



**COUNTY OF SAN BERNARDINO
POLICY MANUAL**

No. 10-06

ISSUE 1

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By

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SUBJECT

FEDERAL AND STATE FALSE CLAIMS ACT

APPROVED

PAUL BIANE
Chair, Board of Supervisors

POLICY STATEMENT

All officials, employees, contractors and agents of the County of San Bernardino have a duty to prevent fraud, waste and abuse and are responsible for reporting suspected instances of fraud, waste and abuse, ensuring the ethical and legal designation of public resources.

DEFINITIONS

Abuse - Generally, practices that are inconsistent with sound fiscal, business, legal or medical practices, and result in an unnecessary cost to the Medicare, Medicaid or County programs, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care (42 C.F.R. 455.2).

Contractor – Contractor includes any contractor, subcontractor, agent, or other person who, on behalf of the entity, furnishes, or otherwise authorizes the furnishing of Medicaid (Medi-Cal) health care items or services, performs billing or coding functions, or is involved in the monitoring of health care provided by the entity.

Fraud - Generally, intentional deception or misrepresentation made by a person or persons with the knowledge that the deception could result in some unauthorized benefit to him or some other person. It includes any act that constitutes fraud under applicable Federal or State law (42 C.F.R. 455.2).

Knowing and knowingly (as it relates to the Federal False Claims Act) - means that a person, (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, and no proof or specific intent to defraud is required (31 U.S.C. 3729).

NOTE: There does not have to be proof of a specific intent to defraud.

Person - A person under the Act means the County as an entity, individual County employees and contractors defined above.

Qui Tam - a legal provision in the United States under the Federal False Claims Act that allows for a private individual or whistleblower with knowledge of past or present fraud committed against the U.S. Federal Government to sue on its behalf.

Waste - Waste is the extravagant, careless, or needless expenditure of funds or consumption of resources that results from deficient practices, poor systems controls, or bad decisions. Waste may or may not provide any personal gain.

POLICY AMPLIFICATION

Federal and California False Claims Acts were enacted to combat fraud committed by contractors and to prevent unwarranted payments. The False Claims Act imposes liability on any person who submits a claim to the federal or state government that he or she knows (or should know) is false, submits a knowingly false record to obtain payment from the government, or uses false statements or records to retain money to which they were not entitled.

Federal False Claims Act allows civil action to be brought against any person or entity who knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval to any federal employee; uses or causes to be made or used a false record or statement to get a false or fraudulent claim paid; conspires to defraud the government by getting a false or fraudulent claim allowed or paid; has possession, custody, or control of property or money used, or to be used, by the government and, intending to defraud the government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt; authorizes to make or deliver a document certifying receipt of property used, or to be used, by the government and, intending to defraud the government, makes or delivers the receipt without completely knowing that the information on the receipt is true; knowingly buys, or receives as a pledge of an obligation or debt, public property from a federal employee, who lawfully may not sell or pledge the property; or knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the government (31 U.S.C. 3729).

California False Claims Act:

The California False Claims Act makes it illegal, among other things, for any individual to knowingly present or cause to be presented to a state employee a false claim for payment or approval, knowingly make, use, or cause to be made or used a false record or statement to get a false claim paid or approved by the state or by any political subdivision, or to conspire to defraud the state or any political subdivision by getting a false claim allowed or paid by the state or by any political subdivision (California Government Code Section 12650-12656).

Examples of a False Claim:

- Billing for procedures not performed;
- Violation of another law, for example, a claim was submitted appropriately but the service was the result of an illegal relationship between a physician and the hospital (physician received kick-backs for referrals);
- Falsifying information in the medical record or in a claim;
- Improper bundling or coding of charges; and
- Misrepresentation by a member or provider to seek benefits provided by the health plan.

VIOLATIONS

- a. Violation of the Federal False Claims Act is punishable by a civil penalty of not less than \$5,500 and not more than \$11,000, plus three (3) times the amount of damages that the government sustains because of the violation.
- b. Violation of the California False Claims Act is punishable by a civil penalty of up to \$10,000 for each false claim, plus three (3) times the amount of damages that the state sustains because of the violation.

REPORTING A FALSE CLAIMS ACT VIOLATION

If you think a County of San Bernardino employee, contractor, or agent may have made a false claim:

- Report it to the Department's Compliance Office, or
- The County Office of Compliance and Ethics, or
- Call the County Confidential Compliance and Ethics Hotline at 1-888-587-3575.
- You may also report directly to the Federal Department of Health and Human Services, the Office of the Inspector General maintains a hotline, which offers a confidential means for reporting vital information at 1-800-HHS-TIPS (1-800-447-8477).

Under the Federal False Claims Act, the statute of limitations before an action may no longer be brought for violation of the law is six years after the date of violation or three years after the date when material facts are known or should have been known by the government, but no later than ten years after the date on which the violation was committed.

WHISTLEBLOWER PROVISIONS and PROTECTIONS

Federal and State False Claims Acts allow individuals to file qui tam or whistleblower lawsuits against organizations that have defrauded the government. Individuals filing lawsuits may share in the government's monetary recovery. Generally, the court may award an individual between 15 and 30 percent of the total recovery from the defendant in a federal false claims act lawsuit and between 15 and 50 percent of the total recovery in a state false claims lawsuit, 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 individual substantially contributed to the prosecution of the action (California Government Code Section 12652 (g)(2)(3) and 31 U.S.C. 3730 (d)).

The County of San Bernardino will not retaliate against individuals informing the County or the federal government of a possible False Claims Act violation or otherwise lawfully exercising rights under the False Claims Act. The California False Claims Act provides whistleblower protection (California Government Code Section 12653).

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by their employer because of lawful acts done by the employee on behalf of the employer or others in furtherance of an action under the Federal False Claims Act, including investigation for, initiation of, testimony for, or assistance in an action filed, or to be filed under the Federal False Claims Act, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, two (2) times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate District Court of the United States for such relief (31 U.S.C. 3730(h)).

If you feel you have experienced unlawful retaliation, contact the Department Compliance Office or the County Office of Compliance and Ethics. You may also call the County Confidential Compliance and Ethics Hotline at 1-888-587-3575.

DISTRIBUTION

This policy shall be available and apply to all officials, employees, contractors and agents of San Bernardino County. Detailed information regarding the Federal False Claims Act and applicable State False Claims Acts will be distributed to officials and employees through this policy and to contractors and agents through contractual language provided in contracts and purchase orders pursuant to the applicable provisions of the Deficit Reduction Act of 2005.