

False Claims Act and Whistleblower Protections

Genetic Disease Screening Program Employee Education and Training



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Why have this training?

- To comply with Federal law – the federal Deficit Reduction Act of 2005 (DRA) as amended in 2007 by § 6032.
- To familiarize employees with GDSP False Claims policies and procedures.
- To provide guidelines for detecting and preventing fraud, waste, and abuse.
- To ensure GDSP receives continued Medi-Cal and Medicaid funding.

[Link: Federal Deficit Reduction Act](#)



Policies

- Include information about the **Federal** and **California FCA Whistleblower protections** under these laws.



These policies may be updated as needed and subsequent training may be required.

Who needs this training?



- All GDSP employees and management.
- All GDSP contractors.
- All GDSP agents.

The Genetic Disease Screening Program takes allegations of funding fraud, waste and abuse very seriously!!!

- All complaints regarding potential **fraud, waste and abuse** of program funding are investigated and employees who report these issues will be protected from retaliation.
- The Genetic Disease Screening Program has procedures for detecting and preventing **fraud, waste, and abuse**. The Screening Information System (SIS) has a set of checks and balances known as inconsistencies that assure contractors cannot bill inappropriately.
- There are program standards and guidelines for contractors that provide services included in the contracts and/or vendor agreements.

The Federal False Claims Act (31 USC § 3279-3733)

- Enacted in 1863 to combat fraud by government contractors.
- Used extensively to combat fraud in government health care programs.
- Amended in 1986 to include non-retaliation (**whistleblower**) protections.



Link to: [Federal False Claims Act](#)

Liability under the federal False Claims Act

- The False Claims Act establishes liability for any person who **KNOWINGLY** presents false or fraudulent claims to the US government for payment.
- The Act includes “Qui Tam” provisions that allow private citizens (**relators**) to sue violators on behalf of the government.



California False Claims Act (CFCA)

- Was enacted in 1987 (Gov't Code 12650 et. Seq.).
- Was modeled after the Federal False Claims Act.
- Allows the government or individual (**relator**) to bring civil actions to recover damages, penalties, and costs when government contractors, vendors or others defraud the government.



To View the California False Claims Act (CFCA) in its entirety

Link to the following site:

[http://www.leginfo.ca.gov/
calaw.html](http://www.leginfo.ca.gov/calaw.html)

Search for 12650-12656 in
the Government Code
Section

The screenshot shows a web browser window with the URL <http://www.leginfo.ca.gov/calaw.html> in the address bar. The page title is "CALIFORNIA LAW". A decorative graphic of stacked books is visible on the left. Below the title, text states: "California Law consists of 29 codes, covering various subject areas, the [State Constitution](#) and [Statutes](#). Information is effective as of January 1, 2007. All California Codes have been updated to include the 2006 Statutes." A sub-instruction says: "To display the Table of Contents for a code, select a code and click on Search." On the left, there is a list of 29 code categories with checkboxes. The "Government Code" checkbox is checked and highlighted with a red arrow. On the right, there is another list of code categories. At the bottom, there is a search bar containing the text "12650-12656", a dropdown menu set to "Limit to: 20 Documents", and two buttons: "Clear" and "Search", with the "Search" button also highlighted by a red arrow.

Address <http://www.leginfo.ca.gov/calaw.html>

CALIFORNIA LAW

California Law consists of 29 codes, covering various subject areas, the [State Constitution](#) and [Statutes](#). Information is effective as of January 1, 2007. All California Codes have been updated to include the 2006 Statutes.

To display the Table of Contents for a code, select a code and click on Search.

Business and Professions Code
 Code of Civil Procedure
 Corporations Code
 Elections Code
 Family Code
 Fish and Game Code
 Government Code
 Health and Safety Code
 Labor Code
 Penal Code
 Public Contract Code
 Public Utilities Code
 Streets and Highways Code
 Vehicle Code
 Welfare and Institutions Code

Civil Code
 Commercial Code
 Education Code
 Evidence Code
 Financial Code
 Food and Agricultural Code
 Harbors and Navigation Code
 Insurance Code
 Military and Veterans Code
 Probate Code
 Public Resources Code
 Revenue and Taxation Code
 Unemployment Insurance Code
 Water Code
 All

To search by keyword(s), select one or more codes above and enter keyword(s) here:

12650-12656 Limit to: 20 Documents

Clear Search

Liability Under CFCA

Fraudulent acts under the CFCA:

1. **Knowingly** "presents or causes to be presented" a false claim to the state.
2. **Knowingly** makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved.
3. Conspiring to defraud the state by submitting a false claim or be paid one.
4. Delivering less property to the state than stated in the receipt.
5. Falsifying a receipt for state property.
6. **Knowingly** buying or taking a pledge of public property from another not authorized to sell or pledge the property.
7. **Knowingly** benefitting from a false claim to the state.
8. Benefits from an inadvertent submission of a false claim and fails to disclose the false claim within a reasonable time after discovery.

What is “Knowingly”?

Any person with respect to the information does any of the following:

1. Has actual knowledge.
2. Acts in deliberate ignorance of the truth or falsity of the information.
3. Acts in reckless disregard of the truth or falsity of the information.



Proof of specific intent to defraud is not required.

“Claims” Include:



- Any request or demand for money, property, or services made to any employee, officer, agent, contractor, grantee, or other recipient, if any portion of the money, property or services was provided by the state or any political subdivision thereof.

CA Government Code 12650 (b)(1)

Remedies under the CA False Claims Act

- Damages:
 - Any person violating the CFCA shall be liable to the state for three times the amount of damages the state sustains from the acts of that person. (Government Code 125651 (a))
- Civil Penalties:
 - Not less than \$5,000, but no more than \$10,000 per claim.
- Costs/Attorneys' Fees.

Who Can Bring a claim under the CFCA?

- The state Attorney General or a “prosecuting authority” may initiate false claims cases on their own.
 - A “prosecuting authority” could include the county counsel, city attorney, or other government official in charge of pursuing civil cases.
- Private citizens (**relators**) may file actions. Like the federal FCA, California’s False Claims Act allows “qui tam” actions.

Qui Tam Actions (31 USC Section 3730)

- Allow private citizens ("relators") to bring civil actions on behalf of the Government in return for an incentive.
- Promote the practice of private persons coming forward and aiding the government in pursuing fraud and waste.

California - CFCA Qui Tam Incentives

- If the Attorney General (AG) initiates or takes over the case from a local prosecuting authority and prevails, the AG gets 33% of the recovery. (Government Code Section 12652 (g)).
- If the prosecuting authority takes the case and prevails, he/she gets 33%.
- If the prosecuting authority intervenes in an action initiated by the AG or remains a party in an action assumed by the AG, the prosecuting authority receives a portion of the AG's 33% as determined by the court.

California - CFCA Qui Tam Incentives (cont.)

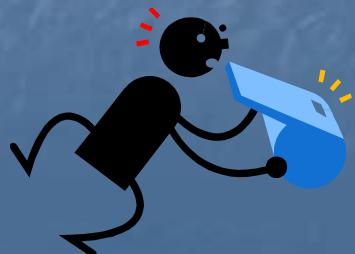
- If a “**relator**” brings the case and the AG or prosecuting authority intervenes, the relator gets between 15% and 33% of the recovery, depending on the **relator’s** contribution to the prosecution. The AG or prosecution authority gets 33%.
- If the **relator** brings the case and neither the AG nor the prosecuting authority intervenes, **relator** receives 25% to 50% of the overall recovery as determined by the court.
- The successful **relator** gets costs and fees.

Qualifications to Qui Tam Incentives in the CFCA

- If the defendant prevails and the court finds that the qui tam plaintiff (**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.
- There is no guaranteed minimum recovery for actions initiated by:
 - Present or former employees of the State or political subdivision who did not initially utilize internal procedures for reporting.
 - Present or former employees who actively participated in the fraudulent activity.

Whistleblower Protections

- The Federal False Claims acts **protects** whistleblowers who initiate, assist with, or testify for a false claim action. (31 USC § 3730(h))
- This section 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.



Whistleblower Protections in the CFCA (CA Government Code 12653)

- Prevents employers from making, adopting and enforcing any rule that would prevent an employee from acting in furtherance of a false claims action.
- No employer shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee because of lawful acts done by the employee in an action filed or to be filed under the CA False Claims Act.

Federal Administrative Process for False Claims and Statements

Detailed information regarding the administrative process can be found in:

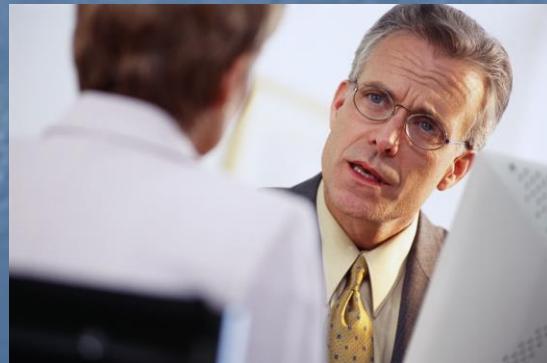
Government code 31 USC § 3801 to 3808, this code includes information regarding:

- Definitions,
- Individual liability (up to \$5,000 for each fraudulent claim),
- Hearings and judicial Review, and
- The right to administrative offset.

What You Can Do to Report Fraud and Abuse



- Report the suspected incident either orally or in writing.



Who to Contact

Report any suspected fraud, waste or abuse
to either:

- Your supervisor or manager,
- the California Department of Public Health,
Deputy Director of the Center For Family
Health at (916) 440-7600.



What will happen?

- The nature and details of the suspected fraud will be documented in writing.
- The report will be forwarded to the Deputy Director of the Center for Family Health in the Department of Public Health within 2 days of the report.



The Investigation



- Will be initiated by the Department of Public Health.
- Corrective actions will be taken, if necessary, which may include filing a claim with the Attorney General's office.
- All complaints regarding potential fraud, waste and abuse of program funding will be taken seriously.

Billions of \$\$\$ are lost to Fraud

It is estimated that 5% of total U.S. health care funds are lost to fraud!

“During FY 2006, the Federal Government won or negotiated approximately \$2.2 billion in judgments and settlements, and it attained additional administrative impositions in health care fraud cases and proceedings. The HCFAC account has returned over \$10.4 billion to the Medicare Trust Fund since the inception of the program in 1997”.

[Healthcare Fraud and Abuse Control Program 2006](#)



So Now You Know

- You can help protect government funds by reporting any suspected fraud, waste, or abuse.
- The False Claims laws are the single biggest weapon for combating fraud perpetrated by government contractors, vendors and others against the federal and state government.

