

False Claims Policy – Fraud Protocol for the State of California

1.0 EFFECTIVE DATE: January 1, 2014

REVISION DATE: June 17, 2014

2.0 PURPOSE:

2.1 The purpose of this policy is to comply with all applicable laws and regulations, including the federal False Claims Act, Program Fraud Civil Remedies Act of 1986, and state laws that address fraud and abuse in a State's Medicaid program.

2.2 The purpose of this policy is to provide information about certain federal and state laws concerning the submission of false and fraudulent claims for payment to the government. These laws play a central role in the government's efforts to prevent and detect fraud, waste and abuse in federal health care programs.

2.3 The purpose of this policy is to ensure that all Parties are educated regarding the federal and state false claims statutes and the role of such laws in preventing and detecting fraud, waste and abuse in federal health care programs.

3.0 SCOPE:

This policy applies to all Acumen employees, program employers, program employees, government aid recipients, contractors and agents ("Parties").

4.0 DEFINITIONS:

4.1 Fraud - defined as an intentional deception or misrepresentation made by an individual with the knowledge that the deception could result in an unauthorized benefit to the individual or some other person.

4.2 Abuse - defined as practices that are inconsistent with good fiscal, business or medical practices, and that result in an unnecessary cost to government programs, or in seeking reimbursement for goods or services that are not medically necessary or that fail to meet professionally recognized standards for healthcare. It also includes practices that result in unnecessary cost to government programs.

4.3 Federal False Claims Act - Under the federal False Claims Act ("FCA"), any person or entity that knowingly submits false or fraudulent claims, causing such claims to be submitted, making a false record or statement in order to obtain payment from a federally funded program for such a claim, or conspiring to get such claim allowed or paid is liable for significant penalties and fines. The civil fines include a penalty of up to three times the cost of the claim, plus penalties ranging from \$5,500 to \$11,000 per false claim, and the costs of the civil action against the person or entity that submitted the false claims.

The FCA applies to Medicare and Medicaid reimbursement and prohibits the following:

Billing for services not rendered:

- 4.3.1** Billing for undocumented services
- 4.3.2** Billing for services outside the scope of the Medicaid program
- 4.3.3** Billing for unnecessary services
- 4.3.4** Characterizing non-covered services or costs in a way that secures reimbursement

The above list does not include the list of all prohibited activities.

The FCA also allows a private person with knowledge of a false claim to bring a civil action on behalf of the United States Government, to recover the funds paid by the government as a result of the false claims. The person who initiates the lawsuit is generally referred to as the "whistleblower". The United States Government may choose to intervene in the lawsuit and assume primary responsibility for the lawsuit. If the government chooses not to intervene then the whistleblower has the right to conduct the action. If the suit is ultimately successful, the whistleblower that initially brought the lawsuit may be awarded a percentage of the funds recovered.

The FCA also contains a provision that protects a whistleblower from retaliation by his employer. If an employee is discharged, demoted, suspended, threatened, harassed, or discriminated against in terms and conditions of employment because of bringing a false claims action that employee may bring an

action in federal court seeking reinstatement, two times the amount of back pay plus interest, and other costs, damages and fees.

4.4 Federal Program Fraud Civil Remedies Act of 1986 - A similar law is the federal Program Fraud Civil Remedies Act of 1986 ("PFCRA"). It provides for administrative remedies against any person who presents or causes to be presented a claim or written statement that the person knows or has reason to know is false, fictitious, or fraudulent due to an assertion or omission to certain federal agencies (including the Department of Health and Human Services). A violation of the PFCRA may result in a maximum civil penalty of \$5,000 per claim plus an assessment of up to twice the amount of each false or fraudulent claim.

4.5 State Laws -States have adopted a Medicaid anti-fraud statute that is intended to prevent the submission of false and fraudulent claims to the state's Medicaid program. The statute makes it unlawful for any person to make a false representation of material fact, present a false claim for payment or approval, or present a false cost document in connection with a claim for payment or reimbursement from the state's Medicaid program. Violations of this law will result in significant monetary civil penalties.

4.6 CA False Claims Act – Under the California False Claims Act Article 9, Sections 12650-12655 of the California Government Code, any person who commits any of the following acts shall be liable to the state for three times the amount of damages which the state sustains because of the act of that person; and for the costs of a civil action brought to recover any of those penalties or damages, and may be liable for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim: (1) Knowingly presents, or causes to be presented, a false claim for payment or approval. (2) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the state. (3) Conspires to defraud the state by getting a false claim allowed or paid by the state. (4) Has possession, custody, or control of public property or money used or to be used by the state and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt. (5) Is authorized to make or deliver a document certifying receipt of property used or to be used by the state and knowingly makes or delivers a receipt that falsely represents the property used or to be used. (6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property. (7) 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 state. (8) Is a beneficiary of an inadvertent submission of a false claim to the state subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or the political subdivision within a reasonable time after discovery of the false claim.

5.0 RESPONSIBILITY:

5.1 All parties must conduct themselves in an ethical and legal manner.**5.2** All parties are responsible for being familiar with this policy.

5.3 All Parties are responsible for reporting potential or suspected incidents of fraud and abuse, and other wrongdoing directly to their Individual State Fraud and Abuse Reporting Contact (located within the individual Program Fact Sheets) or through Acumen's Customer Service or Acumen's President's Hotline.

5.4 Acumen will educate Acumen employees, program employers, program employees/ caregivers and service recipients about fraud and abuse, including federal and state laws pertaining to fraud and abuse.

5.5 Acumen has responsibility for receiving and acting upon all information suggesting the existence of possible fraud, abuse or wrongdoing; and properly comply with all investigations arising from this information.

6.0 VIOLATIONS:

Acumen will take appropriate disciplinary and enforcement action (i.e, corrective action plans, employment termination or contract/participant service termination) against all parties found to have committed fraud and abuse violations and/or not acting in compliance with this policy.

7.0 RETALIATION:

Retaliation against anyone who reports "good faith" fraud and abuse issues is strictly prohibited. In addition, retaliation against anyone who participates in any fraud or abuse investigations is strictly prohibited. Acumen will take appropriate disciplinary action against anyone who is found to have committed an act of retaliation.

8.0 PROCEDURES:

8.1 All Parties will be provided with this policy within 30 days of commencing their engagement with Acumen.

8.2 All Parties with exception of Acumen employees with knowledge of potential fraud and abuse situations must report them through any of the following methods, as applicable:

8.2.1 Notification to State Fraud Contact (located within the individual Program Fact Sheets)

8.2.2 Notifying Customer Service: 877-211-3738

8.2.3 Calling the President's Hotline: 888-530-7473

8.3 Acumen employees with knowledge of potential Fraud should follow the policy "Acumen Reports of Potential Fraud".

8.4 Acumen will report all confirmed allegations of fraud and abuse to the appropriate government officials.

8.5 Acumen will cooperate with federal and state agencies that conduct healthcare fraud and abuse investigations.