



## False Claims Act & Whistleblowing

### Overview of the False Claims Act:

The False Claims Act, 31 U.S.C. & 3729 *et seq.*, is a federal law designed to prevent and detect fraud, waste and abuse in federal healthcare programs, including Medicaid and Medicare. Under the False Claims Act, 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.

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.

False Claims suits can be brought against individuals and entities. 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.

Suspected improper activities could include but not limited to:

- Misuse of cash and other assets, whether tangible or intangible, real or personal property. This includes accepting gifts of a value greater than \$50 individual or \$100 cumulative in a year or in any way influencing participants or their families to provide gifts either monetarily or in kind.
- Providing services by staff or consultants who are unqualified according to their job description such as failure to renew license or credentials, loss of license or credentials.
- Providing differential care based on the participant’s race, religion, payer source, etc. rather than their needs.
- Violation of HIPAA privacy policies.
- Use of confidential Agency information for personal gain.
- Falsified records used as a basis for billing.
- Falsifying records such as time sheets.
- Filing claims to more than one payer (double-billing) except in cases where there are legitimate, multiple funding sources, i.e., a primary and secondary insurance.
- Participating in outside activities that could improperly influence your actions, such as consulting with a competitor without first disclosing that relationship to management.

- Providing payment, gifts, discounts, or other items of value in exchange for referrals of individuals whose services are funded by Medicaid/Medicare.
- Misuse of Abilities First, Inc.'s or a participant's property, including theft or embezzlement.
- Misuse of participant records.

#### Whistleblower or "Qui Tam" Provisions:

In order to encourage individuals to come forward and report misconduct involving false claims, the False Claims Act contains a "Qui Tam" or whistleblower provision.

The Government, or an individual citizen acting on behalf of the Government, can bring actions under the False Claims Act. An individual citizen, referred to as a whistleblower or "Relator," who has actual knowledge of allegedly false claims may file a lawsuit on behalf of the U.S. Government. If the 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 prohibits discrimination by this or any other Agency against any employee for taking lawful actions under the False Claims Act. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in False Claims actions is entitled to relief. Such relief may include reinstatement, double back pay, and compensation for any special damages.

No supervisor, coordinator, manager, director, department head, or any other employee with authority to make or materially influence significant personnel decisions shall take or recommend an adverse personnel action against an employee, volunteer, consultant, participant, or affiliate in knowing retaliation for disclosing alleged wrongful conduct to an Agency officer or any public body. Any individual found to have so violated this Policy, shall be disciplined, up to and including termination, in accordance with existing Agency rules, policies, and procedures.

Any employee, volunteer, consultant, participant, affiliate who feels he/she has been retaliated against for reporting any improper activity, whether perceived or real, can report his/her allegation to the Director of Quality Assurance, the Chief Operating Officer or Chief Executive Officer.

While the Agency will make every effort to maintain the anonymity of the individual making the allegation, it is often difficult to do so especially in instances where an investigation is evident. Therefore, we cannot guarantee anonymity. Similarly, the identity of the subjects of an investigation will be maintained in confidence with the same limitations.

Once an allegation is brought to the Director of Quality Assurance's attention, that person will investigate or assign the appropriate individual, department, group or outside Agency to conduct a thorough investigation using standard investigative practices. The individual providing the initial information should refrain from obtaining evidence for which they do not have a right to access. Such improper access may itself be considered an improper activity (such as improper access to information which would otherwise be prohibited under HIPAA Privacy rules). The intentional filing of a false report, whether orally or in writing is itself considered an improper activity. The individual making the allegation should expect to be interviewed and should be willing to provide detailed information in writing. Those individuals making an anonymous allegation should provide as much detail as possible.

A whistleblower's right to protection from retaliation does not extend to immunity for any complicity in the matters that are the subject of the allegations or an ensuing investigation.

## **Specific Provisions:**

1. Abilities First, Inc. will provide training in this policy and procedure to all its employees, contractors and agents. This training will be provided to all new employees as part of the new employee orientation. The Director of Quality Assurance will ensure that records are maintained to document the receipt of training.
2. Abilities First, Inc. will perform billing activities in a manner consistent with the regulations and requirements of third party payers, including Medicaid and Medicare.
3. Abilities First, Inc. will conduct regular auditing and monitoring procedures as part of its efforts to assure compliance with applicable regulations.
4. Any employee, contractor or agent who has any reason to believe that anyone is engaging in false billing practices or false documentation of services is expected to report the practice according to Abilities First, Inc. Reporting of Compliance Concerns and Non-Retaliation Policy and Procedure.
5. Any form of retaliation against any employee who reports a perceived problem or concern in good faith is strictly prohibited.
6. Any employee who commits or condones any form of retaliation will be subject to discipline up to, and including, termination.
7. The Director of Quality Assurance will assure that this policy and procedure is attached to any contact with outside contractors or agents.

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