	Shasta County Health and Human Services Agency Managed Care, Compliance & Quality Management
	False Health Care Claims Policy and Procedure

1.0 Persons/Programs Affected *(Check all that apply)*

☒ All Staff	☐ All Managers	☐ All Supervisors	

*Each branch to have unique Persons/Programs Affected
**All employees include all employees--full-time, part-time and extra-help.*

2.0 Definitions

Compliance Officer means the person designated by the Mental Health Director and is delegated authority for the implementation, administration, and oversight of the Compliance Program. The Compliance Officer is delegated authority for development and day-to-day operations of the Compliance Program.

3.0 Policy

The Shasta County Health and Human Services Agency (HHSA) through its Mental Health Plan (MHP) is firmly committed to achieving the mutual goals of preventing fraud and abuse, improving operational quality, and ensuring the provision of high quality cost-effective mental health care. The MHP promotes a culture where all levels of the organization are committed to watchful business practices and preventive activities to ensure that laws and regulations are followed.

Every employee contractor, volunteer or student, as defined by the 2005 § 6032 Deficit Reduction Act (DRA), employed by or doing business with Shasta County, is encouraged to communicate any known or suspected incidents of fraud, waste or abuse in any federal or state funded health care program to the confidential Compliance Line (530-229-8050 or 1-866-229-8050), their supervisor, manager, the Compliance Officer or Department/Agency where the known or suspected fraud, waste or abuse has occurred or is occurring.

It is the responsibility of that individual to promptly notify the Compliance Officer or Director of the Branch/Agency where the suspected or known fraud, waste or abuse has occurred or is occurring, including the nature of and the details of the suspected fraud waste or abuse. The Compliance Officer or Director or designee shall promptly initiate an investigation and implement any corrective actions that are appropriate as a 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.

This policy and procedure applies to all employees and contractors, volunteers and students, as defined by the DRA, employed by or doing business with the MHP and provides written information for the appropriate education about the Federal and State False Claims Acts, Whistleblower protections and administrative remedies.

4.0 Procedure

A. The Health and Human Services Agency Director (as Director of Mental Health) is responsible for ensuring compliance with this policy. The Compliance Officer with oversight by the Compliance Committee is responsible for reporting, auditing, detecting, investigating, and resolving identified or potential issues relating to fraud, waste or abuse in federal or state health care programs.

B. The Compliance Officer will be responsible to ensure that all personnel are trained to this policy at or around the time of orientation.

C. *The Deficit Reduction Act of 2005 (DRA)* – definitions for purposes of the DRA include:

1. **Entity** includes a governmental agency, organization, unit corporation, partnership, or business arrangement (including any Medicaid managed care organization, or 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 under Title XIX totaling at least $5,000,000 annually.

D. *Federal False Claims Act*

1. Definitions for purposes of the Federal False Claims Act include:

a) **Knowing or knowingly** in this act means 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.**

2. **Claim** includes any request or demand, for money or property (including those made under contract) to the Government or to a contractor, grantee, or other recipient, if any portion of the requested money or property is funded by or will be reimbursed by the government.

3. Federal False Claims Act Provisions include:

   a) 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 U.S. government.

   A person or organization may be liable for:

   - A civil penalty of $5,000 to $10,000 for each false claim;
   - Three times the amount of damages sustained by the government due to the violations (treble damages); and
   - The costs of a civil suit for recovery of penalties or damages.

   The court may reduce the treble damages if:

   The person committing the violation voluntarily discloses all information known to him or her to the U.S. officials responsible for investigating the false claims violations within 30 days of obtaining the information;

   - The person fully cooperated with any Government investigation; and
   - No criminal prosecution, or civil or administrative action had commenced at the time of the person's disclosure, and the person had no actual knowledge of an investigation into such violation.

   b) 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.

c) 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 prosecution or allow the relator to handle the case.

d) If the government takes over the case and wins, the qui tam relator is eligible for 15% to 25 % share of the recovery.

e) If the relator handles the case and wins, the relator is eligible for 25 to 35% share of the amount recovered.

f) 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.

g) If defendant prevails and the court finds that the qui tam relator was clearly frivolous or took action for the purposes of harassment, then the court may award to the defendant reasonable attorney's fees and expenses.

4. Whistleblower Protections in the Federal False Claims Act

31 U.S.C. Section 3730 identifies that if an employee who has been discharged, demoted, suspended, threatened, harassed, or in any way discriminated against by his or her employer because of involvement in a false claims disclosure is entitled to all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had but for the discrimination;
- Two times the amount of back pay plus interest; and

- Compensation for any special damage sustained because of the discrimination (including litigation costs and reasonable attorney's fees).
- Punitive damages if appropriate.

The protected false claims activities include investigation for, initiation of, testimony for, or assistance in a false claims action that has been or will be filed. An employee is entitled to bring an action in the district court for such relief.

E. California False Claims Act

The California False Claims Act laws discussed are an important part of preventing and detecting fraud, waste or abuse in federal, state, county, or city 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.

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

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

   a) **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 (state funds) or by any political subdivision thereof (political subdivision funds).

   b) **Knowing or knowingly** means 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.

c) **Person** includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

2. 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:

   a) 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

   b) Knowingly makes uses or causes to be made or used a false record or statement to get a false claim paid or approved by any political subdivision.

   c) 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.

   d) Knowingly makes uses or causes to be made 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.

   e) 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.

3. 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."

   a) 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.

b) 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.

c) There is no guaranteed minimum recovery for actions initiated by:

1). Present or former employees of the State or political subdivision (this includes County employees); or

2). Present or former employees who actively participated in the fraudulent activity.

d) 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.

4. Whistleblower Protections in the California False Claims Act:

a) 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.

b) 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 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.

Liability of Employer

An employer who interferes with an employee's disclosure of false claims will be liable to the employee for all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had except for the discrimination;
- Two times the amount of back pay plus interest;
- Compensation for any special damage sustained as a result of the discrimination; and punitive damages where appropriate.

Limitations on Eligibility of Employees for Damages

If an employee's conduct has resulted in a false claim being submitted to the state or a political subdivision, and the employee has been discriminated against by his or her employer, he or she is entitled to remedies only if he or she voluntarily disclosed information to a government or law enforcement agency or assisted in a false claims action; and was coerced (either though harassment, threats of termination demotion, or other coercive actions) by the employer or its management into committing the fraudulent activity in the first place.

5.0 Attachments

N/A

6.0 Revision History

Date	No.	Action:
05/272014	2014-17	Revision to new format & renumbered

7.0. Other Agency Involvement

N/A

8.0 Authorization/Signatures

The above policy and procedure has been reviewed and is authorized for immediate implementation:

Donnell Ewert, MPH, Director — Date: 5/30/14

Micki Mills, Program Manager, Business & Support Services
Compliance Officer
Managed Care Compliance Program — Date: 5/29/2014