

False Claims Policy - Fraud Protocol State of Utah

1.0 EFFECTIVE DATE: January 1, 2013

REVISION DATE: March 24, 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 Utah False Claims Act - The Utah False Claims Act (Utah Act) provides for the imposition of both civil and criminal liability for filing of a false claim for medical benefits in the State. For purposes of the Utah Act, the term 'medical benefit' means a benefit paid or payable to a recipient or a provider under a program administered by the state under: Titles V and XIX of the federal Social Security Act;

- Title X of the federal Public Health Services Act;
- the federal Child Nutrition Act of 1966 as amended by P.L. 94-105; and
- any programs for medical assistance of the state.

Liability under the Utah Act extends to individuals, corporations, unincorporated associations, professional corporations, partnerships, as well as other forms of business associations.

4.6 Utah Protection of Public Employees Act (Utah Whistleblower protections)-Under the Utah Protection of Public Employees Act, Utah Code 67-21, public employees who report in good faith actual or suspected fraud, waste, or abuse are protected from adverse action by their employer. An employee who alleges a violation of this Act may bring a civil action in district court for injunctive relief, actual damages incurred, or both. Furthermore, if the aggrieved employee prevails in its action, the court may also award all or a portion of the costs of litigation, including reasonable attorney fees and witness fees. A person that violates this Act is liable for a civil fine of not more than \$500.

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 wrong doing directly to their Individual State Fraud and Abuse Reporting Contact at <http://attorneygeneral.utah.gov/protecting-utah/from-fraud/medicaid-fraud/> 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

8.2.1.1 DOH Medicaid Fraud Hotline: (801) 538-6155 or (800) 662-9651

8.2.1.2 Utah Attorney General: (801) 538-9600 or (801) 281-1259

8.2.1.3 Office of Inspector General's National Fraud Hotline: (800) 447-8477

8.2.2 Notifying AFA customer service (888) 221-7014 or fax (888) 2497023

8.2.3 Calling the president's hotline at (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.