

PLAN OPERATIONS	 From DentaQuest			
	<i>Policy and Procedure</i>			
	Policy Name:	False Claims Act Information	Policy ID:	PLANCG-66
	Approved By:	Advantage Dental Services, LLC Compliance Committee	Last Revision Date	10/5/2021
	States:	Oregon	Last Review Date:	11/30/2021
Application:	Medicaid	Effective Date:	12/01/2021	

PURPOSE

It is the purpose of this policy to comply with the DRA by providing detailed information, either directly or through reference to other sources about: (1) the federal False Claims Act (FCA); (2) administrative remedies for false claims and statements under the Program Fraud Civil Remedies Act (PFCRA); (3) whistleblower protections; and (4) any State laws pertaining to civil or criminal penalties for false claims and statements.

Advantage Dental Services, LLC as a Dental Care Organization (DCO) is fully committed to the implementation and enforcement of compliance policies what will substantially reduce or eliminate the risk that it or its associates, management, contractors and agents might violate the FCA, comparable State civil and criminal laws or administrative prohibitions on the submission of false claims and statements.

The DCO understands and embraces the DRA’s mandate to disseminate written information to its associates, management, contractors and agents concerning the federal and state laws and sanctions that target fraud, waste and abuse in federal health care programs to ensure that those laws are not violated.

POLICY

It is the policy of the DCO, that it be fully compliant with the requirements of the provisions of the Deficit Reduction Act of 2005 (DRA), applicable as of January 1, 2007 to entities that receive or make at least 5 million dollars in annual payments from a State Medicaid Plan. In order to comply with these DRA requirements, the DCO has established written policies applicable to all of its associates and employees, including management, contractors and agents, that provide detailed information with respect to the role of certain laws in preventing and detecting fraud, waste and abuse in Federal health care programs. The DCO Guideline & Procedures will include a discussion of the laws described above, associate right under the laws’ whistleblower protections, and the company’s policies and procedures for detecting and preventing fraud, waste and abuse.

REFERENCES

- The Deficit Reduction Act of 2005(DRA)
- The Federal False Claim Act (FCA), The Program Fraud Civil Remedies Act (PFCRA)

DEFINITIONS

- **Associate:** The term “associate” includes any employee or officer of the DCO (as defined below).
- **Contractor or Agent:** The term “contractor” or “agent” includes any contractor, subcontractor. Agent

or other person which or who, on behalf of the DCO, furnishes or otherwise authorizes the furnishing of Medicaid health care items or services, performs billing or coding functions, or is involved in monitoring of health care services arranged by the DCO.

- **Advantage Dental Services, LLC or the DCO:** This term includes the corporate DentaQuest parent organization and all of its subsidiary entities.

PROCEDURE

I. Federal False Claims Act Penalties and Whistleblower Protections

- A. The FCA Established Under Sections 3729 through 3733 and Title 31 of the United States Code.
 1. Knowingly presenting or causing to be presented a false or fraudulent claim to an officer or employee of the United State Government.
 2. Knowingly making or using or causing the making or use of a false record or statement to get a false or fraudulent claims paid:
 3. Conspiring to defraud the Government by getting a false or fraudulent claim paid; and
 4. Knowingly making or using or causing to be made or used a false record or statement to conceal, avoid or decrease an obligation to the Government.
- B. The FCA defines “knowingly” to mean not only actual knowledge of the truth or falsity of relevant information but also either deliberate ignorance or reckless disregard for the information’s truth or falsity.
- C. The FCA defines “claim” to include any request or demand for payment for money that is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property that is requested or demanded, or if the Government will reimburse the contractor, grantee, or other recipient for the money or property.

II. Penalties Under the FCA

A person, including a corporation, who violates the FCA is subject to civil monetary penalties ranging from \$5,500 and \$11,000 for each false claim submitted in violation of the FCA. In addition to this civil penalty, persons are liable to the Government for three times the amount of damages that the Government sustains.

III. Information on Administrative Remedies for False Claims and Statement Under the PFCRA codified at Chapter 38 of Title 31 of the United States Code.

- A. The PFCRA was enacted in 1986 to allow federal departments and agencies, including the United States Department of Health and Human Services (HHS) to pursue administrative actions against individuals or organizations who knowingly submit false, fictitious or fraudulent claims or statements for benefits or payments under a federal agency program. Under the PFCRA, the United States can obtain an assessment against the offender, in lieu of damages, of twice the amount of the false claim and a penalty of up to \$5,000 for each false claim submitted. The remedies under the PFCRA are in addition to any other remedy prescribed by law. The “knowingly” element of this Act is defined in the same way that it is under the FCA. Deliberate ignorance or reckless disregard for the truth or falsity of the claim or statement is sufficient; actual knowledge does not have to be established.
- B. A determination of liability under the PFCRA may provide the deferral agency with grounds for commencing an administrative or contractual action against the person or organization,

debaring or preventing them from eligibility to enter into contracts with the Federal Government.

IV. FCA Whistleblower Protections

A. FCA's Whistleblower Provisions

1. The FCA permits both the United States and private citizens to bring civil actions for violations of its liability provisions. When a private citizen or "whistleblower" brings such an action, it is brought in the name of the United States and the lawsuit is filed "under seal" or in secret. The defendant or person being sued is not notified of the suit and does not receive a copy.
2. At the time the suit is filed, the whistleblower must serve the lawsuit on the Government along with a written disclosure of substantially all material evidence of which the whistleblower is aware. The seal remains in place initially for 60 days while the Government investigates the allegations and decides whether to intervene, i.e., to become involved in the prosecution of the case. Typically, the government obtains multiple extensions of the seal. The defendant is served with the suit when the seal is lifted.
3. No other whistleblower may file another suit based on the facts underlying the originally filed suit.
4. If the government decides to intervene, it has primary responsibility for prosecution of the action, but the whistleblower can continue to participate and may, with some limitations, continue to play an active role in the litigation. Most important, the whistleblower may object to any proposed settlement between the Government and the defendant. If such objection is made, the court must hold a hearing to determine if the proposed settlement is fair, adequate and reasonable.
5. If the Government decides not to intervene, the whistleblower is entitled to proceed with the case, with his or her own attorney, although the United States continues to be the actual plaintiff.
6. The whistleblower is entitled to receive from 15 to 25 percent of any recovery through settlement or judgment in those cases where the Government intervenes and between 25 and 30 percent in those cases where the Government declines to intervene. In addition to a share in the recovery, a prevailing whistleblower is also entitled to reasonable attorneys' fees and expenses from the defendant.

B. Employment Protections for Whistleblowers and Other Employees

In addition to a financial award, the FCA entitles whistleblowers to additional relief if the whistleblower has been retaliated against for filing an action under the FCA or committing other lawful acts, such as investigating a false claim or providing testimony for, or assistance in, a FCA action. Such relief includes employment reinstatement; two times the amount of back pay, compensation for special damages including litigation costs and reasonable attorney's fees.

C. Certain Whistleblowers Actions Barred

A whistleblower may not bring an action that is based upon the public disclosure of allegations in a criminal, civil or administrative hearing; in a congressional, administrative, or GAO report, hearing, audit or investigation; or from the news media – unless the whistleblower is an "original source". An original source means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action.

D. State Laws Pertaining to Civil or Criminal Penalties for False Claims and Statements

Many states have enacted laws similar to the Federal False Claims Act, such as the Oregon False Claims Act in Oregon, which the DCO complies with as required.

E. Applicability to Contractors and Agents

1. The DCO will disseminate its DRA policies to its Contractors and Agents, apprise them of the fraud and abuse provisions of federal and state laws, and inform them that they must adopt these policies. In addition, the DCO shall maintain a mechanism by which Contractors and Agents can report possible fraud and abuse. The DCO policies shall also include a description of how to report possible fraud and abuse to governmental entities.
2. To the extent permitted by applicable federal and state authorities, the DCO shall permit its Contractors and Agents to adopt their own policies in compliance with the DRA in lieu of adopting the DCO's policies, but the DCO must approve the policies adopted by the Contractor or Agent. Contractor and Agent policies (including any amendments thereto) shall be subject to the prior written approval of the DCO, which approval shall not unreasonably be withheld.

Revision History

Date:	Description
06/27/2013	Updates based on annual review.
09/26/2013	Further updates based on annual review
6/3/2016	Updates based on annual review
11/17/2017	Updates based on annual review
02/27/2018	Conversion to revised policy and procedure format and naming convention.
11/12/2018	Corporate Compliance Committee approval
05/29/2020	ADS Compliance Committee approval
06/09/2021	Updates based on annual review.
10/05/2021	Updates based on annual review.