

FRAUD, WASTE, AND ABUSE AWARENESS AND REPORTING POLICY

**Purpose**

To ensure that the Alaska Native Tribal Health Consortium has a comprehensive plan to prevent, detect and correct fraud, waste, and abuse to protect ANTHC resources and meet applicable legal requirements.

**Scope**

Applicable to the Board of Directors, all employees who are direct hire or federal, and other members of the workforce, contractors, and agents.

**Policy**

ANTHC promotes a culture of ethics and compliance with all applicable legal and regulatory requirements, and requires members of the workforce, contractors, and agents to become familiar with and comply with applicable fraud, waste, and abuse laws and requirements, including the False Claims Act, the Anti-Kickback Statute, and Stark laws.

ANTHC promotes an effective Ethics & Compliance Program through the Board of Directors, senior leadership, and the Corporate Compliance Department. Major program elements include: high level oversight and governance; Code of Conduct and ANTHC policies and procedures; open communication channels and reporting; education; detection, remediation, and enforcement; risk assessments; auditing and monitoring; and assessment of effectiveness. ANTHC requires members of the workforce, contractors, and agents to become familiar with and comply with the ANTHC Code of Conduct.

ANTHC requires members of the workforce to exercise due diligence in the prevention, detection, and correction of fraud, waste, and abuse, and to promptly report any suspected fraud, waste, and abuse through appropriate channels. Members of the workforce can report issues to their supervisor, line of authority, Human Resources, and/or Corporate Compliance. Employees can remain anonymous by calling the Ethics & Compliance Hotline at 1-877-772-6743.

In addition to workforce reporting, ANTHC encourages its contractors and agents to report any suspected fraud, waste, or abuse to the Corporate Compliance Department. Contractors and agents can remain anonymous by calling the Ethics & Compliance Hotline at 1-877-772-6743.

ANTHC prohibits retaliation against members of the workforce, contractors, or agents, who, in good faith, report a concern regarding possible violations of legal requirements, the Code of Conduct, law, accreditation standards, professional practice standards, or ANTHC policies and procedures.

ANTHC requires members of the workforce, contractors, and agents to have an awareness of the False Claims Act, including the following information:<sup>1</sup>

- **Overview of the False Claims Act**
  - The False Claims Act is a federal statute that covers fraud involving any federally funded program or contract.
  - The False Claims Act establishes liability for any person who knowingly presents or causes to be presented a false or fraudulent claim to the U.S. government for payment. The term “knowingly” means that a person: has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information.
  - The False Claims Act includes a *qui tam* or whistleblower provision to encourage individuals to come forward and report misconduct involving false claims.
  - The False Claims Act requires a whistleblower to have actual knowledge of the fraud, not just a suspicion. Examples of false claims are making false statements, falsifying records, double billing for items or services, and submitting bills for services never performed or items never furnished.
- **Liability for Violations of the False Claims Act:**
  - Health organizations that violate the False Claims Act can be subject to civil monetary penalties ranging from \$5,500 to \$11,000 for each false claim submitted to the U.S. government. There may also be penalties for three times the amount of the civil monetary penalties.
  - If a health organization is convicted of a False Claims Act violation, it may be excluded from participating in certain federal programs such as Medicare and Medicaid, and may be excluded from receiving certain federal moneys such as grants.
- **Whistleblower Provisions of the False Claims Act:**
  - The False Claims Act allows any person (whistleblower) with actual knowledge of allegedly false claims to the U.S. government to file a lawsuit on its behalf. It is not enough to make broad claims and allegations of fraud; actual, specific information is required. The whistleblower’s evidence of alleged fraud cannot come from a publicly disclosed source such as a newspaper, TV, or court hearing.
  - A whistleblower may file a lawsuit on behalf of the U.S. government in a federal district court. The lawsuit will be filed under seal, meaning that the lawsuit is kept confidential while the government reviews and investigates the allegations contained in the lawsuit and decides how to proceed. Generally, a case needs to be filed within six years of the alleged fraud.
  - If the government determines that the lawsuit has merit and decides to intervene, the prosecution of the lawsuit will be directed by the U.S. Department of Justice.

- If the government decides not to intervene, the whistleblower can continue the lawsuit on his or her own.
- If the lawsuit is successful, the whistleblower may receive an award ranging from 15 to 30 percent of the amount recovered and may be entitled to reasonable expenses for bringing the lawsuit.
- **No Retaliation for Under the False Claims Act:**
  - The False Claims Act prohibits retaliatory conduct against a whistleblower for bringing a lawsuit under the False Claims Act.
  - A whistleblower will be protected from harassment, demotion, and wrongful termination.

ANTHC prohibits false claims or other fraudulent financial and billing activities that would violate federal laws such as the False Claims Act.

ANTHC requires members of the workforce, contractors, and agents to have an awareness of the Anti-Kickback Statute, including the following information:

- **Overview of the Federal Anti-Kickback Statute:**
  - The federal anti-kickback Statute's main purpose is to protect patients and federal health care programs from fraud and abuse. The Federal Anti-Kickback Statute prohibits certain conduct involving improper payments in connection with the delivery of items or services. These prohibitions apply to anyone who knowingly and willfully solicits or receives any payment in return for referring an individual to another person for the furnishing, or arranging for the furnishing, of any item or service that may be paid in whole or in part by the Medicare, Medicaid, or other federally funded health care program.
  - The federal Anti-Kickback Statute applies where an individual offers or makes payments to another person in order to induce referrals or other prohibited conduct. Illegal payments or solicitations of payments include those in cash or in kind, i.e., goods, those made directly or indirectly, and those made overtly or covertly.
  - The federal Anti-Kickback Statute also has exceptions called "safe harbors," which are activities that are protected from prosecution and allow providers to participate, invest, recruit, joint venture, and refer patients under certain conditions.
- **Liability for Violations of the Anti-Kickback Statute:**
  - Health organizations and providers that violate the Anti-kickback Statute can be subject to a maximum civil monetary penalty of \$25,000, imprisonment up to five years, or both.
  - Conviction of health organizations and providers would also lead to automatic exclusion from the Medicare, Medicaid, and other federally-funded health care programs. Exclusion from these programs may also be sought by the Department of Health and Human Services (HHS) through an administrative proceeding, without the need to initiate a

criminal prosecution. Responsibility for enforcement of the statute is delegated within HHS to the Office of the Inspector General (OIG).

ANTHC prohibits bribes or kickbacks, including a complex array of discounts, rebates, profit-sharing agreements, or other business arrangements that would violate federal laws such as the Anti-Kickback Statute.

ANTHC requires members of the workforce, contractors, and agents to have an awareness of the Stark Laws, including the following information:

- **Overview of the Stark Laws**
  - Stark I and II are federal statute that prohibit providers from making referrals to any entity in which they or an immediate family member have a financial relationship and that entity provides certain designated health services, unless an exception applies. A financial relationship includes ownership or investment interest, and compensation arrangements.
- **Liability for Violations of the Stark Laws:**
  - Providers that violate the Stark Laws can be subject to the denial of payment of all designated health service claims and civil money penalties for knowing violations of the prohibitions.
  - Violations may also be pursued under the Federal False Claims Act.

ANTHC prohibits inappropriate patient referrals, including improper patient referrals for health care services to entities in which the provider has a financial relationship that would violate federal laws such as Stark.

Employees and members of the workforce are required to report concerns to ANTHC, even if they choose to act as a “whistleblower.” ANTHC will conduct an internal investigation of fraud, waste, and abuse concerns and will take corrective action as appropriate. ANTHC will collaborate with external agencies to deter any fraud, waste, and abuse and report to external agencies and/or law enforcement authorities as appropriate.

ANTHC is a tribal organization and is subject to some unique legal requirements and exceptions, including some related to fraud, waste, and abuse laws. If the Board of Directors, members of the workforce, contractors, and agents have questions or concerns regarding this policy, they may contact the Corporate Compliance Department and/or the Office of General Counsel.

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<sup>1</sup> Some content adapted from *A Supplement to Your Deficit Reduction Act Compliance Training Program: An Overview of the False Claims Act and Federal Health Care Programs* published by the Health Care Compliance Association (HCCA), 2006, ISBN 0-9778430-3-3, reprinted with permission of the publisher, HCCA.