



COUNTY OF YOLO

HEALTH AND HUMAN SERVICES AGENCY

POLICIES AND PROCEDURES

SECTION 5, CHAPTER 4, POLICY 023

WHISTLEBLOWER PROTECTION

POLICY NUMBER:	5-4-023
SYSTEM OF CARE:	BEHAVIORAL HEALTH
FINALIZED DATE:	10.08.2020
EFFECTIVE:	10.05.2020
SUPERSEDES # :	Supersedes Policy #'s: N/A

A. PURPOSE: To establish a uniform Whistleblower Protection policy to provide protection against retaliation for those employees who in good faith file a complaint alleging improper government activity. Such policy shall be in concert with and in addition to protections provided by the State of California.

B. FORMS REQUIRED: N/A

C. DEFINITIONS:

1. Federal False Claims Act: The 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).

2. 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).
3. Fraud: "Fraud" is generally defined as, 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).
4. Waste: "Waste" is defined as 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.
5. Abuse: "Abuse" is generally defined as, 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).
6. 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.
7. Knowing and Knowingly (as it relates to the Federal False Claims Act): "Knowing and Knowingly (as it relates to the Federal False Claims Act)", means that a person:
 - a. has actual knowledge of the information;
 - b. acts in deliberate ignorance of the truth or falsity of the information; or
 - c. 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).
 - d. NOTE: There does not have to be proof of a specific intent to defraud.
8. Person: "Person" is defined as, a person under the Act means the County as an entity, individual County employees and contractors as defined above (2. Contractor).

9. Whistleblower: “Whistleblower” is one who reveals something covert or who informs against another: an employee who brings wrongdoing by an employer or by other employees to the attention of a government or law enforcement agency

10. Qui Tam: “Qui Tam” is 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. 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)).

- D. POLICY:** It is the policy of Yolo County Health and Human Services Agency (HHS) Behavioral Health (BH) to provide a mechanism for its employees to report fraud, waste and abuse of authority, violation of law, or threat to public health without fear of retribution, in accordance with the provisions set forth in the Federal and California False Claims Act. The 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. Examples of a False Claim include and are not limited to:
- a. Billing for procedures not performed;
 - b. 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);
 - c. Falsifying information in the medical record or in a claim;
 - d. Improper bundling or coding of charges; and
 - e. Misrepresentation by a member or provider to seek benefits provided by the health plan.

The State and Federal False Claim Act statutes include a section known as the Qui Tam or Whistleblower provision that authorizes private citizens to report false claim violations directly to the government; and file a False Claims Act legal case against an individual or an entity. The government may join such a legal case, but is not obligated to do so. This provision includes non-retaliation protections when exercised in good faith. Individuals reporting false claims in good faith are protected from retaliation under state and federal law provisions.

The application of this policy shall be accomplished by the establishment of a procedure for the reporting and investigation of suspected improper activity on the part of County officers and employees. Such procedures shall include at a minimum provision for:

- a. Notifying competent authority of suspected improper activity by a County employee or officer,
- b. Notifying competent authority of any alleged act of retaliation for having made a report of improper activity,
- c. Investigating claims of retaliation, and
- d. Responding to proven incidents of retaliation.

Yolo County HHSA assures that employees participating in such reporting shall be protected from threats, harassment, retaliation, or any adverse employment action as a result of reporting improper government activity, participating in an investigation of improper government activity, or testifying as a result of an investigative finding of improper government activity. Violations of the State or Federal False Claims Act is punishable by a civil penalty, including damages that the government sustains because of the violation, as set forth and in accordance with the False Claims Act, 31 U.S.C. §§ 3729.

This policy shall be available and apply to all officials, employees, contractors and agents of Yolo County HHSA. 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.

- E. PROCEDURE:** Yolo County HHSA BH recognizes that it has a paramount interest in protecting the integrity of the County's governmental entities and departments. To further this interest, Yolo County HHSA encourages its employees and agents to disclose possible violations of laws, rules and regulations governing the conduct of County officers and employees

1. Notifying competent authority(s)

A False Claims Act violation for a County of Yolo employee, contractor, or agent, suspected of improper activity or for any act of retaliation for having made a report of improper activity, can be reported to:

- a. The Yolo County HHSA Behavioral Health (BH) Confidential Compliance Hotline at 1-800-391-7440;
- b. Directly to the State Department of Health and Human Services at 1-800-822-6229;
- c. The Federal Government at the California Department of Justice, Attorney General's Office at (916) 210-6276 or 1-800-952-5225;

- d. The U.S. Department of Health and Human Services, Office of the Inspector General hotline, which offers a confidential means for reporting vital information at 1-800-HHS-TIPS (1-800-447-8477).

<p>To file a complaint with Yolo County HHSA Behavioral Health, contact:</p> <p>Katherine Barrett Compliance Officer 137 N. Cottonwood Street, Suite 2500 Woodland, CA 95695 (530) 666-8983 Fax: (530) 666-8637 Katherine.Barrett@yolocounty.org HHSA.BHCompliance.yolocounty.org</p> <p>Phone: 1-800-391-7440 (Hotline)</p>	<p>To file a complaint with the Federal Government, contact the US Attorney General for the District of California:</p> <p>California Department of Justice The Attorney General's Office Attn: False Claims Unit 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004</p> <p>Phone: (916) 210-6276 Hotline: 1-800-952-5225</p>
<p>To file a complaint with the State, contact:</p> <p>Department of Health Care Services Medi-Cal Fraud Complaint – Intake Unit Audits and Investigations PO Box 997413, MS 2500 Sacramento, CA 95899-7413</p> <p>Medi-Cal Fraud at (800) 822-6229, or Fraud@dhcs.ca.gov.</p>	<p>To file a complaint with the Federal Government, you must also contact, the US Attorney General:</p> <p>U.S. Department of Health and Human Services Office of Inspector General ATTN: OIG HOTLINE OPERATIONS P.O. Box 23489 Washington, DC 20026</p> <p>Phone: 1-800-HHS-TIPS (1-800-447-8477) TTY: 1-800-377-4950</p>

2. Statute of Limitations

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.

3. Investigating Claims of Retaliation

Claims of retaliation will be investigated based upon the gravity of each situation and may involve consultation with Compliance Committee members, other departments within Yolo County including, but not limited to Yolo County Human Resources.

4. Responding to proven incidents of Retaliation

The County of Yolo 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 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:

- a. reinstatement with the same seniority status such employee would have had but for the discrimination,
- b. 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.
- c. No retaliation if an employee may bring an action in the appropriate District Court of the United States for such relief (31 U.S.C. 3730(h)).

F. REFERENCES:

- a. DRA of 2005
- b. CA False Claims Act
- c. Federal False Claims Act

Approved by:

Karen Larsen, Director
Yolo County Health and Human Services Agency
Services Agency

11.23.20

Date