To: All Vendors, Agents and Contractors of Hutchinson Clinic

From: Compliance Department

Re: Deficit Reduction Act of 2005

Dear Vendor/Agent/Contractor:

Under the Deficit Reduction Act of 2005, Hutchinson Clinic, is required to provide information to all employees and contractors regarding (1) the Federal False Claims Act and similar Kansas laws, (2) the rights of employees and others protected under the laws for providing information regarding any suspected violations of the laws, and (3) the policies and procedures for detecting and preventing fraud, waste and abuse.

We have enclosed a copy of the Notice Pursuant to the Deficit Reduction Act of 2005 (Notice), and have also posted the Notice and the 2005 Deficit Reduction Act (DRA) Section 6032 Compliance Policy (Policy) on the internet at www.hutchclinic.com. Please review the attached Notice and the Policy, and distribute this letter to all of your employees and agents who provide services to, for, or on behalf of Hutchinson Clinic.

If you have any questions or concerns regarding the Notice or the Policy, or any compliance issue, please contact the Compliance Director at 620.669.2645. You may also call the Compliance Hotline to leave an anonymous message at 855.900.0067 (English) or 800.216.1288 (Spanish). Thank you for your time and attention.

Sincerely,

Compliance and Risk Management

Hutchinson Clinic, PA.

Notice
Pursuant to Deficit Reduction Act of 2005

Hutchinson Clinic strives to comply with all state and federal laws and regulations prohibiting the submission of false claims to the state or federal government to obtain payment for healthcare services. To assist in that effort, Hutchinson Clinic requires that its employees, contractors, and agents also comply with those laws. Contractors and agents include those who (a) furnish or authorize the furnishing of Medicaid healthcare items or services on behalf of Hutchinson Clinic, (b) perform billing or coding functions on behalf of Hutchinson Clinic, or (c) are involved in monitoring the healthcare provided by Hutchinson Clinic.

The Hutchinson Clinic's Compliance Program mandates compliance with federal and state laws including: (a) the False Claims Act, 31 U.S.C. §§ 3729-3733, (b) the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §§ 3801-3812, (c) the Anti- Kickback Statute, 42 U.S.C. 1320a-7b (b), (d) Stark Laws, 42 U.S.C. § 1395 et al. (e) the Kansas False Claims Act, K.S.A. §§ 75-7501-7511; and (f) Kansas Medicaid Fraud Control Act, K.S.A.§§ 21-3844-3856. Hutchinson Clinic has also established a policy for compliance with the provisions of Section 6032 of the Deficit Reduction Act. Hutchinson Clinic expects that employees, contractors and agents will comply with all state and federal laws, regulations and guidance in performing their duties, including the Federal and State False Claims Acts and that all employees will recognize that they are subject to criminal and civil penalties and disciplinary action for the failure to comply with the Compliance Program and with federal and state laws.

Hutchinson Clinic will not take retaliatory action against any individual who in good faith reports conduct which violates federal or state laws. Protections afforded those employees and contractors who provide assistance to the government by investigating and reporting fraud, waste, or abuse are addressed in the Compliance Program, the DRA Compliance Policy.

Hutchinson Clinic requires that its employees, contractors, and agents familiarize themselves with the Compliance Program, the DRA Section 6032 Policy, and the Employee policies as applicable, and follow those policies to facilitate compliance with the above laws, principles, and standards. The Compliance Program and the DRA Section 6032 Policy are available to employees, contractors, and agents on Hutchinson Clinic's website at www.hutchclinic.com. If for any reason you cannot access the Compliance Program or the DRA Section 6032 Policy through the website, you may contact the Compliance Officer to obtain a copy at 620-669-2645.

Employees, contractors, and agents who suspect noncompliance with any of the above laws shall contact the Compliance Officer by calling 620-669-2645 or calling Hutchinson Clinic's Compliance Hotline at 855-900-0067 (English) or 800.216.1288 (Spanish).

Hutchinson Clinic
Hutchinson, Kansas

<table>
<tr><td>Title: Deficit Reduction Act 2005</td><td>Department:
Compliance</td></tr>
<tr><td>Approved By:

______________________________ Date

______________________________ Date</td><td>

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Department Head Date</td></tr>
<tr><td>Original Effective Date:</td><td>Reviewed/ Revised Dates:</td></tr>
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I. SCOPE: The Compliance Officer and/or the designee are responsible for implementing this Policy. The Policy applies to all employees, contractors and agents of Hutchinson Clinic, PA ("HCPA", Hutchinson Ambulatory Surgical Clinic ("HASC") and Hutchinson Physicians, PA (hereinafter collectively "Covered Entity").

II. PURPOSE: The purpose of this Policy is to inform and educate the Covered Entity's employees, contractors and agents about the Covered Entity's commitment to its Compliance Program, and the Federal and State False Claims Acts, including applicable administrative, civil and criminal penalties and protections provided under the laws for those who report suspected fraud, waste and abuse.

III. POLICY: Covered Entity is committed to conducting its operations in compliance with applicable Federal and State laws, and regulatory guidance. This commitment requires that we ensure that the health care services provided to eligible members are done so by providers entitled to participate in federal programs, are medically necessary, meet certain quality requirements, are provided in a cost effective manner, are billed appropriately and paid according to contract terms and Covered Entity policies. Covered Entity, in the course of its operations, works to prevent fraud, waste and abuse (FWA), and to detect and correct any instances of FWA, whether through an employee, contractor, or agent. To that end, all employees, contractors, and agents must understand how the Covered Entity's Compliance Program and its requirements and obligations of the Federal and State False Claims Acts prevent and detect fraud, waste and abuse in federal and state healthcare programs.

IV. Procedure

A. Covered Entity's employees, contractors, and agents will comply with the State and Federal False Claims Acts and the Compliance Program to prevent and detect fraud, waste and abuse in federal healthcare programs, or any program in which the government pays any portion of the healthcare provided. Information regarding protections and rights for reporting actual or suspected fraud, waste

or abuse is contained in the Covered Entity's Whistleblower Policy. Additionally, the Compliance Program and this Policy may be obtained by contacting the Compliance Officer, or by accessing them on the Hutchinson Clinic's website under the legal tab. All employees, contractors, and agents of the Covered Entity have a responsibility to report to the Hutchison Clinic's Compliance Officer any incident of actual or suspected fraud, waste and abuse, or any misconduct which potentially violates Federal or State laws.

B. Any employees, contractors, or agents who knowingly and intentionally submit a false claim to the State or Federal government will be reported to the necessary authority.

C. Employees, contractors, or agents shall contact the Compliance Officer in person, at 620.669.2645, or anonymously to the Compliance Hotline at 855.900.0067 (English) or 800.216.1288 (Spanish), to report any concerns related to compliance with the Federal and State False Claims Acts. Concerns may also be reported to Administration, a Director, or a Compliance Committee Member of Hutchinson Clinic.

D. The Hutchinson Clinic will make this Policy and its Compliance Program available to all employees, contractors, providers and agents. Information regarding individual protections and rights are included within this Policy and included in the Employee Policies provided in the whistleblower policy. Information about the Hutchinson Clinic's Compliance Program and this Policy may also be obtained by contacting the Compliance Officer, or by accessing them on the Hutchinson Clinic's website.

V. Guidelines:

Examples of different types of false claims include:

A. Billing for Items or Services Not Actually Rendered: Employees and agents shall not submit a claim for reimbursement without adequate information to indicate that the service billed for was actually rendered or the item billed for was actually provided to the patient. Such information should include: the date and time the service was rendered or item was provided; the identity of the patient; a description of the services rendered or item provided; and the identity of the person providing the service or item for which reimbursement is sought.
B. Providing Medically Unnecessary Services: Claims should not be submitted to a patient or his or her payor that seek reimbursement for a service that is not warranted by the patient's current or documented medical condition.
C. Upcoding: The assignment of E&M codes should not be used that provide for a higher payment rate than the billing code that actually reflects the service furnished to the patient.
D. Duplicate Billing: Duplicate billings should be avoided. This occurs when more than one claim is submitted to more than one primary payor at the same time.
E. Refund of Credit Balances: Credit balances should be fully refunded on a timely basis.
F. Falsely Billing Physician/Provider Services: Claims for physician/provider services should not be presented if the person providing the service is not a physician.
G. Unbundling: Bills should not be submitted piecemeal or in fragmented fashion to maximize the reimbursement for various tests or procedures that are required to be billed together at a reduced cost.

H. Transactions with Physicians and Others: Any transaction potentially involving fraud and abuse laws shall only be entered into after consultation with legal counsel and/or the Compliance Officer.
I. Intentional misuse of a provider number issued by a federal health care program: Services provided must be billed under the provider who actually performed the services unless exceptions to this are allowed as defined by federal or state laws.

VI. ADDITIONAL INFORMATION

A. **FEDERAL FALSE CLAIMS ACT (FCA):** The FCA imposes civil liability on persons or corporations who, among other things "(1) knowingly present or cause to be presented a false or fraudulent claim for payment to the government; (2) knowingly use a false record or statement to obtain payment on a false or fraudulent claim paid by the government; or (3) engage in a conspiracy to defraud the government to obtain allowance for, or payment of, a false or fraudulent claim. The FCA defines "knowing" or "knowingly" as having actual knowledge of the information; acting in deliberate ignorance of the truth or falsity of the information; or acting in reckless disregard of the truth or falsity of the information; and requires no proof or specific intent to defraud. Violations of the FCA are subject to civil, monetary penalties of not less than $5,500 and no more than $11,000, plus three times the amount of damages which the government sustains because of the act of that person. In healthcare, the amount of damages sustained is the amount paid for each false claim that is filed. Examples of the type of activities prohibited by the FCA include billing a federally funded program, such as Medicare or Medicaid, for services that were not provided and/or upcoding, i.e., billing for a highly reimbursed service in lieu of service actually provided. Another example is retaining improper overpayments received from a federally funded program. The FCA applies to billing and claims sent from a medical provider to any government payor program, including Medicare and Medicaid, other Federal healthcare programs, and other State healthcare programs funded, in whole or in part, by the Federal government.

B. **FEDERAL ANTI-KICKBACK LAW**: A violation of the Anti-Kickback statute is also a false claim. The Anti-Kickback statute forbids the knowing or willful offer, payment, solicitation, or receipt of any type of remuneration to induce or in return for referrals of items or services paid for by Medicare or Medicaid. An example of a "kick-back" in violation of this law would be a physician accepting compensation from a pharmaceutical company in response to the physician writing prescriptions to his/her patients for medications manufactured by the pharmaceutical company. The compensation or other benefits received by a physician in this example could be construed as a payment for that physician's referral of his/her patients to use a specific drug/pharmaceutical that is paid for by the government. The law is also violated in the event inappropriate inducements are made to patients, such as waiving co-insurance or deductibles without regard to financial need. Violations of Anti-Kickback law can result in significant civil and criminal liability for physicians, non-physicians and organizations, and the penalties can include significant fines, imprisonment, or both.

C. **STARK LAW:** A violation of the Stark Laws may, under some circumstances, also create a violation of the False Claims Act. Stark Law prohibits physicians from referring Medicare and Medicaid patients for certain "designated health services" reimbursable by the Medicare and Medicaid programs to entities with which the physicians (or their immediate family members) have a financial relationship. A financial relationship may be an ownership interest or a compensation arrangement, and may be direct or indirect. In addition to prohibiting the referral

for services, the Stark Law bans billing and collecting for services rendered pursuant to a prohibited referral.
Billing in violation of the Stark Law subjects the parties, both the referring physician and the billing entity, to monetary penalties equal to $15,000 per claim, two times the amount claimed, and potential exclusion from the Medicare and Medicaid programs. Other civil monetary penalties apply for failing to report information and for circumvention schemes, which can be substantial. There are exceptions to Stark Law, but they require a proper legal analysis before entering into any such relationship.

D. **CIVIL ACTIONS UNDER THE FCA:** Enforcement of the FCA is the responsibility of the U.S. Attorney General, but the FCA also includes a qui tam or whistleblower provision. Qui tam actions are brought by private individuals on behalf of the government. More specifically, a "qui tam action" is defined as a claim brought by a relator or informer under a statute that establishes a penalty for the commission or omission of a certain act. If a wrongdoing is found, part of the penalty paid by the wrongdoer is paid to the relator or informer, with the remainder going to the government.

A qui tam action is initiated by a relator filing his or her lawsuit in the Federal District Court on behalf of the government for false or fraudulent claims submitted by an individual or entity doing business with or being reimbursed by the United States government. The lawsuit is filed and shall remain under seal for a period of sixty (60) days in order for the government to investigate and decide whether it will pursue the action. At the end of the 60-day period, the complaint is unsealed and the Department of Justice or the U.S. Attorney General's office begins prosecuting the claim. If the government decides not to pursue the case, the relator has the right to continue with the case on his or her own. The government may join the action at a later date, if it can demonstrate good cause for doing so. If the government proceeds with the lawsuit and is successful, the person who filed the action will receive between 15% and 25% of any proceeds of the action, plus attorney's fees and costs. The amount of the award depends on contributions of the individual to the success of the case. If the government declines to pursue the case, the qui tam plaintiff will be entitled to between 25% and 30% of the proceeds of the successful case, plus reasonable expenses and attorney's fees and costs awarded against the defendant. On the other hand, if the qui tam plaintiff is unsuccessful and the court finds that the lawsuit was clearly frivolous, clearly vexatious, or primarily for the purpose of harassment, it may reward the defendant in the action reasonable expenses and attorney's fees. Whether or not the government proceeds with the lawsuit, if the court finds that the qui tam plaintiff planned and initiated the violation upon which the lawsuit was brought, the court may reduce the share of the proceeds which the person would have otherwise received. If the qui tam plaintiff is convicted of criminal conduct arising from his or her role in the violation, the person will be dismissed from the civil lawsuit and shall not be paid any part of the proceeds.

E. **ANTI-RETALIATION PROTECTIONS FOR WHISTLEBLOWERS UNDER THE FCA:** Any individual associated with an organization who observes activities or behavior that may violate the law in some manner and who reports their observations either to management or to the governmental agencies is provided protections under the law. Whistleblowers initiating a qui tam action may not be discriminated or retaliated against in any manner by their employer. Any employee, who is discharged, demoted, suspended, threatened, harassed, or confronts discrimination in furtherance of a qui tam action, or as a consequence of whistleblowing, are entitled to all relief necessary to make the employee whole.

F. **SOCIAL SECURITY ACT:** The Social Security Act authorizes the Secretary of Health and Human Services to seek civil monetary penalties and assessments for many types of conduct. The Secretary of Health and Human Services has delegated many of these civil monetary penalties to the Office of Inspector General (OIG). In most of the cases for which the OIG may seek civil monetary penalties, the OIG may also seek exclusion from participation in all federal healthcare programs.

G. **STATE FALSE CLAIMS LAWS:**

1. Kansas enacted its False Claims Act in early 2009. Like its Federal counterpart, the Kansas False Claims Act (KFCA) allows the Kansas Attorney General to file civil lawsuits to recover funds obtained fraudulently from State and Local governments, including Medicaid payments.

2. The KFCA sets out the following actions as fraudulent claims for which individuals and entities can be liable under the statute: (1) knowingly making a false or fraudulent claim for payment or approval; (2) knowingly using or submitting false records or statements to get a false or fraudulent claim for payment; (3) knowingly using or submitting false records or statements to conceal, avoid, or decrease an obligation to pay; (4) knowingly delivering less property or money than commissioned; (5) knowingly making or delivering a receipt that falsely certifies property; (6) knowingly buying or accepting an obligation for public property from a person not authorized to sell or pledge the property; (7) benefitting from a fraudulent claim and failing to disclose the false claim; and (8) conspiring to commit any of these actions.

3. Also similar to the FCA, the KFCA defines "knowingly" as actual knowledge of the information, acting in deliberate ignorance of the truth or falsity of the information, or acting in reckless disregard of the truth or falsity of the information, but proof of specific intent to defraud is not required.

4. The Kansas Attorney General's office may bring an action up to three (3) years after the date when the material facts are known, or should be known, to the State, or up to six (6) years after a violation, but in no event more than ten (10) years. Any wrongdoer will be liable for three (3) times the amount of actual damages, a civil penalty of up to $11,000 per violation, and costs and fees associated with the civil litigation. The court may not fine a wrongdoer more than two (2) times the amount of damages in cases where the wrongdoer provides complete information within thirty (30) days of the violation, the wrongdoer fully cooperates with the investigation, and no legal action has already commenced.

5. **ANTI RETALIATION PROTECTIONS FOR WHISTLEBLOWERS UNDER THE KFCA:** The KFCA establishes specific protections for employees or whistleblowers who report a violation of the State law. Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner retaliated against by the employer shall be entitled to all relief necessary to make the employee whole. Although this is yet another similarity with the FCA, the KFCA is distinguished in a significant way; it does not include an equivalent to the qui tam provisions of the FCA.

6. KANSAS MEDICAID FRAUD CONTROL ACT:

a. Similar to Federal laws, Kansas does not solely rely on KFCA for laws addressing the issue of detection and prevention of fraud, waste and abuse relevant to government funded programs. The Kansas Medicaid Fraud Control Act (KMFC) allows the Kansas Attorney General's office to file lawsuits to recover Medicaid payments under the Kansas Criminal Code. The KMFC defines making a false claim to the Medicaid program as "knowingly and with the intent to defraud, engaging in a pattern of making, presenting, submitting, offering or causing to be made, presenting, submitting, or offering any false or fraudulent claim, statement, representation, report, book, record, document, data, or instrument." The KMFC also defines unlawful acts related to the Medicaid program as "knowingly and intentionally soliciting or receiving any remuneration, including a kickback, bribe or rebate, directly or indirectly, in cash or in any kind for certain acts."

b. KMFC also includes the requirement to maintain records which fully disclose the nature of goods, services, items, facilities or accommodations for which a claim is submitted or a payment received, or the income or expenditures upon which rates of payment were based. Negligence in maintaining records along with intentional destruction or concealment of records can all lead to punishment.

c. Violations of the KMFC are criminal offenses punishable by imprisonment and payments of full restitution to the State of Kansas, plus interest and all reasonable expenses.

VII. REFERENCES:

Federal False Claims Act, 31 U.S.C. §§ 3729-3733.
Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §§ 3801-3812.
Anti-kickback Statute, 42 U.S.C. §1320a-7b(b)
Stark Laws. 42 U.S.C. §1395
Kansas False Claims Act, K.S.A. §§ 75-7501 through 75-7511.
Kansas Medicaid Fraud Control Act, K.S.A. §§ 21-3844 through 21-3855.