

	DIVISION OF CHILD & FAMILY SERVICES Children's Mental Health Services
SUBJECT:	False Claims Act
POLICY NUMBER:	11.70
NUMBER OF PAGES:	5 + Compliance Violation Report form
EFFECTIVE DATE:	March 16, 2009
ISSUED DATE:	March 16, 2009
REVIEWED BY:: DATE:	Children's Mental Health Management Team March 2, 2009
SUPERCEDES: PAGES:	N/A
APPROVED BY: DATE: APPROVED BY: DATE:	Patricia Merrifield, Deputy Administrator March 2, 2009 Commission on Mental Health and Developmental Services March 12, 2009
REFERENCES:	Employee Education – Deficit Reduction Act & False Claims Act Deficit Reduction Act of 2005 False Claims Act – 31 U.S.C §§ 3729 through 3733 Administrative remedies – 31 U.S.C Chapter 38 Civil & criminal penalties – NRS 357; NRS 422.410-570 & NRS 193.130 Whistleblower protections – NRS 357.240 - 250
ATTACHMENTS:	Compliance Violation Report form

I. POLICY

Division employees shall be informed about the (1) activities that constitute false claims against state and federal funds (for example Medicaid eligibility and Medicaid reimbursement); (2) relief to which individuals (employees who report fraud and consequently suffer discrimination for such action) are entitled; and (3) procedures for detecting and preventing fraud, waste, and abuse.

II. PURPOSE

To communicate and comply with the contents of the federal and state False Claims Act (FCA) and the Deficit Reduction Act (DRA) of 2005, Section 6032, which requires (1) an employee education policy regarding false claims recovery for entities receiving annual payments of at least 5 million dollars under a state Medicaid plan; and (2) procedures for detecting and preventing fraud, waste, and abuse.

III. DEFINITIONS

- A. Claim – includes any request or demand, whether under a contract or not, for money or property if the United States Government provides or reimburses any portion of the money or property, which is requested or demanded.

- B. False Claims Law Investigation – any inquiry conducted for the purpose of determining whether any person is or has been engaged in any violation of a false claim law.
- E. Knowing and Knowingly – a person, with respect to information:
1. Has actual knowledge of the information;
 2. Acts in deliberate ignorance of the truth or falsity of the information; or
 3. Acts in reckless disregard of the truth or falsity of the information.

IV. RESPONSIBILITIES AND PROCEDURES

It is the responsibility and policy of the Division to obey all federal and state laws, to implement and enforce procedures to detect and prevent fraud, waste and abuse regarding payments to the Division from federal or state programs, and to provide protections for those who report actual or suspected wrongdoing.

Below are summaries of certain statutes that provide liability for false claims and statements. These summaries are not intended to identify all applicable laws but rather to outline some of the major statutory provisions as required by the DRA.

Federal False Claims Act

One of the primary uses of the FCA is to combat fraud and abuse in government health care programs. The FCA accomplishes this by making it possible for the government to bring civil actions to recover damages and penalties when healthcare providers submit false claims.

A “person” is liable under the FCA if that person “knowingly”:

- Presents a false or fraudulent claim for payment or approval.
- Makes or uses a false record or statement to get a false or fraudulent claim allowed or paid.
- Provides less property or equipment than claimed.
- Makes or uses a false record to conceal or decrease an obligation to pay or provide money or property.

A false or fraudulent claim includes or is supported by any written statement that:

- Omits material evidence or facts which would establish the falsity of a claim.
- Is for the provision of property or services which the person has not provided as claimed.
- Includes charges in excess of usual charges or the patient’s needs.
- Are for services that are not medically necessary.
- Presents facts that are false or fraudulent.

State False Claims Act

Under the State False Claims Act, a person is liable who knowingly receives an inadvertent submission of a false claim, and after discovering the falsity, does not report or disclose the false claim to appropriate State officials within a reasonable time.

Civil Actions

A civil action may be brought against a person by:

- The U. S. Attorney General, who is responsible for conducting investigations for violations of the Federal False Claims Act;
- The State Attorney General, who is responsible for conducting investigations for violations of the State False Claims Act;
- A private person who has knowledge of a violation of either FCA. They must submit a written complaint and all material evidence and information they have regarding the false or fraudulent claim or statement.

When a private person brings a civil action, only the government can intervene or bring a related action based on the same violation.

The government has primary responsibility for prosecuting an action, brought by a person, but the person can continue as a party to the action, and shall receive at least 15% but not more than 25% of the proceeds of any settlement.

Time limitations:

- A civil action cannot be filed on a violation if more than 6 years have elapsed since the act was committed.
- The time frame can be extended to 10 years if facts material to the case were made known within the previous 3 years.

Administrative Remedies for False Claims and Statements

Civil penalties -

Under the FCA, anyone who violates the act is liable for a civil penalty as outlined in 31USC § 3729 through 3733, plus three times the amount of the damages the government sustains. Anyone intentionally participating in the submission of a false claim may be liable for the costs of a civil action brought to recover any penalties or damages.

Criminal penalties -

Under State law involving a false claim or combination of fraudulent claims violations, a person may be subject to incarceration, monetary fines, or both. The length of imprisonment and/or fine is dependent on the value of the fraudulent claim.

Under Federal law involving a false claim or fraudulent activities, a person may be subject to imprisonment or monetary fine or both as outlined in 31USC § 3729 through 3733.

Administrative remedies -

Providers in violation of any regulations regarding false claims or fraudulent acts will be subject to exclusion, suspension, or termination of provider status for participation in Medicaid and other government programs.

The same violation may be subject to multiple penalties if action is brought under federal law as well as state law.

Employee Protections

Under State and Federal law -

- An employer cannot prohibit an employee from disclosing information to the state or government, on a false claim or statement.
- An employer is prohibited from discharging, demoting, suspending, harassing, threatening, or otherwise discriminating against an employee for reporting on a false claim or statement or for providing testimony or evidence in a civil action pertaining to a false claim or statement.

Liability for violations –

- An employer who discharges, demotes, suspends, harasses, threatens, or discriminates against an employee for disclosing information, is liable to the employee for:
 - All relief necessary to correct the wrong, including if needed –
 - Reinstatement with the same seniority as if the action had not occurred; or
 - Damages in lieu of reinstatement, if appropriate; and
 - 2 times the lost compensation, plus interest; and
 - Any special damage sustained as a result of the action; and
 - Punitive damages, if appropriate.

Detecting and Preventing Fraud

All complaints regarding potential fraud, waste, and abuse of program funding are taken seriously and employees who report these issues can remain anonymous if they wish.

The Division is committed to detecting and preventing fraud, waste, and abuse. Prevention and detection will be implemented through sound business operations, periodic audits, and staff training.

Staff training will be provided upon implementation of this policy and for new employees through the New Employee Orientation Packet provided by Division personnel unit. In addition, Division will provide refresher training to staff as required in the State Medicaid False Claims Act Certification.

Employees are expected to report the preparation or submission to Medicaid or any other federal health care program of any claim or report that appears to be false or fraudulent, or any other conduct that appears to violate the False Claims Act. All reports received from employees will be evaluated and investigated as necessary pursuant to such policy.

The Division will strive to immediately initiate an investigation, and if appropriate, delay the submission of claims when any compliance issues (e.g., improper coding) are brought to its

attention internally (from auditing or from registered complaints by internal staff) or externally (from state and/or federal agencies). The Division will cooperate fully with state and/federal agencies investigating any potential compliance concern.

Reporting Compliance Concerns

The Division maintains an “open door” policy at all levels of management to encourage employees and others to report problems and concerns. The Division will not retaliate or discriminate against any employee who reports an actual or potential violation of laws, regulations, policies and procedures.

In the event that an employee discovers a compliance error that could lead to a violation of the FCA:

- The individual should bring it to the attention of their immediate supervisor.
- The supervisor can in turn work with their manager to investigate and rectify the problem.
- The supervisor and/or manager should, if necessary, initiate or revise the business process to eliminate future compliance errors or problems.

If an employee suspects or becomes aware of a fraud, waste, or abuse, they should report the matter either verbally or in writing to:

- Their immediate supervisor, or
- Their office manager, or
- The Division’s HIPAA Privacy and Security Officer.

The reporting employee and the individual receiving the report should complete the ‘Compliance Violation Report’ form detailing the information received. The completed form should be submitted to the appropriate Deputy Administrator within 5 working days.

The Deputy Administrator or designee with the assistance of the Deputy District Attorney, if necessary, will begin the false claims law investigation.

Employees are encouraged to contact their supervisor or the Division’s HIPAA Privacy and Security Officer if they have questions about fraud, waste, or abuse of program funds.

Division of Child and Family Services
 Children's Mental Health Services

Compliance Violation Report

This form is for reporting alleged violations of Federal, State, or other regulations and laws (e.g., False Claims Act).

Note: This form is not for reporting grievances. You must follow the normal process for such complaints.

Please complete all of the following information:

Today's Date: _____ Date or Dates of Violations: _____

Person or Department alleged to have committed the violation: _____

Please describe in detail what you believe is not in compliance with applicable Federal, State, or other regulations or policies of this Division (please submit any supporting documentation you may have, or indicate where the documentation can be found):

What are the Federal, State, or other regulations or policies that you believe have been violated:

Optional Information:

Name: _____ Position: _____

Telephone Number: _____

Please note: Although this information is not required for an investigation to be conducted, the Division will be unable to report findings back to you or obtain additional information if needed without this information. The Division does not permit retaliatory action against employees who, in good faith, report violations.