

Deficit Reduction Act and False Claims Act Compliance Requirements

The DRA requires that any entity (which receives or makes payments, under a State plan approved under title XIX or under any waiver of such plan, totaling at least \$5 million annually) must establish written policies for its employees, management, contractors and agents regarding the False Claims Act (FCA). The FCA applies to claims presented for payment by Federal health care programs. The FCA allows private persons to bring a civil action against those who knowingly submit false claims upon the government.

Activities for which one may be liable under the FCA; one who:

- Knowingly presenting to an officer or employee of the United States government a false or fraudulent claim for payment or approval.
- Knowingly making, using, or causing a false record or statement to get a false or fraudulent claim paid or approved by the government.
- Conspiring to defraud the government by getting false or fraudulent claims allowed or paid.
- Having possession, custody, or control of property or money used, or to be used by the government and, intending to defraud the government by willfully concealing property, delivering, or causing to be delivered less property than the amount for which the person receives.
- Authorizing to make or deliver a document, certifying receipt of property used by the government and intending to defraud the government and making or delivering a receipt without completely knowing that the information on the receipt is true;
- Knowingly buying, or receiving as a pledge of an obligation or debt, public property from an officer or employee of the government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or
- Knowingly making, using or causing 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.

The definition of “knowing” and “knowingly” as it relates to the False Claims Act includes actual knowledge of the information, acting in deliberate ignorance of the truth or falsity of the information, and/or acting in reckless disregard of the truth or falsity of the information. Proof of specific intent to “defraud” is not required for reporting potential violations of the law.

MCP contract with AHCCCSA

As required by Mercy Care Plan’s (MCP) contract with AHCCCSA, providers must train their staff on the following:

- The administrative remedies for false claims and statements;
- Any state laws relating to civil or criminal penalties for false claims and statements;
- The whistleblower (or relator) protections under such laws.

In addition, MCP Provider Manual must be updated to include the above-listed requirements.

Administrative Remedies for False Claims and Statements:

The United States Government (Government) has administrative remedies available to it in cases that have resulted in FCA violations. The administrative remedy for violating the FCA is three times the dollar amount that the government is defrauded and civil penalties of \$5,500 to \$11,000 for each false claim by the party responsible for the claim. If there is a recovery in the case brought under the FCA, the person bringing suit (relator) may receive a percentage of the recovery against the party that had responsibility for the false claim. For the party that had responsibility for the false claim, the Government may seek to exclude it from future participation in federally-funded health care programs or impose integrity obligations against it.

Any State Laws Relating To Civil or Criminal Penalties or False Claims And Statements:

To prevent and detect fraud, waste, and abuse, many states have enacted laws similar to the FCA but with state-specific requirements, including administrative remedies and relator rights. Those laws generally prohibit the same types of false or fraudulent claims for payments for health care related goods or services as are addressed by the federal FCA. For further information on specific state law requirements, contact MCP Compliance Office.

Additional information on the Deficit Reduction Act and False Claims Act is locatable on the following web sites:

- Deficit Reduction Act – Public Law 109-171: <http://thomas.loc.gov/>
- Arizona Revised Statutes: <http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp>

The Whistleblower/Relator Protections under Such Laws

MCP is committed to fostering a culture of compliance and an environment in which its employees and other members of MCP are educated and knowledgeable about their role in reporting concerns and problems in relation to compliance and ethics. MCP encourages employees to report any concerns relating to potential fraud and abuse, including false claims.

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 MCP's commitment to compliance with the relevant false claims acts and other applicable laws, no employee will be discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by MCP solely because of actions taken to report potential fraud 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.

As part of MCP Compliance Program's objective to detect, prevent, and correct potential, credible incidents of fraud, waste and abuse, it is the policy of MCP that its employees, contractors, subcontractors, agents, and directors, in particular those involved in the provision of services under government programs including members and providers, to report matters which involve potential violations of compliance policy. These individuals or parties may either report the incident(s) to their appropriate supervisor, the MCP Compliance Hotline [1 (800) 810-6544], or MCP's Compliance Office. Such reports may be made anonymously; the reporting individual or party may request confidentiality and will be protected from any retaliatory action.