

The False Claims Acts

What you need to know

Why have this training?

- Required by federal law
- Employees have a duty to identify and report fraud, waste and abuse
- By safeguarding Medi-Cal and Medicare funding, and all State and federal funding, we are better able to serve our clients and patients

When you have completed this training...

- You will have a basic knowledge of the federal and California False Claims Acts
- You will increase your understanding of your role in safeguarding Medi-Cal and Medicare funding
- You will be able to identify resources available to assist you in this role

Why does every employee
need to know and understand
the federal and California
False Claims Acts?

Rising Health Care Costs

- Reported \$85 billion in health care fraud nationwide in 2003
- 5% of total U.S. health care spending is lost to fraud
- Every dollar lost to fraud, waste or abuse is one less dollar available for client and patient services

Under federal and state law and County of San Diego policy:

- All employees have a duty to prevent fraud, waste and abuse of taxpayer dollars
- All employees are responsible for reporting suspected instances of fraud, waste and abuse

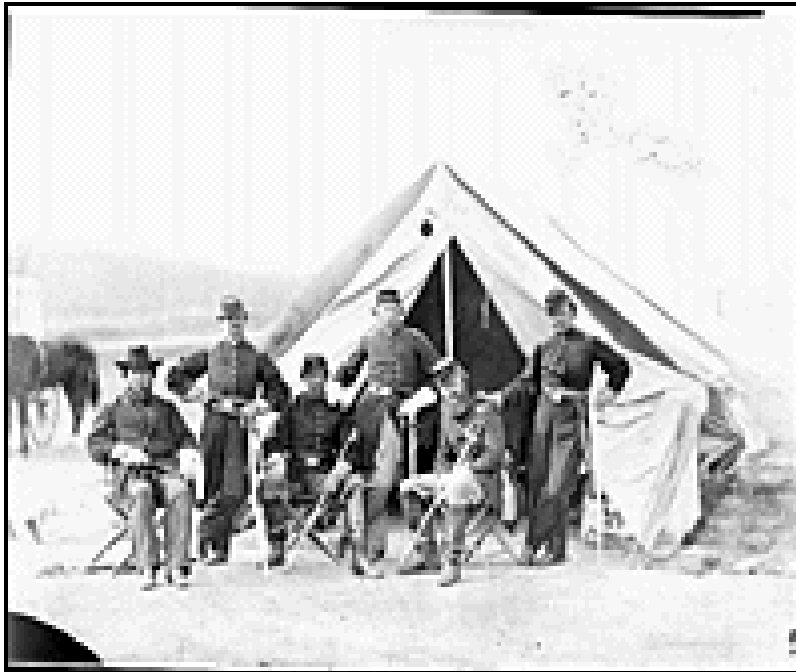
Causing or allowing the misuse of Medi-Cal funds could expose both you and your employer to:

- Federal criminal prosecution
- State criminal prosecution
- Federal civil prosecution
- State civil prosecution
- Federal administrative civil penalties

What are the False Claims Acts?

- The federal and California False Claims Acts are laws that were enacted to combat fraud committed by contractors against the U.S. Government and the State of California

Legislative History



- **Federal False Claims Act**

(USC Title 31 Sec 3729-3732)

- Enacted During the Civil War to combat contractor fraud against the Union Army

- **State False Claims Act**

(Cal Gov't Code 12650-12655)

- Enacted in 1992 to combat contractor fraud against the State of California

Federal False Claims Act

The Law

The Basics

A “person” is liable under the Federal False Claims Act if they “knowingly”:

- **Present a false or fraudulent claim to the U.S. government;**
- **Make, use or cause to be used, a false record or statement to obtain payment from the government;**
- **Conspire to defraud the government by getting a false claim paid;**

The Basics (cont.)

- **Shortchange on delivery;**
- **Give a receipt “without completely knowing” the accuracy of the receipt;**
- **Buy or receive government property from an unauthorized person; or**
- **Make a false record to avoid or reduce a government obligation.**

Under the Act...

- “Person” means both your employer as an entity ***and*** individual employees
- And since you have to “***knowingly***” present a false or fraudulent claim for payment in order to violate the Act...



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Prigal

So all we have to say is we
didn't know and there's no
problem, right?

Uh, no....

Under the Act, the terms “knowing” and “knowingly” mean that a person, regarding the information on a claim —

(1) has actual knowledge the information is false;

(2) acts in deliberate ignorance of whether the information is true or false; or

(3) acts in reckless disregard of whether the information is true or false.

And there doesn't have to be proof
of a specific intent to defraud!

So if we violate the Act...

Civil Penalties Under the Federal False Claims Act

- Treble (3X) damages plus
- \$5,500 to \$11,000 per claim plus
- Potential exclusion from participation in the Medicaid program and

The amount of the false claim doesn't matter!

What is a Reckless Disregard for the Truth?



- Completing claims with little or no factual basis
- Failing to document **actual** time spent on the project
- Poor record keeping
- Approving claims without reviewing them for accuracy

Reduction of Liability

If a false claim occurs, the court may assess “not less than” double damages and costs **IF** within 30 days of discovery:

- **We self-report;**
- **We fully cooperate with any investigation;**
- **No legal proceeding has been commenced regarding the violation; and**
- **We have no knowledge of a governmental investigation of the violation.**

Blowing the Whistle

- The federal False Claims Act allows individuals to file “qui tam” or “whistleblower” lawsuits against organizations that have defrauded the government.
- In a qui tam action, an individual with direct knowledge of fraud files a lawsuit on behalf of the government.

Blowing the Whistle

- Individuals filing qui tam lawsuits (known as “relators”) may share in the government’s monetary recovery.
- Generally, a relator is entitled to between 15% and 35% of the funds recovered by the government.

Protecting Whistleblowers

- Individuals who file whistleblower lawsuits are protected from retaliation by federal law.
- Any employee who is discharged or discriminated against based upon the filing of a whistleblower lawsuit, is entitled to ***all relief necessary to make the employee whole.***

But Wait, There's Also the California False Claims Act....

- California Government Code Section 12650 *et seq.*
- Similar to the federal False Claims Act
 - Applies to state and political subdivisions
 - Same definitions of “knowing” and “knowingly”
 - Treble damages and penalties up to \$10,000 per false claim
 - Permits whistleblower lawsuits
- California Attorney General has the option to prosecute the claim as a criminal act

**What is HHSA doing to
prevent false claims?**

The Agency takes allegations of funding fraud, waste and abuse very seriously

The Compliance Office was established to give employees a place to raise these kinds of concerns if they aren't comfortable discussing them with their manager or supervisor

HHSA's Anti-Fraud Policies

- HHSA has implemented policies and procedures to prevent health care fraud and comply with the False Claims Acts.
- You should familiarize yourself with these materials, which can be obtained from the this website or from the Compliance Office.

If you need to file a complaint about fraud, waste or abuse of program funds, or if you just want to talk about a concern, please call:

- Bob Borntrager, CHC, Compliance Officer, at 619.515.4246
- Jonathan Galloway, Compliance Analyst, at 619.515.4244

Or e-mail us at:

Compliance.HHSA@sdcounty.ca.gov

You can also call

VOICE YOUR CONCERNS

County of San Diego
Compliance Office

Toll-Free Hotline
(866) 549-0004

*An ethical workplace is your right...
and your responsibility.*



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

Won't I get in trouble if I call?

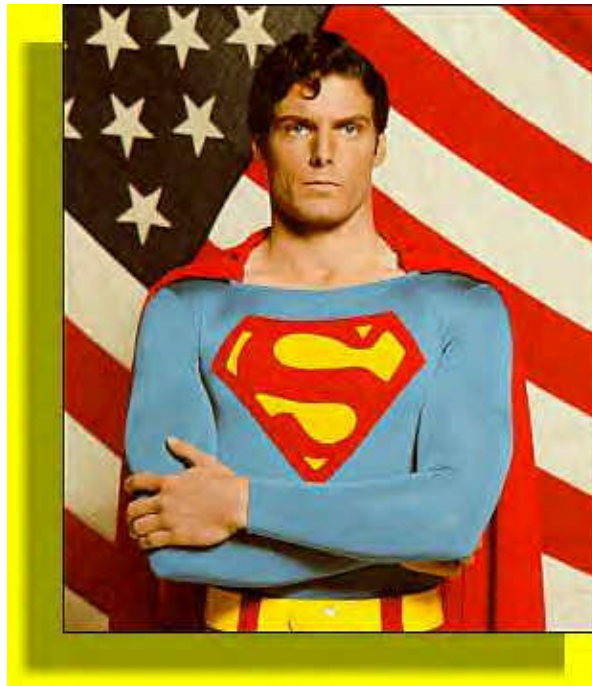
NO!

- Both the Agency and the County strongly encourage you to report possible false claims and other compliance issues. The law prohibits retaliation against any employee who reports a compliance issue in good faith.

REMEMBER

- *You* know the programs better than anyone else
- *You* know when there is a problem or concern
- The best prevention against false claims is *your* awareness and diligence

You are the first line of defense
against inappropriately spent funds





COMPLIANCE OFFICE

QUALITY ■ EFFICIENCY ■ INTEGRITY