

**Model Provider DRA Policy and/or Employee Handbook Insert**

**[To be used in conjunction with, and inserted into, federal materials prepared by American Health Care Association (available to members at its website ([www.ahca.org](http://www.ahca.org)))].**

**[Washington State Providers ONLY]**

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**3. Washington State Provisions for Civil or Criminal Penalties for False Claims and Statements and Whistleblower Provisions related to Federal Health Care Programs.**

**A. MEDICAL CARE PUBLIC ASSISTANCE STATUTE**

Washington State's **Medical Care Public Assistance Statute** includes provisions that create liability for fraudulent claims and actions related to certain federal medical assistance. (Chapter 74.09 RCW). The statute provides that any person or company that makes a willful false statement or misrepresentation, including fraudulent billing for services or items, with respect to obtaining benefits or payments must disgorge the excess benefits. Civil penalties may also be assessed up to three times the amount of the overpayment or excess benefits, plus interest.

Any person or company that obtains excess benefits without intent to violate the law is subject to disgorge the excess benefits, plus interest.

In addition to liability for civil penalties, the statute provides for criminal liability. Any person or company that makes willful false statements or willfully conceals information with the intent to fraudulently receive excess benefits or overpayment will be guilty of a class C felony, and a potential fine of not more than twenty-five thousand dollars.

The statute also penalizes false claims made with respect to qualifying conditions of various facilities. Any person or company that knowingly makes any false statement or representation of a material fact with respect to the conditions or operations of any facility in order that such institution or facility may qualify (either upon initial certification or upon recertification) as a hospital, nursing facility, or home health agency, shall be guilty of a class C felony, and a potential fine of not more than five thousand dollars.

Providers that charge excessive rates are also subject to criminal liability. Any person or company that knowingly charges rates for services in excess of the legal rate for individuals receiving benefits shall be guilty of a class C felony, and a potential fine of not more than twenty-five thousand dollars.

## **B. HEALTH CARE FALSE CLAIMS ACT**

Washington State's **Health Care False Claims Act** is a statute that creates liability for false claims submitted to a broad range of health care payors, including certain federal programs. (Chapter 48.80 RCW). Any person who knowingly makes a false claim or false representation related to a health care payment or conceals the occurrence of any event affecting the right to a health care payment shall be guilty of a class C felony. Any health care provider who willfully attempts to collect an amount knowing that to be in violation of an agreement or contract with a health care payor is guilty of a class C felony.

## **C. STATE WHISTLEBLOWER PROTECTIONS**

Neither of the above-cited statutes include whistleblower provisions. However, state law affords several whistleblower protections to employees under certain circumstances.

**Washington common law** (created by judicial decision) recognizes actions against employers for wrongful discharge in violation of public policy. By referencing the federal or state statutes prohibiting false claims, whistleblowers could recover under this law if the whistleblower is discharged as a result of lawful acts in furtherance of these statutes and the whistleblower's discharge contravenes or jeopardizes the public policy espoused by these statutes.

**Washington State Department of Health** statutory chapter provides remedies for retaliation against whistleblowers who notify the Department of Health about improper quality of care by a health care provider. (RCW 43.70.075). Under some circumstances, improper quality of care may be related to fraud, waste, or abuse under Federal health care programs. Whistleblowers under this statute have the remedies provided under the anti-discrimination laws enforced by the Washington State Human Rights Commission (Chapter 49.60 RCW). These remedies can include recovery of damages for the whistleblower.

The **State Employee Whistleblower Protection** statute (Chapter 42.40 RCW) and the **Local Government Whistleblower Protection** statute (Chapter 42.41 RCW) provide whistleblower protections to employees if the employer is related to state or local government. Both statutes prevent retaliation against whistleblowing employees of state and local government agencies, including state medical facilities, and provide for various remedies, including attorneys fees and costs.