



False Claims Act and Whistleblower Provisions Policy

Adopted by the Anderson Center for Autism Board of Trustees: 03/22/07

Anderson Center for Autism and affiliates (hereinafter referred to as ACA) are committed to the prevention and/or detection of fraud, waste and abuse of healthcare program funds. All employees, including management staff, all contractors and agents of ACA are bound by this policy. In accordance with federal and state false claims acts, ACA consistently implements and monitors its systems that ensure prompt, complete and accurate billing of all services provided to individuals. ACA and its employees, contractors and agents may not make or submit any false or misleading entries on any claim forms. No employee, contractor or agent shall engage in any arrangement or participate in any such arrangement at the direction of another person, including any supervisor or manager, which results in the submission of a false or misleading entry on claims forms. No employee, contractor or agent shall document any services that result in the submission of a false claim. Employees, contractors or agents of ACA are required to be knowledgeable regarding the accurate and timely submission of service provision and/or business operations. ACA may not retaliate against any employee, contractor or agent who reports false claims and/or files a claim on behalf of the federal or state government.

Overview of the Federal False Claims Act (31 U.S.C. § 3729 *et seq.*)

The False Claims Act (FCA) is a federal law designed to prevent and detect fraud, waste and abuse in federal healthcare programs, including Medicaid and Medicare. The FCA imposes liability on any person who submits a claim to the federal government, or submits a claim to entities administering government funds, that he or she knows, or should know, is false. The FCA also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. A “reverse false claim” is any instance in which someone obtains money from the federal government to which he or she may not be entitled, and then uses false statements or records in order to retain the money. Anyone who knowingly submits false claims to the Government is liable for damages up to three times the amount of the erroneous payment plus mandatory penalties of \$5,500 to \$11,000 for each false claim submitted.

While the False Claims Act imposes liability only when the claimant acts “knowingly”, it does not require that the person submitting the claim have actual knowledge the claim is false. The law was revised in 1986 to expand the definition of “knowingly” to include a person who:

- Has actual knowledge of falsity of information in the claim;
- Acts in deliberate ignorance of the truth or falsity of the information in the claim; and
- Acts in reckless disregard of the truth or falsity of the information in a claim.

Whistleblower or “Qui Tam” Provisions

The False Claims Act also provides that private parties may bring an action against individuals and entities on behalf of the United States. These private parties, known as “qui tam relators” or “whistleblowers” may share in a percentage of the proceeds from an FCA action or settlement. If a lawsuit is successful, and provided certain legal requirements are met, the whistleblower may receive an award ranging from 15% - 30% of the amount recovered.

The False Claims Act does not require proof of a specific intent to defraud the Government. Providers can be prosecuted for a wide variety of conduct that leads to the submission of a false claim. Some examples include knowingly making false statements, falsifying records, submitting claims for services never performed or items never furnished, double-billing for items or services, using false records or statements to avoid paying the Government, or otherwise causing a false claim to be submitted.

The False Claims Act prohibits discrimination by ACA or any employer against an employee for taking lawful actions under the FCA. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in false claim actions is entitled to relief. Such relief may include reinstatement, double back pay, and compensation for any special damages.

New York False Claims Act (State Finance Law §§ 187-194)

The New York State False Claims Act (NYFCA) is similar to the Federal False Claims Act. It imposes penalties and fines upon individuals and entities who knowingly file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. The NYFCA also has a provision regarding “reverse false claims” similar to the federal FCA. This provision identifies that a person or entity will be liable in those instances in which the person obtains money from a state or local government to which he may not be entitled, and then uses false statements or records in order to retain the money.

The penalty for filing a false claim is six to twelve thousand dollars per claim plus three times the amount of damages which the state or local government sustains. A person who violates this act is liable for costs, including attorney fees, of a civil action brought to recover any penalty.

“Qui tam” Civil Actions

The New York State False Claims Act allows private individuals to file lawsuits in state court as if they were state or local government parties, subject to possible limitations imposed by the NYS Attorney General or local government. If a suit concludes with payments back to the government, the person who started the case can recover 25 to 30 percent of the proceeds if the government did not participate in the suit, or 15 to 25 percent if the government did participate in the suit.

The New York State False Claims Act prohibits discrimination by ACA or any employer against an employee for taking lawful actions under the NYFCA. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in false claim actions is entitled to relief. Such relief may include reinstatement, double back pay, and compensation for any special damages.

Adopted: 3/22/07

Amended: 9/22/11