

CHAPTER 21 - FALSE CLAIMS ACT

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EFFECTIVE DATE: March 29, 2013

REFERENCES: Public Law 101-12 (Whistleblower Protection Act), Public Law 109-171 (Deficit Reduction Act of 2005); 31 U.S.C. 3729-3733 (False Claims Act)

Overview

This policy provides an overview of key provisions of the False Claims Act (FCA) and related legal requirements as required by the Deficit Reduction Act of 2005 (DRA) for the Division of Developmental Disabilities (Division). This policy defines fraud and describes the expectations for prevention, detection, and reporting of fraud, false claims, and abuse by providers, agents and subcontractors.

Policy Objectives

- A. Delineate the False Claims Act
- B. Explain the Deficit Reduction Act of 2005
- C. Prevent or detect fraud, waste and abuse
- D. Describe training requirements
- E. Specify policy requirements for providers, agents and subcontractors

Definitions

- A. **Abuse** – Per 42 CFR 455.2, *Abuse* means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes beneficiary practices that result in unnecessary cost to the Medicaid program.
- B. **Code of Federal Regulations (CFR)** - is the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government.
- C. **Claim** – Under the False Claims Act (FCA), the definition of “claim” includes any request or demand, whether under contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States government provides any portion of the money or property which is requested or demanded, or if the government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.
- D. **Deficit Reduction Act (DRA)** –The DRA of 2005 is a United States Act of Congress concerning the budget. It addresses deficit reductions ranging from education to housing and Medicare to Medicaid. In addition, any entity that receives or makes

annual Medicaid payments, under the State plan, of at least \$5 million must implement written policies for its employees, management, contractors and agents regarding the False Claims Act.

- E. False Claims Act (FCA) - The FCA, also called the "Lincoln Law" is an American federal law that imposes liability on persons and companies (typically federal contractors) who defraud governmental programs. It is the Federal Government's primary litigation tool in combating fraud against the Government. The law includes a *qui tam* provision that allows people who are not affiliated with the government, called "relators" under the law, to file actions on behalf of the government (informally called "whistleblowing" especially when the relator is employed by the organization accused in the suit).
- F. Fraud - "An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in an unauthorized benefit to himself or another person. It includes any act that constitutes fraud under applicable Federal or state law." (42 CFR 455.2)

An act of fraud has been committed when a member or provider:

- a. Knowingly presents (or causes to be presented) to the Federal Government a false or fraudulent claim for payment.
 - b. Knowingly uses (or causes to be used) a false record or statement to get a claim paid by the Federal Government.
 - c. Conspires with others to get a false or fraudulent claim paid by the Federal Government.
 - d. Knowingly uses (or causes to be used) a false record or statement to conceal, avoid, or decrease an obligation to pay money to transmit property to the Federal Government
- G. Potential - Based on one's professional judgment, it appears as if an incident of fraud and abuse may have occurred. The standard of professional judgment used would be that judgment exercised by a reasonable and prudent person acting in a similar capacity.
- H. Prevention - Keep something from happening.
- I. Provider - A person, entity or employee of an entity that subcontracts with the Division for the delivery of services to members. All providers must meet the specific qualifications outlined in the Division's Policy Manuals. All providers of Arizona Long Term Care System (ALTCS) services must be registered with the Arizona Health Care Cost System (AHCCCS). Health Plans under contract with the Division are responsible for credentialing acute care providers.
- J. Waste - As defined by (AHCCCS), the overutilization of services, or other practices that, directly or indirectly, result in unnecessary costs to the Medicare program. Waste is generally not considered to be caused by criminally negligent actions but rather the misuses of resources.

The Deficit Reduction Act of 2005

The DRA of 2005 imposes the following requirements on any entity that receives or makes at least \$5,000,000 annually:

- A. Establish written policies for all employees of the entity (including management), and of any contractor or agent of the entity, that provide detailed information about the FCA as established under Title 31 of United States Code, to include administrative remedies for false claims and statements, and any state laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in federal health care programs.
- B. Provide detailed written policies and procedures for detecting and preventing fraud, waste and abuse.
- C. Include in any employee handbook for the entity, a specific discussion of the FCA and Whistleblower Protection Act, to include, the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste and abuse.

The FCA covers fraud involving any federally funded contract or program, with the exception of tax fraud. Liability for violating the FCA is equal to three times the dollar amount that the government is defrauded and civil penalties of \$5,500 to \$11,000 for each false claim.

An individual can receive an award for "blowing the whistle" under the FCA. In order to receive an award, the person must file a "qui tam" lawsuit. An award is only issued if, and after, the government recovers money from the defendant as a result of the lawsuit.

The amount of the award is generally between 15 and 30 percent of the total amount recovered from the defendant, whether through a favorable judgment or settlement. The amount of the award depends, in part, upon the government's participation in the suit and the extent to which the person substantially contributed to the prosecution of the action.

The "whistle blower" is protected under the FCA. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in furtherance of an action under the Act is entitled to any relief necessary to make the employee whole.

False Claims Act

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As the "whistle blower" is protected under the FCA, the FCA and related law commits that no person will be subject to retaliatory action as a result of their reporting of credible misconduct. Pursuant to the Division's commitment to compliance with the relevant FCA and other applicable laws, no employee can be discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the provider, agent or subcontractor solely because of actions taken to report potential fraud, waste and abuse, or other lawful acts by the employee in connection with internal reporting of compliance issues or an action filed or to be filed under the FCA.

Training

As a condition for receiving payments, the providers must establish written policies, and must ensure adequate training and ongoing education for, all of its employees (including management), members, and of any subcontractors and/or agents of the Provider regarding the following:

- A. Detailed information about the Federal False Claims Act,
- B. The administrative remedies for false claims and statements,
- C. Any State laws relating to civil or criminal liability or penalties for false claims and statements, and
- D. The whistleblower protections under such laws.