosure of information to the State or furtherance of an action under the New Jersey False Claims Act. Remedies include reinstatement with comparable seniority as the party 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.

3) NEW JERSEY CONSCIENTIOUS EMPLOYEE PROTECTION ACT
N.J.S.A. 34:19-1et seq.

New Jersey's Conscientious Employee Protection Act ("CEPA"), was adopted to protect employees who "blow the whistle" on their employers for what the employees reasonably believe to be fraudulent behavior.

Under CEPA, employers are prohibited from taking any retaliatory action against an employee because the employee does any of the following:

(a) Discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy or practice of the employer … that the employee reasonably believes is in violation of a law . . . or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care;

(b) Provides information to, or testifies before, any public body conducting an investigation . . . into any violation of law . . . or, in the case of an employee who is a licensed or certified health care professional, provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into quality of patient care;

(c) Objects to, or refuses to participate in, any activity, policy or practice which the employee reasonably believes:

(i) is in violation of a law . . . or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care;

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(ii) is fraudulent or criminal; or
(iii) is incompatible with a clear mandate of public policy concerning the public health, safety, or welfare or protection of the environment.

More information on OLLHCS, Inc.'s responsibilities under the New Jersey Conscientious Employee Protection Act can be found in a separate policy entitled *Corporate Compliance Code of Conduct and Conscientious Employee Protection Act Notification Statement,* Policy AS0002CCP.

J) THE ROLE OF SUCH LAWS IN PREVENTING AND DETECTING FRAUD, WASTE, AND ABUSE IN FEDERAL AND STATE HEALTH CARE PROGRAMS

1) The laws described in this policy create a comprehensive scheme for controlling waste, fraud and abuse in federal and state health care programs by giving appropriate governmental agencies the authority to seek out, investigate and prosecute violations. Enforcement activities are pursued in three available forums: criminal, civil and administrative. This provides a broad spectrum of remedies to battle this problem.

2) Moreover, whistleblower statutes and protections for individuals reporting waste fraud and abuse in good faith encourage reporting of waste fraud and abuse, creating broader opportunities to prosecute violators.

3) Whistleblower statutes, such as the federal and state Civil False Claims Act and those found in New Jersey law, create reasonable incentives for this purpose. Employment protections create a level of security employees need to help in prosecuting these cases.

K) OUR LADY OF LOURDES EXISTING POLICIES AND PROCEDURES FOR DETECTING AND PREVENTING FRAUD

1) *Corporate Compliance Purpose Statement Policy*, AS0001CCP

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The Corporate Compliance Program is intended to reinforce the commitment of the stakeholders to sound ethical practices and moral behavior and to minimize instances of improper conduct by individuals OLLHCS, Inc.

2) *Corporate Compliance Code of Conduct and Conscientious Employee Protection Act Notification Statement,* AS0002CCP
The Corporate Compliance Code of Conduct provides guidance to all of OLLHCS, Inc.'s trustees, officers, managers, supervisors, associates, contractors, volunteers, students, and others and assists OLLHCS, Inc. in acting pursuant to appropriate ethical and legal standards. In the event that unethical or illegal events are observed, OLLHCS, Inc. protects its associates under the guidance of the Conscientious Employee Protection Act (CEPA) from any retribution for reporting any suspected violations of the Code of Ethics, Code of Conduct, policies and procedures, or federal and state laws and regulations.

3) *Corporate Compliance Internal Review Policy*, AS0008CCP
This policy details the Internal Review Process resulting from the receipt of any associate complaints or other information (including audit results) that suggest the existence of conduct in violation of compliance policies and applicable laws or regulations.

4) *Monitoring Compliance Policy*, AS00017CCP
An integral part of the Corporate Compliance Program includes monitoring the implementation and execution of the program. A monitoring system throughout OLLHCS, Inc. is needed to insure compliance with applicable federal and state laws and regulations. This policy details the monitoring tools and techniques to be utilized by the program to ensure that leadership, associates, managers, and supervisors have followed prescribed compliance techniques and taken appropriate corrective actions as directed.

5) *Billing Code of Conduct Statement*, AS00019CCP

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This policy provides guidance to all of OLLHCS, Inc.'s stakeholders and assists them in carrying out their daily billing activities within appropriate ethical and legal standards.

6) *Monitoring Billing Compliance Policy*, AS00021CCP
This policy demonstrates OLLHCS, Inc.'s commitment to on-going monitoring and auditing of documentation and billing processes. OLLHCS, Inc. provides evidence of its documentation and billing policies and procedures and designates the accountability structure for internal monitoring and auditing as described in this policy.

7) *Corporate Compliance Hotline Reporting Policy*, AS00007CCP.
Stakeholders have an ethical responsibility to report any violations or possible violations of OLLHCS, Inc.'s Code of Ethics, Code of Conduct, policies and procedures, or federal and state laws and regulations. To address this responsibility, OLLHCS, Inc. uses a compliance telephone hotline to report suspected violations or questionable conduct.

a) The hotline telephone number is 877-215-5697 and is available twenty-four hours a day, seven days a week.

b) The telephone number is included in physician agreements and displays on bulletin boards.

APPROVED BY: ______________________________
Alexander J. Hatala, President and Chief Executive Officer

ORIGINAL AND REVISION DATES	12/20/06; 08/11/08; 10/05/11
EFFECTIVE DATE:	08/31/14
REQUIRES REAUTHORIZATION IN:	08/31/17

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