

Contra Costa Health Services

Compliance	Reporting Suspected Fraud, Waste, and Abuse	Policy # 705-C
		Original Date: 01/2007
		Revised:
		Supercedes:

PURPOSE

The purpose of this policy is to outline the reporting options available to employees, contract employees, or agents of Contra Costa Health Services (CCHS) should they have reason to believe any individual or entity acting on behalf of Contra Costa Health Services is engaging in an activity that appears to be an inappropriate practice or a violation of the law.

POLICY

Contra Costa Health Services is committed to ethical and legal conduct that is compliant with all relevant laws and regulations, and to correcting any wrongdoing wherever it may occur within the organization. Each individual has a responsibility to report any activity by any employee, physician, subcontractor, or vendor that appears to violate applicable laws, rules, regulations, accreditation standards, standards of medical practice, Federal healthcare Conditions of Participation, or the CCHS Compliance Program.

This policy applies to employees, contract employees, and agents of CCHS, and expands on the basic principles of the Health Services Compliance Program as outlined in the Code of Conduct, the Compliance Program Manual, and the policies and procedures developed at any level of the organization which address regulatory compliance and the business activities of the Health Services Department.

REFERENCES

Deficit Reduction Act of 2005 (S.1932)
Title 31, United States Code, Sections 3729-3733, False Claims Act
California Government Code, Article 9, Sections 12650-12655, False Claims Actions
Contra Costa Health Services Policy 700-C, '*Compliance Program*'

PROCEDURE

CCHS is committed to providing quality health care services and medical education training in compliance with all federal and state laws and regulations. Although the health care environment is increasingly complex, making it difficult at times to understand the intent of federal and state laws and regulations, violations of these laws could result in both civil and criminal penalties, as well as exclusion from participation in Federal health care programs. Accordingly, we at CCHS expect all employees to be responsible for appropriate ethical and legal behavior in the work place.

The Compliance Program addresses organizational integrity through implementation of policies and procedures, education and training

programs, monitoring and auditing processes, investigation and reporting systems, disclosure of fraud and abuse, corrective action plans, and referral as appropriate to quality assurance committees. Violations of the law, or failure to comply with CCHS policies and procedures will be addressed in accordance with County employment policies and union contracts.

Internal Reporting of Potential Compliance Concerns

The Compliance Program establishes an internal process for reporting suspected instances of fraud, waste, and abuse. Whenever possible, potential compliance issues should be addressed with your immediate supervisor. When that is not possible, or if the individual feels that another course of action is required, contacting a member of Senior Management or the Compliance Officer directly is also an option. Employees also have the option of reporting compliance concerns to the Contra Costa Health Services 24 Hour Compliance Hotline at 1-800-304-9490. Other reporting options, including E-mail and direct mail reporting are discussed in the CCHS Code of Conduct.

The confidentiality of the identity of any individual who files a report will be maintained unless disclosure of their identity is mandated by law or County policy. There is no retribution or discipline for anyone who reports a concern in good faith. Anyone who deliberately makes a false accusation with the intent of harming or retaliating against a co-worker is subject to discipline.

All potential compliance issues will be investigated promptly and confidentially to the extent possible. The Compliance Officer will coordinate all investigations and initiate corrective action. All CCHS staff are expected to cooperate with investigations.

Where an internal investigation substantiates a reported violation, corrective action is expected. Corrective action includes making prompt restitution of any overpayments, disclosure to the appropriate governmental agency, and instituting disciplinary action where needed.

External Reporting of Potential Compliance Concerns

1. The Federal False Claims Act

Although there is no requirement for employees to first report problems internally, the most effective and efficient way to correct a wrong is through the Contra Costa Health Services Compliance Program.

In the event an individual reports a compliance concern and feels the internal reporting mechanism has failed to take appropriate and necessary action, the Federal False Claims Act gives individuals the option to initiate actions on behalf of the government in lawsuits called *qui tam* actions. The False Claims Act (FCA) allows the government to recover significant damages from persons or entities submitting false or fraudulent claims, and permits the individual initiating the action, called a *qui tam* plaintiff or “whistle-blower”, to receive up to 30 percent of any damages recovered by the government.

Elements of a Violation of the Federal False Claims Act

Under the FCA, a health care provider is liable if it “knowingly” causes a “false claim” to be presented to the government or “knowingly” makes a false statement to obtain payment of a “false claim.” A *claim* is simply a request for payment. A *false claim* is a request for payment that is somehow untrue.

In order for a health care provider to be found liable for false claims, it must be shown that the provider acted “knowingly.” A health care provider will be found to have acted “knowingly” if it acted with either:

- 1) ***Actual Knowledge***. This requires that a health care provider actually knew that the claim it made to the government was false or fraudulent when it submitted the claim.
- 2) ***Deliberate Ignorance*** of the truth or falsity of the claim. This means the health care provider was aware there was a high probability that the claim was in fact false or fraudulent, yet ensured that the organization remained ignorant of the truth.
- 3) ***Reckless Disregard***. This can be shown when a health care provider was aware there was a high probability that the claim was in fact false or fraudulent, but acted with indifference.

A health care provider that merely makes an innocent mistake or acts negligently will not satisfy the “knowingly” standard.

Types of Violations of the Federal False Claims Act

Under the FCA, health care providers and their employees may be liable if they take certain steps to obtain improper payments from the government. The statute delineates seven “acts” that are unlawful:

- 1) ***Submitting False Claims:*** This violation occurs if a health care provider knowingly submits to the government a claim for payment that is somehow untrue.
- 2) ***Making False Records or Statements:*** Under this provision, a health care provider is liable for knowingly making a false statement that results in payment of a false claim.
- 3) ***Conspiracy:*** It is unlawful for a health care provider to conspire to defraud the government by having a false claim paid.
- 4) ***Withholding Money:*** A health care provider violates the FCA if it willfully delivers or causes to be delivered to the government less property or money than agreed.
- 5) ***Certifications:*** A health care provider violates the FCA if it certifies that the government has received property without knowing whether the certification is true.
- 6) ***Improper Purchase:*** It is a violation of the FCA if a health care provider knowingly buys property from an employee of the government who is not authorized to sell the property.
- 7) ***Avoiding Obligations to the Government:*** A health care provider violates the FCA if it knowingly uses a false record or statement to conceal, avoid, or decrease an obligation to pay money or transfer property to the government.

Liability Under the Federal False Claims Act

If a health care provider is found to have violated the FCA, the potential liability could be substantial. The violator will be liable for up to triple the actual damages incurred by the government, and can be assessed civil penalties by the government of at least \$5,000 and up to \$10,000 for each violation of the FCA.

Thus, even if the government was not materially damaged, a health care provider could be liable for millions of dollars in penalties based on the number of individual claims submitted to the government that contain false or fraudulent information. For example, a \$20 fraudulent claim may not materially damage the government. However, under the FCA, a \$20 fraudulent claim submitted 500 times could result in penalties of \$5,000,000 (\$10,000 penalty per violation x 500 claims) even though the government only suffered \$10,000 in actual damages (\$20 error x 500 claims).

Enforcement of the Federal False Claims Act

The FCA may be enforced by the government and also by private individuals who bring actions on behalf of the government. The government, through the United States Attorney's Office or the Department of Justice (DOJ) may file a FCA action. In addition, private persons are empowered by the FCA to initiate civil actions for FCA violations on behalf of the United States government.

These individuals are called *qui tam* plaintiffs (or “whistle-blowers” or “relators”). The lawsuits are called *qui tam* actions because the plaintiff sues for the government as well as himself. Under the FCA, the *qui tam* plaintiff may receive a portion of any amounts recovered in the civil action. The remainder goes to the government.

The *qui tam* provisions were motivated by Congress' concern that limited government resources prevented effective enforcement of the FCA. It was also believed that fraud would be difficult to detect without informants acting as whistle-blowers.

Qui Tam Procedure

The whistle-blower/relator must file his/her lawsuit in a federal district court. The lawsuit will be filed “under seal,” meaning 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 join (“intervene”), the prosecution of the lawsuit will be directed by the U.S. Department of Justice. At this point, the government will be the “plaintiff,” or party suing the health care provider. If the government decides not to intervene, the whistle-blower can continue with the lawsuit on his/her own.

2. The California False Claims Act

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.

Enforcement of the California False Claims Act

Both the government, through the Attorney General's Office, and private individuals (*qui tam* plaintiffs) may initiate actions under the California FCA. In addition, the prosecuting authority for a particular subdivision that was the recipient of the false claim may bring an action (i.e. a city attorney could bring action against a violator who submitted a false claim to that city's government).

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.

CCHS Strategy to Protect Against False Claims Actions

In order to avoid or reduce its FCA liability, Contra Costa Health Services has adopted a voluntary Compliance Program and maintains a corporate culture of compliance with all applicable legal requirements.

As part of its Compliance Program, CCHS has established systems that enable it to learn of potential problems before a *qui tam* plaintiff

blows the whistle. This includes establishing internal disclosure policies, creating a 24-hour Compliance Hotline for reporting suspected compliance violations, instituting self-monitoring programs, conducting internal audits and investigations, and utilizing an exit interview program to solicit information from departing employees regarding potential misconduct and suspected violations of the CCHS Compliance Program or the organization's policies and procedures.

The CCHS Code of Conduct and the Compliance Program Manual establish the framework for the CCHS Compliance Program. These documents outline the principles and guidelines that employees should follow to enable CCHS to conduct its activities in an ethical and legal manner. Together these documents comprise CCHS Policy 700-C, entitled '*Compliance Program*'.

The Code of Conduct and the Compliance Program Manual are available on the CCHS intranet. To view these documents and other information on the Contra Costa Health Services Compliance Program, go to the Intranet, click on 'Sites', and then click 'Compliance'. You can also obtain information on the Compliance Program by contacting your supervisor or the Compliance Office.

RESPONSIBLE Compliance Officer
Division Directors

Departmental Review	Signature	Date
Health Services Director		
Compliance Officer		