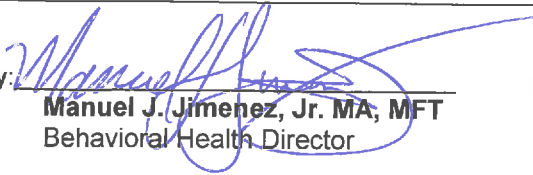




By:   
**Manuel J. Jimenez, Jr. MA, MFT**  
Behavioral Health Director

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| <b>POLICY TITLE</b>                                      | <b>Policy No:</b> 1703-3-1             |
| <b>Whistleblower Program for Fraud, Waste, and Abuse</b> | <b>Date Effective:</b> October 7, 2016 |
|  | <b>Date Revised:</b>                   |

### PURPOSE

This policy addresses the Federal and State requirements that a method be established and put in place for detecting, correcting, and preventing actual or perceived Fraud, Waste and Abuse; this policy puts such a method in place for Alameda County Behavioral Health Care Services (BHCS) to ensure compliance with regulations and to ensure that employees and contractors are educated about its Whistleblower Program for Fraud, Waste, and Abuse.

### AUTHORITY

Code of Federal Regulations Title 42 Subpart E, Sec 438.608, California Government Code Article 4, Sec 53087.6, California Labor Code 1102.5, Alameda County Administrative Code CH.3.52, Sec 3.52.010, Sec 352.020, Sec.352.030, Sec 352.40(A), Sec 352.050, the MHP Agreement No. 12-89353 with California Department of Health Care Services, Sec. 18, Federal Acquisition Regulation (FAR) Subpart 3.9 and Alameda County Behavioral Health Care Services Compliance and Integrated Ethics Plan.

### SCOPE

All Alameda County Behavioral Health Care Services (BHCS) county-operated programs in addition to entities, individuals and programs providing Medi-Cal funded services under a contract or subcontract with BHCS.

### POLICY

It shall be the policy of BHCS to comply with State and Federal Law. BHCS shall maintain a Whistleblower Program to guard against Fraud, Waste, and Abuse within Alameda County Behavioral Health Care Services. The BHCS Whistleblower Program is designed to encourage reports of suspected fraud, waste and abuse within Alameda County Behavioral Health Care Services; the program is administered by the BHCS Quality Management Program. BHCS will monitor all contractors to ensure that they have policies and procedures in place to guard against Fraud, Waste, and Abuse within the contractor's programs.

### PROCEDURE

#### Reporting Fraud, Waste, and Abuse

- A. It is the responsibility of all employees, vendors, and contract providers to comply with all laws and regulations, and to ensure that others do as well.

**1. County Employees**

- a. BHCS employees who are aware of or suspect non-compliance are encouraged to report it to their supervisor(s), the BHCS Compliance Officer, the BHCS Quality Management Program Director, the BHCS Quality Assurance Administrator, or may follow the reporting process described below.
- b. Pursuant to California Labor Code Section 1102.5, employees are a protected class of individuals. "Employee" means any person employed by an employer, private or public, including, but not limited to, individuals employed by the state or any subdivision thereof, any county, city, city and county, including any charter city or county, and any school district, community college district, municipal or public corporation, political subdivision, or the University of California. [California Labor Code Section 1106].
- c. A *Whistleblower* can also be an employee who refuses to participate in an activity that would result in a violation of, or non-compliance with, a state or federal law, rule or regulation.
- d. BHCS shall ensure that all county programs have the BHCS "*Whistleblower Hotline*" poster posted in a place visible to employees and all visitors.

**2. Contractors**

- a. Contractors shall have policies and procedures to guard against Fraud, Waste and Abuse and that protects employees against retaliation for such reporting.
- b. BHCS shall ensure contractors have policies in place to guard against Fraud, Waste and Abuse during the Medi-Cal Site Certification process and/or as part of contract monitoring; contractor shall present its policies and procedures upon BHCS request.
- c. Contractors' policies must provide that employees who are aware of or suspect non-compliance report it per their program's policies and procedures OR report it to the BHCS Compliance Officer, the BHCS Quality Management Program Director, the BHCS Quality Assurance Administrator, or follow the reporting process described below.
- d. BHCS shall ensure that all contracted programs have the BHCS "*Whistleblower Hotline*" poster posted in a place visible to employees and all visitors.

**3. Consumers and Citizens**

- a. Consumers and citizens may report suspected Fraud, Waste, or Abuse using the methods below and may choose to report anonymously.

**4. How to make a report****a. Reports of Fraud, Waste or Abuse may include the following information as relevant:**

- i. Description of allegation
- ii. Name of individual or organization you are reporting
- iii. Date(s) of incident
- iv. Your name and contact information (optional)
- v. Evidence to support complaint

**b. Reports of Fraud, Waste, or Abuse may be made by any of the following methods:**

BHCS Whistleblower Hotline Phone Number: (844) 729-7055

Fax: (510) 639-1346

E-mail: [ProgIntegrity@acgov.org](mailto:ProgIntegrity@acgov.org)

US Mail: 2000 Embarcadero, Suite 400, Oakland, CA 94606, Attn: QA Office

**c. For more information go to the "Whistleblower" link at [www.acbhcs.org](http://www.acbhcs.org)****B. Reports may be made anonymously to the BHCS Compliance Officer or the BHCS Quality Assurance Office through the methods listed above.****Investigating Reports of Fraud, Waste, and Abuse**

**A.** BHCS is committed to investigating all reported concerns promptly and confidentially to the extent possible. BHCS shall coordinate any findings from the investigations and immediately recommend corrective action or changes.

**B.** Reports of non-compliance shall be investigated under the direction of the BHCS Compliance Officer or their designee. All investigations of non-compliance shall be concluded within sixty (60) working days of the date of notification to the extent possible. BHCS may consult with or refer the case to County Counsel for further investigation.

**C. For allegations against County employees or programs:**

1. After obtaining a basic understanding of the allegation, if the complainant has not already provided their name, they will be asked for their name and contact information; the complainant shall be asked their preference about remaining anonymous.
2. The investigation may include interviewing employees and/or reviewing documentation. All BHCS employees shall cooperate with such investigations.
3. BHCS may consult with or refer the case to County Counsel for further investigation.

- D. For allegations against a BHCS Contractor's employee or program:
1. After obtaining a basic understanding of the allegation, if the complainant has not already provided their name, but has provided a means of contact, they will be asked for their name and additional contact information; the complainant shall be informed that he or she may remain anonymous, and that should they opt to provide identification and contact information, any such information will be kept confidential.
  2. Any subsequent investigation may include interviewing contractor's management, employees and/or requesting documentation for review.
  3. BHCS may consult with or refer the case to County Counsel for further investigation.
- E. Once the investigation is complete, the BHCS Compliance Officer, or their designee, shall submit a written report and make a verbal report to the BHCS Executive Team. The written report shall contain a summary of the initial report, the findings, and recommendations for minimizing future risk. Any determination of a need for corrective or disciplinary action shall be the decision of the Behavioral Health Care Services Director, or designee, and the BHCS Human Resources Department as relevant.

#### Whistleblower Protection against Retaliation

- A. Retaliation by any BHCS, or BHCS contractor's, employee, management, or program against any complainant or informant is prohibited under California Labor Code Section 1102.5.
- B. An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties. [California Labor Code Section 1102.5(b)].
- C. Under California Labor Code Section 1102.5, if an employer retaliates against a whistleblower, the employer may be required to reinstate the employee's employment and work benefits, pay lost wages, and take other steps necessary to comply with the law.
- D. Contractors and subcontractors are prohibited from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract, a gross waste of Federal funds, an abuse of authority relating to a Federal contract, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract)(Federal Acquisition Regulation, Subpart 3.9)

Education of Employees, Contractors, Consumers, and Citizens

- A. All County and Contracted programs shall post BHCS's "Whistleblower Hotline" poster in a visible area for employees and visitors to view. The poster shall be available on the Provider Website in the Quality Assurance Manual.
- B. BHCS shall maintain a *Whistleblower Program for Fraud, Waste, and Abuse* information page on its public website [www.acbhcs.org](http://www.acbhcs.org).
- C. BHCS employees shall be trained on fraud, waste, and abuse at minimum every two years and proof of completion made part of their employee record.
- D. Contractors' policies must provide that employees be trained on fraud, waste, and abuse at a minimum every two years and proof of completion made part of their employee record.
- E. Material on BHCS's *Whistleblower Program for Fraud, Waste, and Abuse* shall be included in all compliance and ethics trainings to BHCS employees and Contractor's employees.

**CONTACT**

| BHCS Office                | Current as of | Email                   |
|----------------------------|---------------|-------------------------|
| Quality Management Program | October, 2016 | ProgIntegrity@acgov.org |

**DISTRIBUTION**

This policy will be distributed to the following:

- BHCS Staff
- BHCS County and Contract Providers
- Public

**ISSUANCE AND REVISION HISTORY**

**Original Author:** Donna Fone, MFT, LPCC, Quality Assurance Administrator and Shannon Benson, MPA, Program Specialist

**Original Date of Approval:** by Manuel J. Jimenez, Jr. MA, MFT, BHCS Director

| Revise Author | Reason for Revise | Date of Approval by (Name) |
|---------------|-------------------|----------------------------|
| N/A           |                   |                            |

**DEFINITIONS**

| Term                 | Definition  |
|----------------------|---|
| <b>Fraud</b>         | Knowingly and willfully executing, or attempting to execute, a scheme or artifice to defraud any health care benefits program or to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefits.   |
| <b>Waste</b>         | Overutilization of services or other practices that, directly or indirectly, result in unnecessary costs to the health care system. It is not generally considered to be caused by criminally negligent actions, but by the misuse of resources.  |
| <b>Abuse</b>         | Actions which directly or indirectly, result in unnecessary costs to the health care benefit program, improper payment or payment for services which fail to meet professionally recognized standards of care, or that are medically unnecessary. Abuse involves payment for items or services when there is no legal entitlement to that payment and the provider has not knowingly and/or intentionally misrepresented facts to obtain payment.   |
| <b>Whistleblower</b> | A whistleblower who discloses information to a government or law enforcement agency, person with authority to investigate, discover, or correct the violation or noncompliance, or who provides information to or testifies before a public body conducting an investigation, hearing or inquiry. A whistleblower can also be an employee who refuses to participate in an activity that would result in a violation of a state or federal statute, or a violation of or noncompliance with a local, state or federal rule or regulation. |

**ATTACHMENT**Poster: *Whistleblower Hotline*