

Requirements for Employee Education about False Claims Recovery Under the Federal Deficit Reduction Act of 2005

What is the Deficit Reduction Act of 2005 (“DRA”)? On February 8, 2006, President Bush signed the Deficit Reduction Act of 2005 (DRA). The DRA is legislation addressing deficit reductions ranging from education to housing and Medicare to Medicaid. Although the Deficit Reduction Act of 2005 (DRA) would seem to have little effect on the University of California, it contains a provision entitled “Employee Education about False Claims Recovery”, that imposes mandatory compliance obligations on any entity that receives annual Medicaid payments of at least \$5 million under a state Medicaid plan.

What are the compliance obligations of the Deficit Reduction Act of 2005 (DRA)? Any entity that annually receives at least \$5 million in Medicaid payments ("Qualifying Entity") is required to establish written policies and procedures about federal and state false claims laws and whistleblower protections. In addition, the DRA requires Qualifying Entities to include these policies and procedures in their employee communications. Qualifying Entities must comply with these educational requirements by January 1, 2007. Failure to comply with the new education requirements may render a Qualifying Entity ineligible to receive Medicaid payments. In addition to forfeiting Medicaid payments, any Qualifying Entity that knowingly violates the education requirements or is in non-compliance with the requirements after January 1, 2007 may be penalized for submitting false claims under the federal False Claims Act.

What is the False Claims Act? The False Claims Act prohibits any person from knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval of government funds. Under the federal False Claims Act, any person who knowingly submits a false or fraudulent claim to a Medicare, Medicaid or other federal healthcare program is liable to the federal government for three times the amount of the federal government's damages plus penalties of \$5,000 to \$10,000 per false or fraudulent claim.

What are examples of a false claim? Under the federal False Claims Act (FCA), the federal government prosecutes, criminally or civilly, individuals or entities who submit or cause to be submitted, claims for payment by the government, when the claims are false. In the healthcare industry this includes Medicare, Medicaid and other federal healthcare programs. Examples that may create a false claim include but are not limited to: billing twice for the same service; billing for services not rendered; billing for medically unnecessary services or falsifying certificates of medical necessity; unbundling or billing separately for services that should be billed as one; creating false medical records or treatment plans to increase payments; failing to report and refund overpayments or credit balances; physician billing without personal involvement for services rendered by medical students, interns, residents or fellows in teaching hospitals; and giving and/or receiving unlawful inducements to healthcare providers for referrals for services.

What are the DRA Education Requirements? As a condition of receiving Medicaid payments, Qualifying Entities must establish written policies and procedures that provide detailed information to all employees, contractors, and agents regarding:

- The Federal False Claims Act;
- Administrative remedies for false claims and statements;
- Any state laws pertaining to civil or criminal penalties for false claims and statements; and
- The whistleblower protections under such laws.

How do University of California policies comply with the DRA education requirements? The University of California has a web-site dedicated to whistleblower procedures with information, frequently asked questions, resources and written policies which include specific details regarding policies and procedures for detecting and preventing fraud, waste, and abuse. The policies incorporate requirements under State of California laws. The UC “Standards of Business Conduct” (employee Code of Conduct) has been updated with DRA information and includes a section covering the laws described above, the rights of employees to be protected as whistleblowers, and UC policies and procedures for detecting fraud, waste, and abuse. For more information on the UC Whistleblower

and Whistleblower Protection policies and additional information can be found online at: <http://ucwhistleblower.ucop.edu/>. University of California, San Diego's Whistleblower policy (No. 150-23), can be found on line at: <http://blink.ucsd.edu/HR/supervising/resources/hotline.html>

UC's "Standards of Business Conduct" sets forth the expectation of all University personnel:

University personnel are strongly encouraged to report all known or suspected improper governmental activities (IGAs) under the provisions of the Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (Whistleblower Policy). Managers and persons in supervisory roles are required to report allegations presented to them and to report suspected IGAs that come to their attention in the ordinary course of performing their supervisory duties. Reporting parties, including managers and supervisors, will be protected from retaliation for making such a report under the Policy for Protection of Whistleblowers from Retaliation and Guidelines for Reviewing Retaliation Complaints (Whistleblower Retaliation Policy).

Those who report such suspected violations may remain anonymous and are protected from retaliation both by federal law and UC policies.

What and how do I report? If you suspect instances of fraud, submission of false medical billing claims or other non-compliance with federal, state, local laws, regulations UC or UCSD policies, you should report it. Any activity by a UC or UCSD employee that violates any state or federal law or regulation (e.g., corruption, malfeasance, bribery, theft or misuse of government property, fraud, coercion, or conversation); or wastes money, or involves gross misconduct, gross incompetence, or gross inefficiency can be reported.

Where to Report?

- Your supervisor (or other appropriate administrator within your unit), who will report it to the UCSD Locally Designated Whistleblower Official, Human Resources, Academic Affairs, or Compliance Office
- Directly to any of the above offices
- University-wide Whistleblower Hotline: 1-800-403-4744 (the hotline is independently operated to help ensure confidentiality)
- In writing or orally, with as much specific factual information possible (report what you know, but don't investigate – leave that to the experts!)
- Anonymously, if preferred

Confidentiality will be maintained, to the extent possible

What are examples of whistleblower protections? CA whistleblowers (or relators as they are referred to in the law) must be original sources of the allegations, thus they cannot use published accounts of fraud allegations or information that has already come to the attention of the government. FCA whistleblowers are protected by the law from retaliation in any form as the result of their whistle blowing. These protections include reinstatement without loss of seniority if fired, recovery of two times lost wages plus interest and recovery of attorney fees and other reasonable costs in connection with pursuing a retaliation claim.

For More Information: Contact your Human Resources or Academic Affairs office for information on the University's Whistleblower and Whistleblower Protection policies and procedures or go to UCSD's web site at: <http://blink.ucsd.edu/HR/supervising/resources/hotline.html>

The University's Whistleblower and Whistleblower protection policies and additional information can be found online at <http://ucwhistleblower.ucop.edu>.