

# NAPA COUNTY HEALTH AND HUMAN SERVICES

POLICY: "Whistleblower Protections"	EFFECTIVE DATE: 5/1/2008
REFERENCE: 31 USC § 3730; the Deficit Reduction Act of 2005 Section 6032; the Federal Sentencing Guidelines; Criminal Statutes reference herein; and related Compliance Program policies and procedures	REVIEW FREQUENCY: Annual ORIGINAL DATE OF ISSUE: 5/1/2007
POLICY # Distribution: _X_ Agency-Wide	APPROVAL:  Surges Spando 4-4-08  Compliance Officer Date
	APPROVAL:  HNSA Director  Date

#### POLICY STATEMENT

Napa County Health and Human Services Agency (HHSA) is committed to taking measures to ensure that it does not engage in retaliatory activity, and that it educates its employees concerning the whistleblower protections that exist to protect them from retaliatory activity related to lawful actions taken by the employee in furtherance of a False Claim action. See related False Claims Act policy.

To help ensure that HHSA employees are educated about the whistleblower protections, this policy shall be posted at all times on the HHSA intranet site and included in the HHSA "New Hire Orientation Binder." Training and education about this policy shall also be conducted at "New Hire Orientation" and at the Agency's mandated Annual General Compliance Training which occurs each May. Additionally, the HHSA Compliance Officer is also readily available to answer any employee questions related to this policy.

HHSA is also committed to ensuring its "covered" organizational contract providers (organizational contractors whose services are billable to a Federal healthcare program) abide by and adhere to this policy. This is accomplished through contract provisions and distributing and reviewing this policy at Annual Provider Compliance Trainings.

#### **PURPOSE**

The purpose of this policy is to provide employees with detailed written information regarding the federal and state whistleblower protections that exist to help protect employees from any retaliatory activity due to lawful actions taken by the employee in furtherance of a False Claim action. By providing employees with this

<sup>&</sup>lt;sup>1</sup> Retaliatory activity may include being discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against by his or her employer because of reporting violations of the False Claims Act.

written policy, and through other written Compliance Program policies and procedures, HHSA helps to ensure that employees are not retaliated against for pursuing lawful actions in furtherance of a False Claim action, and furthers its overarching goal of ensuring it does not engage in fraudulent, abusive or wasteful activities.

### **ADMINISTRATION**

Compliance Officer

## THE FEDERAL AND STATE WHISTLEBLOWER PROTECTIONS

Whistleblower Protections are afforded to those who investigate, initiate, provide testimony for, or assistance in a False Claims Act filed or to be filed. In such circumstances there are specific Federal and State statutes which forbid an employer from engaging in retaliatory actions against an employee and protect the employee through various mechanisms.

- A. The Federal Whistleblower Protections, 31 USC §3730(h)
  - 1. Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole.
  - Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation of special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.
  - An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection.
- B. The California Whistleblower Protections & Provisions, Cal. Gov't Code §12653
  - An employer cannot make, adopt, or enforce any rule, regulation, or policy preventing an
    employee from disclosing information to a government or law enforcement agency or from acting
    in furtherance of a false claims action, including investigating, initiating, testifying, or assisting in
    an action filed or to be filed under section 12652.
  - 2. An employer cannot discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the 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 Section 12652.
    - a. If an employee is subjected to conduct set forth above, the employee will be 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, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and, where appropriate, punitive damages, and litigation costs and reasonable attorneys' fees.
    - b. An employee who is discharged, demoted, suspended, harassed, denied promotion, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of participation in conduct which directly or indirectly resulted in a

false claim being submitted to the state or a political subdivision shall be entitled to the remedies set forth in 2.a. if, and only if, both of the following occur:

- i. The employee voluntarily disclosed information to a government or law enforcement agency or acted in furtherance of a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed.
- ii. The employee had been harassed, threatened with termination or demotion, or otherwise coerced by the employer or its management into engaging in the fraudulent activity in the first place.
- An employee may bring an action in the appropriate superior court of the state for the relief provided in this subdivision.

#### CONTACT:

Jennifer Yasumoto, JD, Compliance Officer, 253-4715