

Hawaii needs effective way to bring whistleblower complaints to light

In the past several months, whistleblowers have been in the news:

>> Kiewit Construction West Co.'s environmental manager alleged rail construction contractual and environmental violations.

>> The state Department of Land and Natural Resources' enforcement chief resigned because he was allegedly thwarted in his attempts to stop a "culture of waste, fraud and corruption."

>> The Hawaii Fire Department chief was sued by two former battalion chiefs who complained that deficient hurricane and tsunami emergency plans put lives and safety at risk.

The common thread was the allegation of government or contractor fraud, waste, abuse or mismanagement.

How big is the problem?

The U.S. Office of Management and Budget says more than 10 percent of all health care provider bills to Medicare and Medicaid are fraudulent; this amounts to over \$80 billion each year.

A 2011 Department of Defense report estimates that more than \$100 billion yearly (\$1 trillion total) was fraudulently billed by U.S. defense contractors in the decade preceding the report.

Locally, the problem is no better. Since 2000, the state Attorney General Medicaid Fraud Unit has recovered more than \$144 million in fraudulent medical provider Medicaid billings, including \$82 million against pharmaceutical companies overcharging the state for drugs for patients. The Association of Certified Fraud Examiners reports that 42 percent of fraudulent activity in private organizations and government is uncovered by “tips” — reports made by employees or the public. Whistleblowers are often the source of these “tips” — typically reporting wrongdoing “up the chain of command” as required by government or a private company.

However, such complaints often fall on deaf ears.

Supervisors who may be negatively affected by the alleged wrongdoing want to keep the problems quiet by retaliating against those reporting the acts.

Our state and county governments need a proactive method of investigating whistleblower complaints and addressing the reported problems. We need to create a culture of compliance by providing a means for reporting, investigating and addressing fraudulent-conduct complaints.

Recently, the University of Hawaii Board of Regents created a confidential whistleblower hotline and website to encourage staffers, students and the public to report suspected fraud, waste or abuse of UH resources. The cost per year is \$25,000.

While the hotline's true effectiveness can only be measured by its ultimate success in combating fraud and waste, UH's example should be followed by the state and the counties.

The Harvard Law School Forum on Corporate Governance and Financial Regulation has outlined the major components of an effective whistleblower hotline and program, including:

>> Education, publicity and making the hotline available.

Employees and the public need to know the hotline is available and how to use it.

>> Anonymity and confidentiality. The system must allow for anonymous, confidential reporting.

>> No retaliation. Persons who identify themselves must be assured they will not suffer retaliation.

>> Third-party assessment. An independent entity — like the Attorney General’s Office or state auditor — needs to assess the complaints and take steps to address the problems.

>> Whistleblower incentives. Appropriate financial incentives are an inducement for reporting fraud and waste.

Whistleblower incentives are already available under our county, state and federal False Claims Acts. Those statutes allow private parties to bring lawsuits on behalf of the government for contractor fraud. These “relators” of government fraud get to share in a portion of any recovery by the government.

The Hawaii False Claims Act is one of the few state statutes in the U.S. that provides financial incentives for government employees. It is also one of the only statutes that provide incentives for reporting government tax fraud. But it shouldn’t take a lawsuit for government monies to be recovered where fraud, waste and abuse is present.

These incentives should be given without the necessity of hiring an attorney and filing a lawsuit.

Our state and our counties need to develop and implement an effective whistleblower hotline system that encourages the reporting of fraud and activities that result in stolen tax dollars. It should include the components of

education, confidentiality, protection, incentives and third-party administration.

Let's eliminate whistle-blower lawsuits by providing an effective means to uncover government fraud and waste and punish the wrongdoers.

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