Youth Advocate Programs (YAP) compliance guidance for complying with the Deficit Reduction Act (DRA) 2005 and the False Claims Act (FCA)

It is the responsibility of YAP to educate employees, contractors, venders, and other agents conducting business on YAP's behalf on the Deficit Reduction Act (DRA) and the Federal and State False Claims Act (FCA).

The DRA and FCA extend to any payment requested of the federal government. More specifically, both of these Acts apply to the billing and claim(s) sent from YAP to any government payer including, but not limited to, Medicaid.

A provision in the Deficit Reduction Act of 2005 (DRA) requires organizations receiving at least $5 million in payments from Medicaid to establish detailed, written policies describing the provisions and requirements of certain federal antifraud statutes, state antifraud statutes, and *qui tam* or whistleblower provisions at the federal and state level.

Deficit Reduction Act (DRA)

Medicaid behavioral health services are shaped and delivered around State and Federal regulations and statutes. As of January 1, 2007, the Federal government implemented the Deficit Reduction Act of 2005 which was signed into law by President Bush in February, 2006. Under the DRA, YAP must ensure we are aware and knowledgeable about the Federal False Claims Act, the rights of employees to be protected as whistleblowers, and YAP's policies and procedures for detecting and preventing fraud, waste, and abuse.

The DRA applies to YAP as a corporation, YAP employees, contractors, venders, and other agents conducting business on YAP's behalf who "knowingly" submit a false claim or statement to a federally funded program including Medicaid, or otherwise conspire to defraud the government, in order to receive payment.

Federal False Claims Act (FCA)

The False Claims Act is a federal statute that covers fraud involving any federally funded contract or program, including Medicare and Medicaid programs. The 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" is defined to mean that a person, with respect to information:

- Has actual knowledge of falsity of information in the claim;
- Acts in deliberate ignorance of the truth or falsity of the information in a Claim; or
- Acts in reckless disregard of the truth or falsity of the information in a claim.

Under the FCA any individual or company that submits a false claim or statement to the Government may be fined between $5,500 and $11,000 for each such claim submitted, regardless of the size of the false claim. The person or company may also be required to pay an additional fine of three times the value of any charges.

The FCA includes provisions intended to protect individuals who report suspected fraud. The FCA protects individuals from being retaliated against, demoted, suspended, threatened, or harassed for making a report. The FCA also protects individuals who assist in an investigation, provide testimony, or participate in the government's handling of a false claim.

Further, YAP also protects individuals who report suspected fraud in accordance with the Integrity Compliance Plan.

- **Whistleblower Protection Act -** To encourage individuals to come forward and report misconduct involving false claims, the False Claims Act includes a "qui tam" or whistleblower provision. This provision essentially allows any person with actual knowledge of false claims activity to file a lawsuit on behalf of the U.S. government.

- Under federal law, the whistleblower may be awarded a portion of the funds recovered by the government, typically between 15 and 30 percent. The whistleblower also may be entitled to reasonable expenses, including attorney's fees and costs for bringing the lawsuit.

- In addition to a financial award, the False Claims Act entitles whistleblowers to additional relief, including employment reinstatement, back pay, and any other compensation arising from employer retaliatory conduct against a whistleblower for filing an action under the False Claims Act or committing other lawful acts, such as investigating a false claim, providing testimony, or assisting in a False Claims Act action.

- The False Claims Act includes specific provisions to protect whistleblowers from retaliation by their employers. Any employee who initiates or assists with an FCA case is protected from discharge, demotion, suspension, threats, harassment and discrimination in the terms and conditions of his or her employment. A person who brings a qui tam action that a court later finds was frivolous may be liable for fines, attorney fees and other expenses.

- **Qui Tam Lawsuit (Whistleblower)** -The FCA provisions are generally enforced by the United States Department of Justice (DOJ). Any person with direct and independent knowledge, otherwise known as "original source" knowledge, of false claims to the government may initiate a formal complaint or "qui tam" lawsuit on behalf of the government. The plaintiff must notify the DOJ.