



BOARD OF SUPERVISORS RESOLUTION
APPROVED FEBRUARY 28, 2006/RESOLUTION # 2006-130
WHISTLEBLOWER POLICY

Approved 2/06

PURPOSE

All Stanislaus County employees operate under the requirements of numerous County policies, ordinances and contractual agreements, as well as other State and Federal laws and regulations governing employee activities. The collective requirements of all of these laws, regulations, policies, ordinances and agreements, create an environment of high standards for all County employees in the performance of their duties.

The purpose of this policy is to:

1. Establish an alternative process for reporting employee misconduct; and
2. Confirm the County's commitment to protecting whistleblowers from harassment or retaliation.

Many of the current standards governing employee conduct include specific procedures for County employees to report allegations of employee misconduct for appropriate investigation and follow-up. Some of the existing procedures for reporting misconduct are included in the County's Equal Employment Opportunity Program, the County Code of Ethics Policy and numerous Federal and State laws and regulations. The County also maintains contractual agreements with labor organizations and other private or public entities, many of which contain specific procedures for individuals to report allegations of contractual violations. This policy is not intended to replace any of the existing procedures that are currently in place for reporting issues of employee misconduct or contractual grievances. All existing procedures for reporting employee misconduct and contractual grievances remain available in conjunction with the implementation of this policy.

A. DEFINITIONS

- **Employee**—any regular, temporary or contracted employee of the County, including all appointed and elected officials.
- **Employee Misconduct**—any employee action which specifically violates any employee responsibility defined in County policies, ordinances, and contractual agreements, as well as any State and Federal laws or regulations.
- **Whistleblower**—any employee reporting an allegation of employee misconduct.

POLICY

Employees are encouraged to address allegations of employee misconduct at the lowest level appropriate for the issue. This would typically include reporting the violation to the employee's supervisor, manager or Department Head. Employees who are not comfortable reporting employee misconduct to available supervisors, managers or Department Heads, may elect to report the allegation of misconduct to the Human Resources Division of the County Chief Executive Office for appropriate referral and follow-up. Reports may be done verbally or in writing to:

Stanislaus County
Attn: CEO - Human Resources Division
1010 10th Street, Suite 6800
Modesto, CA 95354
(209) 525-6333

Reports may be anonymous, although follow-up and investigation may be limited in some situations when the reporting party is not identified. If the allegation of misconduct involves a member of the CEO – Human Resources Division, the report may be forwarded to the following:

Stanislaus County
Attn: Chief Operating Officer
1010 10th Street, Suite 6800
Modesto, CA 95354
(209) 525-6333

An employee who in good faith reports an allegation of employee misconduct shall be protected from harassment or retaliation. Any employee who retaliates against another employee who has reported an allegation of misconduct will be subject to discipline up to and including termination of employment. Employees who knowingly file a false report of employee misconduct may also be subject to discipline up to and including termination of employment.

B. CALIFORNIA WHISTLEBLOWERS PROTECTION ACT

The California "Whistleblowers Protection Act" applies to all employers in the State of California, including Stanislaus County. The specific provisions of the Act are contained in Sections 1102.5 through 1106 of the California Labor Code. The Act protects employees when reporting any violations of State or Federal laws or regulations and requires the California State Attorney General to maintain a Whistleblower Hotline (800-952-5225) for accepting reported violations. A notice describing the Whistleblower Hotline is posted in workplaces throughout the County in compliance with the Act.



BOARD OF SUPERVISORS RESOLUTION
APPROVED MAY 8, 2007/RESOLUTION # 2007-346
FALSE HEALTH CARE CLAIMS POLICY

Approved 5/07

A. PURPOSE

To communicate to the employees and contractors of Stanislaus County, according to Section 6032 of the Deficit Reduction Act of 2005 (DRA), the policies and procedures related to the Federal and State False Claims Acts. These policies and procedures include preventing, detecting and responding to known or suspected incidents of fraud, waste or abuse in federal or state funded health care programs, i.e. Medicaid (Medi-Cal), Medicare, etc., within Stanislaus County. This policy is not intended to replace any of the existing procedures that are currently in place for reporting issues of employee misconduct or contractual grievances. All existing procedures for reporting employee misconduct and contractual grievances remain available in conjunction with the implementation of this policy.

B. POLICY

Every employee or contractor of Stanislaus County, as defined by the DRA, is encouraged to communicate any known or suspected incidents of fraud, waste or abuse in any federal or state funded health care program at the lowest level appropriate for the issue. This would typically include their supervisor, manager, the Compliance Officer or the Director of their Department/Agency, or the Compliance Officer or Director of the Department/Agency where the known or suspected fraud, waste or abuse has or is occurring. Employees or contractors who are not comfortable reporting to a Department/Agency, may elect to report to the Human Resources Division of the County Chief Executive Office. It is the responsibility of the supervisor, manager, Compliance Officer, Director or CEO Human Resources Division to promptly notify the Compliance Officer or Director in the Department/Agency where the known or suspected fraud, waste or abuse has or is occurring, in writing, of the nature and details of the suspected fraud, waste or abuse. The Compliance Officer or Director in such Department/Agency shall promptly initiate an investigation and implement any corrective actions that may seem appropriate as the result of their investigation. The individual reporting known or suspected fraud, waste or abuse shall have full whistleblower protections as set forth in this policy from any form of retaliation for making the report.

Stanislaus County shall provide to all required employees and contractors, as defined by the DRA, appropriate education about the Federal and State False Claims Acts, including, but not limited to, inclusion in the Personnel Manual.

REFERENCES

1. Deficit Reduction Act of 2005, Section 6032.
2. Social Security Act, Section 1902 (a) (68-69).
3. United States Code Title 31, Chapter 37, Sections 3729-3733, False Claims Act.
4. United States Code Title 31, Chapter 38, Sections 3801-3808, Administrative Remedies for False Claims and Statements.
5. California Government Code § 12650-12656.

C. PROCEDURE

1. Applicability

These policies and procedures apply to all required employees and contractors, as defined by the DRA, employed by or doing business with Stanislaus County.

2. Responsibility

The Director of each County Department/Agency is responsible for ensuring compliance with this policy. Any County Department/Agency that receives federal or state health care funding, including Medicaid (Medi-Cal) or Medicare funds, shall establish such policies and procedures, including a functional Compliance Committee, as necessary, for reporting, auditing, detecting, investigating, and resolving identified or potential issues relating to fraud, waste or abuse in federal or state health care programs.

3. Notification/Education

- a. Required Stanislaus County employees, as defined by the DRA, shall be informed of this policy and procedure.
- b. Required Contractors, as defined by the DRA, shall have included in their contracts a notice of the existence and applicability of this policy and procedure.
- c. The Stanislaus County Personnel Manual shall include this policy, which shall serve as a specific discussion of the Federal and State False Claims Act and Whistleblower protections afforded by these acts.
- d. The Stanislaus County Personnel Manual, including this policy, shall be available on the Internet for access by all employees and contractors.

4. Deficit Reduction Act of 2005 (DRA)—definitions for purposes of the DRA include:

- a. **Entity** includes a governmental agency, organization, unit, corporation, partnership, or other business arrangement (including any Medicaid managed

care organization, irrespective of form of business structure or arrangement by which it exists), whether for-profit or not-for-profit, which receives or makes payments, under a State Plan approved under title XIX or under any waiver of such plan, totaling at least \$5,000,000 annually.

- b. **Employee** includes any officer or employee of the entity.
- c. **Contractor** includes any contractor, subcontractor, agent, or other persons who, on behalf of the entity, furnishes, or otherwise authorizes the furnishing or Medicaid health care items or services, performs billing or coding functions, or is involved in the monitoring of health care provided by the entity.

5. Federal False Claims Act

- a. Definitions for purposes of the Federal False Claims Act include:
 - i. **Knowing or knowingly** mean that a person, with respect to information:
 1. Has actual knowledge of the information;
 2. Acts in deliberate ignorance of the truth or falsity of the information; or
 3. Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.
 - ii. **Claim** includes any request or demand, whether under contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

- b. Federal False Claims Act Provisions include:
 - i. 31 U.S.C. Section 3729 (a) prohibits any individual/entity from knowingly submitting or causing the submission of a false or fraudulent claim for payment to the US government. The civil penalty for a false claim is not less than \$5,000 and not more than \$10,000, plus three times the amount of damages.
 - ii. 31 U.S.C. Section 3729 (b) defines “knowingly” as having actual knowledge of the information, acting in deliberate ignorance of the truth or falsity of the information, acting in reckless disregard of the truth or falsity of the information. The government does not have to prove that the person intended to defraud the government.

- iii. 31 U.S.C. Section 3730 includes “Qui Tam” provisions that allow private citizens (relator) to sue violators on behalf of the government. The government can take over the prosecution or allow the relator to handle the case.
- iv. If the government takes over the case and wins, the qui tam relator is eligible for 15-25% share of the recovery.
- v. If the relator handles the case and wins, the relator is eligible for 25-35% share of the amount recovered.
- vi. If the action is initiated by a relator who planned and initiated the violation, then the court may reduce the share of the proceeds. If the relator bringing the action is convicted of criminal conduct arising from the violation of the False Claims Act, then they shall not receive any proceeds from the action.
- vii. If defendant prevails and the court finds that the qui tam relator was clearly frivolous, clearly vexatious, or took action for the purposes of harassment, then the court may award to the defendant reasonable attorney’s fees and expenses.

c. Whistleblower Protections in the Federal False Claims Act

- i. 31 USC Section 3730 (h) protects employees against discharge, demotion, suspension, threats, harassment, or discrimination by the employer because of lawful acts done by the employee in cooperating with the False Claims Act, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section.

6. Federal Administrative Remedies for False Claims and Statements

31 USC Sections 3801 to 3808 includes detailed information about the administrative process involved in the False Claims Act. Including definitions of individuals, positions and events that occur from a false claim or statement through the investigation, hearings and judicial review.

7. California False Claims Act

a. Definitions for purposes of the California False Claims Act include:

- i. **Claim** includes any request or demand for money, property, or services made to any employee, officer, or agent of the state or of any political subdivision, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, the state

(hereinafter "state funds") or by any political subdivision thereof (hereinafter "political subdivision funds").

- ii. **Knowing** and **knowingly** mean that a person, with respect to information, does any of the following:
 - a. Has actual knowledge of the information.
 - b. Acts in deliberate ignorance of the truth or falsity of the information.
 - c. Acts in reckless disregard of the truth or falsity of the information. Proof of specific intent to defraud is not required.
 - iii. **Political subdivision** includes any city, city and county, county, tax or assessment district, or other legally authorized local governmental entity with jurisdictional boundaries.
 - iv. **Prosecuting authority** refers to the county counsel, city attorney, or other local government official charged with investigating, filing, or conducting civil legal proceedings on behalf of, or in the name of, a particular political subdivision.
 - v. **Person** includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.
- b. California Government Code Section 12651 states a person can be liable for three times the amount of damages and also be liable to the state or to the political subdivision 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 if the person:
- i. Knowingly presents or causes to be presented to an officer or employee of the state or of any political subdivision thereof, a false claim for payment or approval.
 - ii. 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 or by any political subdivision.
 - iii. Conspires to defraud the state or any political subdivision by getting a false claim allowed or paid by the state or by any political subdivision.
 - iv. Has possession, custody, or control of public property or money used or to be used by the state or by any political subdivision and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt.

- v. 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.
 - vi. 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 or to any political subdivision.
 - vii. Is a beneficiary of an inadvertent submission of a false claim to the state or a political subdivision, 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.
- c. The California False Claims Act also includes provisions that allow a private citizen to bring a civil action for a violation of this article as a “qui tam plaintiff.”
- i. If the Attorney General or local prosecuting authority take over the case and prevail, the qui tam plaintiff may receive between 15% and 33% of the proceeds as determined by the court.
 - ii. If the Attorney General or local prosecuting authority does not proceed and the qui tam plaintiff prevails, the qui tam plaintiff may receive between 25% and 50% of the proceeds as determined by the court.
 - iii. There is no guaranteed minimum recovery for actions initiated by:
 - a. Present or former employees of the State or political subdivision (this includes County employees).
 - b. Present or former employees who actively participated in the fraudulent activity.
 - iv. If defendant prevails and the court finds that the qui tam plaintiff was clearly frivolous, clearly vexatious, or took action for the purposes of harassment, then the court may award to the defendant reasonable attorney’s fees and expenses.
- d. Whistleblower Protections in the California False Claims Act.
- i. California Government Code Section 12653 provides protection for employees by preventing employers from making, adopting, enforcing any rule, regulation or policy that would prevent an employee from disclosing information to a government or law enforcement agency or from acting in furtherance of a false claims action.

- ii. California Government Code 12653 also requires that no employer shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against, an employee in the terms and conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency or in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in, an action filed or to be filed under the California False Claims Act.

8. Role of false claims laws

The false claims laws discussed above are an important part of preventing and detecting fraud, waste and abuse in federal and state programs, because they provide governmental agencies the authority to seek out, investigate and prosecute fraudulent activities. Enforcement activities take place in the criminal, civil and administrative arenas. This provides a broad spectrum of remedies to battle these problems.

Anti-retaliation protections for individuals who make good faith reports of fraud, waste and abuse encourage reporting and provide broader opportunities to prosecute violators. Statutory provisions, such as the anti-retaliation provisions of the False Claims Act, create reasonable incentives for this purpose. Employment protections create a level of security employees need in order to help in prosecuting these cases.