

 <p style="text-align: center;">County of Sacramento Department of Health Services Division of Behavioral Health Services Policy and Procedure</p>	Policy Issuer (Unit/Program)	QM
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Title: Deficit Reduction Act False Claims Recovery	Functional Area: Federal Managed Care Regulations	
Approved By: (Signature on File) Signed version available upon request		
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BACKGROUND/CONTENT:

This policy establishes that the Division of Behavioral Health Services Compliance Program incorporates the 2005 § 6032 Deficit Reduction Act requirement to educate employees regarding the provisions of the Federal and State False Claims Acts. This policy provides written information to employees and contractors regarding the State and Federal regulations, administrative remedies and whistleblower protections. The Division of Behavioral Health Services (Division) and Mental Health Plan (MHP) maintains a zero tolerance policy for any acts of retaliation against any employee who, in good faith, reports potential or suspected compliance program violations. All entities receiving or making payments of \$5,000,000 or more in Medicaid funding in the previous fiscal year are required to abide by DRA provisions.

PURPOSE:

The Department of Health Services (DHS) Division of Behavioral Health Services is firmly committed to achieving the mutual goals of preventing fraud and abuse, improving operational quality, and ensuring the provision of high quality cost-effective mental health and alcohol and drug care. The Division promotes a culture where all levels of the organization are committed to watchful business practices and preventive activities to ensure that laws and regulations are followed.

As a matter of policy, the Division, including county employees and contractors, including volunteers and students are requested to follow all policies and procedures established by the Division Compliance Program.

DETAILS:

The Federal False Claims Act:

The Federal False Claims Act (FCA) helps the federal government combat fraud and recover losses resulting from fraud in federal programs, purchases, or contracts. 31 U.S.C. §§ 3729-3733.

- Knowingly submitting (or causing to be submitted) a false claim to the Government or the Armed Forces of the United States (the Armed Forces) for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved by the Government;

- Conspiring to get a false claim allowed or paid by the Government;
- Delivering (or causing to be delivered) less property than the amount of the receipt, where the person with possession or control of the Government money or property intends to deceive the agency or conceal the property;
- Making or delivering a receipt without completely knowing that the receipt is true, where the person authorized to make or deliver the receipt intends to defraud the Government;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from an officer or employee of the Government or a member of the Armed Forces who has no legal right to sell or pledge the property; or
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to the Government

“Knowing” and “Knowingly” means a person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

“Claim” includes any request or demand for money or property (including those made under contract) to the Government or to a contractor, grantee, or other recipient, if any portion of the requested money or property is funded by or will be reimbursed by the Government.

A person or organization may be liable for:

- A civil penalty \$10,781.40 to \$21,562.80 for each false claim;
- Three times the amount of damages sustained by the Government due to the violations; and
- The costs of a civil suit for recovery penalties or damages.

The court may reduce the treble damages if:

- The person committing the violation voluntarily disclosed all information known to him or her to the U.S. officials responsible for investigating false claims violations within thirty days of obtaining the information;
- The person fully cooperated with any Government investigation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person’s disclosure, and the person had no actual knowledge of an investigation into such violation.

Actions by Private Persons or *Qui Tam* Plaintiffs (also known as Relators):

An individual also has the right to file a civil suit for him or herself and for the Government. The suit must be filed in the name of the Government. The suit is filed and served on the Government. The suit and all information are filed under seal, and most remain under seal for at least sixty days. The suit may be dismissed only if the court and the Attorney General consent to the dismissal in writing.

If a *qui tam* plaintiff alleges a false claims violation, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the Government. Once the

action is filed, no person other than the Government is allowed to intervene or file a lawsuit based on the same facts.

Rights of the Parties to *Qui tam* Actions:

If the Government decides to file a civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has the right to continue as a party to the action, subject to certain limitations. If the Government decides not to file a civil suit, the *qui tam* plaintiff still has the right to proceed with a lawsuit. The Government can intervene later upon a showing of good cause.

Award to *Qui tam* Plaintiff:

If the Government prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 25 percent of the recovery, depending on his or her contribution to the case. If the case is based primarily on information other than the disclosures of the *qui tam* plaintiff, the award cannot be more than 10 percent of the recovery.

If the Government decides not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive between 25 and 30 percent of the award or settlement. In either case, the court will award the *qui tam* plaintiff reasonable expenses and attorney's fees and costs.

If the court finds that the *qui tam* plaintiff planned and initiated the violation upon which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive. If the *qui tam* plaintiff is convicted of criminal conduct, he or she will be dismissed from the lawsuit and will not receive any monetary award.

If the court finds the defendant not guilty and the claim frivolous in a suit conducted by a *qui tam* plaintiff, the court may award the defendant reasonable costs and attorney fees.

Certain Actions Barred:

An individual cannot bring a *qui tam* action against a member of Congress, a member of the judiciary, or a senior executive branch official based on evidence already known to the Government.

An individual cannot bring a *qui tam* suit based on allegations in a civil suit or an administrative proceeding in which the Government is already a party.

An individual cannot bring a *qui tam* action based on the public disclosure of allegations unless he or she is the original source (e.g., an individual with direct and independent knowledge of the information on which the allegations are based who has voluntarily provided the information to the Government before filing a civil action). Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in a congressional, administrative, or GAO report, hearing, audit, or investigation; or from the news media.

Whistleblower Protection:

An employee who has been discharged, demoted, suspended, threatened, harassed, or in any way discriminated against by his or her employer because of involvement in a false claims disclosure is entitled to all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had but for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained because of the discrimination (including litigation costs and reasonable attorney's fees).
- Punitive damages if appropriate.

The protected false claims activities include investigation for, initiation of, testimony for, or assistance in a false claims action that has been or will be filed. An employee is entitled to bring an action in the district court for such relief.

The California False Claims Act:

The California False Claims Act ("CFCA") applies to fraud involving state, city, county or other local government funds. The CFCA encourages voluntary disclosure of fraudulent activities by rewarding individuals who report fraud and allowing courts to waive penalties for organizations that voluntarily disclose false claims. Cal. Gov't Code §§ 12650-12656.

Actions that violate the CFCA include:

- Knowingly submitting (or causing to be submitted) a false claim for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved;
- Conspiring to get a false claim allowed or paid by the state or by any political subdivision;
- Benefiting from an inadvertent submission of a false claim, subsequently discovering the falsity of the claim, and failing to disclose to the state or political subdivision within a reasonable time after discovery;
- Delivering less property than the amount of the receipt, where the person has possession or control of public property;
- Knowingly making or delivering a false receipt, where the person is authorized to deliver a document;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from any person who has no legal right to sell or pledge the property; or
- Knowingly making or using a record to conceal, avoid, or decrease an obligation to pay money or transmit property to the state or local government.

"Claim" includes any request for money, property, or services made to the state or any political subdivision (or to any contractor, grantee, or other recipient), where any portion of the money, property, or services requested was funded by the state or any political subdivision.

The maximum civil penalty is \$11,000, per claim. Persons who violate the CFCA may be liable to the state for three times the amount of damages that the state sustains because of the violation. The court can waive penalties and reduce damages for CFCA violations if the false claims are voluntarily disclosed. The CFCA does not apply to false claims of less than \$500. Lawsuits must be filed within three years after the violation was discovered by the state or local official who is responsible for investigating the false claim (but no more than ten years after the violation was committed). Cal. Gov't Code §§ 12651

Private or Qui Tam Actions/Whistleblower Provisions:

Individuals (or qui tam plaintiffs) can sue for violations of the CFCA. Individuals who bring an action under the CFCA receive between 15 and 33 percent of the amount recovered (plus reasonable costs and attorney's fees) if the state prosecutes the case, and between 25 and 50 percent (plus reasonable costs and attorney's fees) if the qui tam plaintiff litigates the case on his or her own. Cal. Gov't Code §§ 12652

An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.

The CFCA bars employers from interfering with an employee's disclosure of false claims. Employees who report fraud and consequently suffer discrimination may be entitled to compensation and protection as noted in the **Whistleblower Protection** provision.

Liability to the State or Political Subdivision:

A person or organization will be liable to the state or political subdivision for:

- Three times the amount of damages that the state or local government sustains because of the false claims violations;
- The costs of a civil suit for recovery of damages; and
- A civil penalty of up to \$11,000 for each false claim.

Certain Actions Barred:

An individual cannot bring a *qui tam* suit based on allegations in a civil suit or an administrative proceeding in which the state or political subdivision is already a party. An individual cannot file a lawsuit based on the public disclosure of allegations unless he or she is the original source (e.g., an individual with direct and independent knowledge of the information on which the allegations are based). Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in an investigation, report, hearing, or audit conducted by or at the request of the Senate, Assembly, auditor, or governing body of a political subdivision; or by the news media.

Awards:

If the state or political subdivision prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff receives between 15 and 33 percent of the recovery (plus reasonable costs and attorney's fees), depending on his or her contribution to the case. If the state or political subdivision decides not to file a lawsuit and the *qui tam* plaintiff successfully litigates the action, the *qui tam* plaintiff receives between 25 and 50 percent of the award or settlement. Employees who participated in fraudulent activities are not guaranteed any recovery. If the court finds the defendant not guilty and the claim frivolous in a suit conducted by a *qui tam* plaintiff, the court may award the defendant reasonable costs and attorney fees.

Whistleblower Protection:

Employers are prohibited from:

- Making or enforcing any type of rule or policy that prevents an employee from disclosing information to a government or law enforcement agency, or from investigating, initiating, testifying, or otherwise assisting in a false claims action; or
- Discharging, demoting, suspending, threatening, harassing, denying promotion to, or in any other manner discriminating against an employee because of his or her involvement in a false claims action.

Liability of Employer:

An employer who interferes with an employee's disclosure of false claims will be liable to the employee for all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had except for the discrimination;
- Two times the amount of back pay plus interest;

- Compensation for any special damage sustained as a result of the discrimination; and punitive damages where appropriate.

Limitations on Eligibility of Employees for Damages:

If an employee’s conduct has resulted in a false claim being submitted to the state or a political subdivision, and the employee has been discriminated against by his or her employer, he or she is entitled to remedies only if he or she voluntarily disclosed information to a government or law enforcement agency or assisted in a false claims action; and was coerced (either through harassment, threats of termination demotion, or other coercive actions) by the employer or its management into committing the fraudulent activity in the first place.

REFERENCE(S)/ATTACHMENTS:

- Title 31, US Code, Chapter 37 Sections 3729 Through 3733
- Title 31, US Code, Chapter 38 Sections 3801 Through 3808
- California Government Code, Sections 12650 through 12656
- Deficit Reduction Act of 2005 Chapter 3, Eliminating Fraud, Waste and Abuse in Medicaid

RELATED POLICIES:

- No. 41-01 Compliance Program
- No. 41-03 Code of Conduct
- No. 42-01 Compliance Officer
- No. 42-02 Compliance Committee
- No. 44-01 Issue Reporting
- No. 20-01 Claims Certification and Program Integrity
- No. 20-02 Excluded Individuals / Entities

DISTRIBUTION:

Enter X	DL Name	Enter X	DL Name
X	Behavioral Health Staff	X	Management Team
X	Mental Health Treatment Center	X	DHS Deputy Director
X	Adult Contract Providers	X	DHS Human Resources
X	Children’s Contract Providers	X	County Counsel
X	Substance Use and Prevention Treatment	X	County Compliance Oversight Committee
X	County of Sacramento Privacy & Compliance Officer		

CONTACT INFORMATION:

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