

False Claims Act (FCA)
Medicaid Integrity Plan-Deficit Reduction Act

Effective Date: January 1, 2007
Amended November 15, 2010

Pursuant to the Deficit Reduction Act of 2005, Section 6032 and Sections 3729 through 3733 of Title 31 of the United States Code, as amended August, 2010, Imagine!, it's employees, contractors, and agents shall comply with the federal False Claims Act and related state requirements. These policies and procedures may be amended to address requirements as directed by the State of Colorado, Health Care Policy and Financing, and the Colorado Department of Human Services.

Policy

Imagine! is committed to following local, State and Federal laws, rules and regulations that address the prevention, detection, reporting, and correction of fraud, waste, and abuse of public funding. Complaints regarding acts which violate the False Claims Act, such as false claims or attempts to defraud health care programs will be promptly reported, investigated, and remedied, as appropriate and required by law.

Definitions

Fraudulent and abusive claims activities may include:

- Knowingly billing for services not rendered;
- Knowingly including improper entries on cost reports;
- Knowingly assigning incorrect codes to secure higher reimbursement for services rendered;
- Knowingly characterizing unallowable services or costs in a way that secures reimbursement;
- Not seeking payment from beneficiaries who may have other primary payment sources;
- Knowingly falsifying, forging, altering, or destroying documents to secure payment;
- Knowingly concealing, avoiding or decreasing an obligation to pay money to the government.

The terms "knowing" and "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. A person who is 'material' to a false claim may also be considered to have intent in false claims activities.

Procedures

Preventing and Detecting False Claims

All Imagine! employees, contractors, vendors and agents are required to participate in the prevention, detection and reporting of fraud, waste and abuse of resources. Detailed information regarding the False Claims Act shall be provided all Imagine! employees, agents and contractors.

All individuals who engage in financial documentation and billing will be responsible for ensuring that information is accurate and does not constitute fraud as defined above. Entities responsible for the monitoring of programs and services will also be responsible for verifying that documentation and billing is accurate and reflective of the services provided to individuals. Information that is not reconcilable and is not

intentionally falsified is to be corrected prior to the submission of any billing. If it has been determined that a fraudulent or abusive act has occurred, the act is to be reported following reporting procedures below.

Reporting Suspicions of Fraudulent Claims

If an employee, contractor or agent of Imagine! believes that a representative of Imagine! is fraudulently billing for services as described above, s/he should immediately contact a member of the Imagine! Executive Team, the Chief Executive Officer, the Integrity Officer, or report the concern through the Imagine! reporting hotline (EthicsPoint). Concerns are to be promptly reported, and will be thoroughly investigated, and remedied in a timely manner. Imagine! will follow procedures delineated in the *Corporate Integrity Plan* for the completion of investigations.

Reports of suspected or observed acts shall include:

- Name(s) of individuals involved in the suspected or observed fraudulent act
- When the suspected or observed fraudulent act occurred
- Where the suspected or observed fraudulent act occurred
- Which programs, departments, and/or individuals were affected by the fraudulent act
- A thorough description of the suspected or observed act
- Name(s) of individuals who have first hand knowledge of the suspected or observed act
- Name(s) of other individuals who may have knowledge of the suspected or observed act

Protection for Reporting Fraudulent Claims

The False Claims Act provides protection from retaliation by an employer to employees who act as whistleblowers. An employee may not be discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA, 31 U.S.C. 3730(h), and as defined in the Imagine! Whistleblower Activities Policy.

Retaliation against an employee or other reporting individual because that individual, in good faith, reported a violation or assisted in a complaint investigation is strictly prohibited. If an individual feels that retaliation has occurred, a complaint regarding the retaliation is to be filed with the Imagine! Chief Executive Officer or designee within forty-five days. If the employee can demonstrate that s/he was retaliated against, the False Claims Act provides for conditions for reinstatement, if applicable.

In addition, the False Claims Act provides for financial remedies to the employer when an action is brought forth for the purpose of harassment, and/or the case is determined to have no merit. In these instances, the whistleblower may be responsible to recompense for legal fees and the costs of defense.

Administrative Remedies and penalties

Violations of this policy as well as actual wrongdoings in the areas of fraud, waste, and abuse may have severe consequences including, but not limited to, civil and criminal penalties as allowed under applicable federal and state laws including the False Claims Act.

The False Claims Act allows individuals, who have first-hand knowledge of fraudulent billing as described above, to sue the entity that submitted the false claim on behalf of the United States. These are called “qui tam” lawsuits and are also known as “whistleblower lawsuits”. In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States. 31 U.S.C. 3730 (b).

These private parties, known as “qui tam relators,” may share in a percentage of the proceeds from an FCA action or settlement.

Section 3730(d)(1) of the FCA provides, with some exceptions, that a qui tam relator (whistleblower), when the Government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(d)(2) provides that the relator shall receive an amount that the court decides is reasonable and shall be not less than 25 percent and not more than 30 percent.

Additionally, another federal statute, *the Federal Administrative Remedies for False Claims, 31 USC Sections 3801 through 3812*, creates a penalty for submitting a false claim of up to \$5,000 per claim and twice the amount of the claim. This law is violated when a false claim is submitted, not when it is paid. Under this statute, investigations and recoveries are handled by federal agencies, not the courts. Although private individuals may report violations to the government, there is no option for the whistleblowers to share in the amounts recovered.

Failure to meet the requirements of the False Claims Act may result in the forfeiture of all Medicaid payments during the period of noncompliance.

Education About the False Claims Act

Imagine! will ensure that all employees, contractors, vendors and agents are informed of the False Claims Act and related acts creating the need for this policy. Imagine! employees will be provided this information as part of their employment orientation and training. Contractors, vendors and agents will be provided a copy of this policy to ensure compliance.

Any new employee, contractor, vendor or agent will receive the same information at the time of employment or when entering into a written agreement with Imagine!.