

DEFICIT REDUCTION ACT COMPLIANCE

EMPLOYEE EDUCATION ABOUT FALSE CLAIMS

I. POLICIES AND PROCEDURES TO PROTECT AGAINST FRAUD

Contra Costa Health Plan has policies and procedures to protect against fraud, waste, and abuse, in compliance with federal Medicaid regulations, 42 C.F.R. § 438.608, for Medicaid managed care organizations. Specifically, the requirement is for CCHP to have a compliance plan to guard against fraud and abuse which includes written policies, procedures, and standards of conduct.

Contra Costa Health Plan is a division of Contra Costa Health Services. As such, CCHP's requirements for reporting suspected fraud, waste and abuse are contained in Policy# 705-C. CCHP also has Policy 706-C, Preventing Fraud, Waste and Abuse: Audits and Risk Assessment.

Both these policies combined with the Health Services Compliance Program and Code of Conduct cover false claims, compliance reporting, fraud detection, and whistleblower protections. These policies are available on the Contra Costa County Health Services Intranet site, available and accessible to all CCHP employees for review.

II. INFORMATION ON FEDERAL AND STATE LAWS REGARDING FALSE CLAIMS

A. The Federal False Claims Act, 31 U.S.C. § 3279-3733

The False Claims Act ("FCA") is a set of Federal statutes that cover fraud involving any Federally-funded contract or program, including Medicare and Medicaid. The FCA establishes liability for any person who knowingly:

- Presents or causes to be presented, a false claim for reimbursement by a Federal health care program, including Medicare or Medicaid;
- Makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- Repays less than what is owed to the Government;
- Makes, uses, or causes to be made or used, a false record or statement material to reducing or avoiding repayment to the Government; and/or
- Conspires to defraud the Federal Government through one of the actions listed above.

The term “knowingly” is defined to mean that a person, with respect to information:

- Has actual knowledge of information in the claim
- Acts in deliberate ignorance of the truth or falsity of the information in a claim; or
- Acts in reckless disregard of the truth or falsity of the information in a claim.

Claims

The FCA is not limited to false health care claims but also includes any false statements or records that are material to the claim. In addition, the government has prosecuted health plans that fail to comply with applicable Medicaid statutes and regulations that are a condition or a requirement of payment.

For Medicaid managed care plans, fraud can occur in the areas of contract procurement (e.g., falsifications), marketing (e.g., misleading recipients), enrollment and disenrollment (e.g., cherry-picking enrollees), underutilization (delaying, discouraging, or stinting on care), and data collection and submission (e.g., misclassifying enrollees).

Liability

A health plan that violates the FCA can be subject to civil monetary penalties ranging from \$5,500 to \$11,000 for each false claim submitted. In addition to this civil penalty, a health plan can be required to pay three times the amount of damages sustained by the U.S. Government. If a health plan is convicted of a False Claims Act violation, the Department of Health and Human Services, Office of Inspector General may seek to exclude the health plan from participation in Federal and State health care programs, such as Medicare and Medicaid.

B. Qui Tam Whistleblower Provisions, 31 U.S.C. § 3730(h)

To encourage individuals to come forward and report misconduct involving false claims, the Federal Claims Act includes a “qui tam” or whistleblower provision. This provision essentially allows any person with actual knowledge of allegedly false claims to the government to file a lawsuit on behalf of the U.S. government. Such persons are referred to as “relators.”

Qui Tam Procedure

The whistleblower/relator must file his or her lawsuit on behalf of the Government in Federal district court. The lawsuit will be filed “under seal,” meaning that the lawsuit is kept confidential while the Government reviews and investigates the allegations contained in the lawsuit and decides how to proceed. If the Government determines that the lawsuit has merit and decides to intervene, the prosecution of the lawsuit will be directed by the U.S. Department of Justice. If the government decides not to intervene, the whistleblower can continue with the lawsuit on his or her own.

Award to Qui Tam Whistleblowers

If the lawsuit is successful, and provided certain legal requirements are met, the qui tam relator or whistleblower may receive an award ranging from 15 to 30 percent of the amount recovered. The whistleblower may also be entitled to reasonable expenses including attorneys’ fees and costs for bringing the lawsuit.

Whistleblower Rights

The FCA prohibits employers from retaliating against employees, contractors or agents who file or participate in the prosecution of a whistleblower suit. Employees, contractors or agents who are discharged, demoted, suspended, threatened, harassed, or in any way discriminated against in the terms and conditions of employment by their employer for “blowing the whistle” are entitled to recover all relief necessary to make the employee, contractor or agent whole. Damages available to the employee, contractor or agent who proves retaliation include: reinstatement with the same seniority status, two times back pay, interest on the back pay, compensation for special damages (i.e., emotional distress), and litigation costs and attorneys fees. .

C. California False Claims Laws

Since the federal FCA does not address the problems of fraud in state and local government programs, the California Legislature adopted a state FCA to protect state governments from the same type of fraud prohibited by the federal FCA. The California FCA was modeled after the federal FCA with a few exceptions.

As described above, the federal FCA delineates seven acts that are unlawful. These same seven acts are unlawful under the California FCA, but the California FCA also contains an additional provision that subjects health care providers to liability. *Under the California statute, providers are also liable if they benefit from an inadvertent submission of a false claim to the state government, but do not disclose the false claim to the state within a reasonable time after discovery.*

Liability Under the California False Claims Act

As in the case of the Federal FCA, a person found to have violated the California FCA may be liable for three times the actual damages sustained by the government, as well as penalties. The California FCA assesses penalties for each false claim up to \$10,000, but *does not set a mandatory minimum amount*.

Employee Protections

Under the FCA, an employer cannot make any rule or policy that prevents an employee from disclosing information to a government or law enforcement agency in furtherance of an FCA action. An employer also cannot discriminate against an employee (by discharging, demoting, suspending, or threatening the employee) for lawful acts performed in furtherance of an FCA action.

The California FCA can protect employees even though the employee's actions may appear tenuously linked to a potential FCA action. An employer who is found to have unlawfully retaliated against an employee in this manner may be subject to various sanctions, and the employee may be awarded reinstatement, double his or her back pay plus interest, compensation for special damages, and possibly punitive damages.

D. Program Fraud Civil Remedies Act, 31 U.S.C. § 3801-3812.

The Program Fraud Civil Remedies Act (“Act”) is a federal statute which provides additional penalties separate from the Federal False Claims Act for improper claims and improper statements.

Improper Claims

A person violates the Act if they know or have reason to know they are submitting a claim that is:

- False, fictitious or fraudulent; or,
- Includes or is supported by written statements that are false, fictitious, or fraudulent; or,
- Includes or is supported by a written statement that omits a material fact; the statement is false, fictitious or fraudulent as a results of the omission; and the person submitting the statement has a duty to include the omitted facts; or
- For payment for property or services not provided as claimed.

A violation of this provision of the Act carries a penalty of \$5,500 for each such improper claim. In addition, an assessment of two times the amount of the claim may be made, unless the claim has not actually been paid.

Improper Statements

A person violates the Act if they submit a written statement which they know or should know:

- Asserts a material fact which is false, fictitious, or fraudulent; or,
- Omits a material fact and is false, fictitious or fraudulent as a result of the omission. In this situation, there must be a duty to include the fact and the statement submitted contains a certification of the accuracy or truthfulness of the statement.

A violation of the provision for submitting an improper statement carries a civil penalty of up to \$5,500.