



# Deficit Reduction Act of 2005 (DRA)

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## Vendor Training

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## Background

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- On February 8, 2006, President Bush signed the Deficit Reduction Act of 2005 (the “DRA”).
- It has transformed the nature of compliance programs from voluntary to mandatory for those institutions receiving \$5 million or more in Medicaid reimbursement.



## Background Continued...

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- The government has been granted additional resources to combat fraud and abuse in both the Medicare and Medicaid programs.
- Compliance aspects of the DRA are effective January 1, 2007.



## Focus on Medicaid

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- Medicaid is the largest health insurance program in the US.
- It is jointly funded by Federal and state governments.
- Federal contribution in Fiscal Year 2004 topped \$176 billion and is expected to exceed \$193 billion in Fiscal Year 2007.



## Focus Continued...

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- In Fiscal Year 2004, Medicaid covered 43.7 million low-income children and adults and expected to exceed 46 million in Fiscal Year 2007.
- Bottom line = Medicaid spending, which grew 7.7% alone last year.
- Fraud and abuse enforcement is aimed at containing the rise in Medicaid spending.



# Examples of Medicaid Fraud

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- Billing for services not rendered.
- Billing for undocumented services.
- Double billing for items or services.
- Making false statements.
- Participating in kickbacks.
- Including improper entries on cost reports.
- Billing for medically unnecessary services.
- Assigning incorrect codes to secure higher reimbursement.



## Federal False Claims Act (31 USC § 3279)

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Federal statute that covers fraud involving any Federally funded contract or program (i.e., Medicare/Medicaid) and 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.



# False Claims Act Liability

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- Subject to civil monetary penalties (CMP) ranging from \$5,000 to \$11,000 for each false claim submitted.
- In addition to the CMP, can be required to pay three times amount of damages sustained by U.S. government.
- Office of Inspector General (OIG) may seek to exclude the provider or supplier from participation in Federal health care programs.



## Qui Tam “Whistleblower” Provisions

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- Purpose = to encourage people to come forward and report misconduct involving false claims.
- Allows any person (with actual knowledge of allegedly false claims) to file a lawsuit on behalf of the U.S. government.
- Persons often referred to as “relators.”



# Qui Tam Procedures

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- The relator must file the lawsuit on behalf of the government in a Federal district court.
- If the government decides to intervene, the prosecution of the lawsuit will be directed by the U.S. Department of Justice (DOJ). If not, the relator can continue with the lawsuit on his/her own.
- If the DOJ is successful, the relator may receive 15% to 30% of the amount received and may be entitled to reasonable expenses, including attorney's fees and costs for bringing the lawsuit.



# No Retaliation

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- The False Claims Act also grants relators protection from retaliation from employers for filing a lawsuit or assisting (i.e., providing testimony) in a False Claims Act action.
- Relief may include: employee reinstatement, back pay, or any other damages arising from retaliatory conduct.



## NM Medicaid False Claims Act (Chap. 27, Art. 14 NMSA 1978)

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- Provides for similar procedures under the Federal False Claims Act except that the action shall be brought in the name of the State of New Mexico.
- Provides for awards of at least 15% but not more than 25% of the action or settlement.
- Provides employee protection from employer retaliation for bringing or assisting in a false claims action.



# UNM Policy Against Retaliation

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- UNM Business Policy 2200, Reporting Misconduct and Retaliation
  - To extent allowed by law, reasonable efforts are made to protect confidentiality of relators.
  - Prohibits and has sanctions against any type of retaliation against those who report concerns.
  - Works in conjunction with the Federal False Claims Act and the NM Medicaid False Claims Act in protecting relators.



## How to Report Internally

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- You may contact UNM Purchasing at 505-277-2036.
- HSC Compliance Director at 505-272-2588.
- Anonymous toll-free 24/7 contracted HSC Compliance Hotline:

**1-888-899-6092**