

<b>SUBJECT: Deficit Reduction Act of 2005</b>	<b>DEPARTMENT: Corporate Compliance</b>
<b>APPROVED: Corporate Compliance Committee</b>	
<b>REVIEWED/REVISED: 5/2024, 6/2025, 4/2026</b>	
<b>Supersedes: 8-2016</b>	

## **Policy**

The Lutheran Care Network (TLCN) is committed to complying with the requirements of Section 6032 of the Deficit Reduction Act of 2005 (DRA) that requires entities that receive Medicaid funds more than five million annually to establish written policies providing detailed information about fraud, waste and abuse in federal health care programs. To promote compliance, TLCN developed a policy to inform all officers, employees, volunteers, and TLCN's vendors, contractors and agents ("Covered Persons") regarding (1) the Federal False Claims Act (FCA), the New York State False Claims Act (NYSFCA) and other applicable New York State civil and criminal laws regarding false claims and (2) protections for employees as whistleblowers under Federal and State Laws. All Covered Persons should be aware of the laws regarding fraud and abuse and false claims and report any issues immediately as outlined below.

## **Procedure**

1. It is expected that employees, officers, executives, and independent contractors (Covered Persons) will disclose to and seek guidance from a supervisor, manager or the TLCN Compliance Office if they believe any Covered Person or other person associated with or doing business with TLCN has previously engaged, is engaging, or may engage in any conduct that violates the FCA, the NYSFCA or any related law, rule, or regulation.
2. Covered Persons may report their concerns in writing, by phone 914-912-1853, by email to [bfinnegan@tlcn.org](mailto:bfinnegan@tlcn.org), or in person. Concerns may also be reported as follows:
  - a. Discuss the issue with a supervisor or your manager;
  - b. If your supervisor or manager is the subject of your concern, you may report it to Administration or the Human Resources Dept.;
  - c. If the subject of your concern is in either of the above Departments, you may report your concern directly to the Corporate Compliance Officer.
3. You may also raise any concerns you have anonymously via the Corporate Compliance Hotline. The Hotline can be accessed toll-free, 24 hours/7 days a week at 1-914-912-1853. Anonymous complaints should be detailed to the greatest extent possible because follow-up of anonymous complaints is difficult. Individuals reporting his/her own violation cannot utilize anonymous reporting to satisfy their obligation to report concerns. Those individuals should report their concern directly to the Compliance Officer.
4. Any Supervisor, Manager or other person that receives a concern should contact the Compliance Officer who will oversee additional follow-up.

5. Concerns will be managed in accordance with Compliance procedures. Compliance Office will review each concern to determine the extent of the investigation necessary. All investigations will be conducted in a confidential and sensitive manner, to the extent reasonably possible. Information will be disclosed on an as needed basis to facilitate review of the investigation material or as otherwise required by law. Covered Persons must cooperate as necessary in connection with any such investigation. In the event a concern involves or implicates the Compliance Officer, the Compliance Officer will promptly recuse herself from the investigation and inform the CEO in writing. The CEO may investigate or appoint impartial attorneys to investigate the concern.
6. Any employee who in good faith reports a suspected violation of the FCA or the NYSFCA or related laws, or who cooperates in an investigation of an alleged violation will not be punished or retaliated against for doing so.

The FCA and NYSFCA provide protection from retaliation to employees who engage in whistleblowing in good faith. Employees who are demoted, harassed, discharged or are discriminated against in any other manner in terms and conditions of employment because of lawful acts conducted in furtherance of an action under the FCA or NYSFCA will be entitled to all the relief necessary to make them whole. Relief may include, but is not limited to, reinstatement, back pay, plus interest and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

7. All concerns will be documented in the Compliance Log, including a summary of the concern; nature and specific allegations, individuals involved; date the concern was received; status of the investigation, including those responsible to investigate the concern; any factual findings; recommendations for corrective actions; and final resolution of the concern.
8. The Compliance Officer will report to the Board of Directors on the implementation of and compliance with this policy. Any member of the Board who is a whistleblower him/herself will recuse him/herself from deliberating on or addressing the concern. However, the individual may present information as background or answer questions of the Board prior to any Committee deliberations or voting relating thereto.
9. This policy will be distributed to all Covered Persons who provide substantial services to TLCN and its vendors, contractors and agents. Distribution may be in person, or by posting it in a conspicuous location accessible to employees, or by posting it on the TLCN website.

A Description of applicable Federal and State laws governing fraud, waste, and abuse, and employee whistleblower protections for reporting any of those is attached to this policy.

## **I. FEDERAL FALSE CLAIMS ACT (31 U.S.C. ss 3729 et. seq.)**

The False Claims Act (“FCA”) is a federal statute that imposes civil liability for fraud on any person who knowingly presents, or causes the submission of, a false or fraudulent claim for claim for payment or approval to the Medicare or Medicaid programs.

Examples of claim submissions for payment or approval that could lead to FCA liability include:

- Filing a claim for service not rendered;
- Filing a claim for services that are not medically necessary;
- Submitting a claim containing known false information, and
- Billing for inadequate or substandard care.

Under the whistleblower provisions of the FCA, a private person (otherwise known as a relator or whistleblower) may bring a civil action in the name of the United States to help the government recover amounts fraudulently obtained by a health care provider. Whistleblowers whose lawsuits are successful may be eligible for a percentage of the monetary amount recovered by the government.

For 2026, health care providers who are found to have violated the FCA may pay a minimum civil penalty of not less than \$14,308 per claim, and not more than \$28,619 per claim, plus up to three times the amount of damages which the government has sustained as a result of the fraudulent claim.

### **Administrative Remedies for Federal False Claims (31 U.S.C. ss 3801-3812)**

Civil monetary penalties may be imposed against any person who, among other things, presents or causes to be presented a claim to a Federal health care program that person knows or has reason to know is false, fictitious, or fraudulent, or that contains an omission of material fact.

## **II. NEW YORK STATE FALSE CLAIMS ACT (New York State Finance Law ss 187-194)**

The New York State False Claims Act (“NYSFCA”) which closely tracks the FCA, establishes civil liability for any person who knowingly presents, or causes to be presented, a false or fraudulent claim for payment by any State or local government, including health care programs such as Medicaid. Under the whistleblower provisions of the NYSFCA, a private person (otherwise known as a relator or whistleblower) may bring a civil action in the name of the State of New York to help the government recover amounts fraudulently obtained by a health care provider. Whistleblowers whose lawsuits are successful may be eligible for a percentage of the monetary amount recovered by the government.

Examples of claim submissions for payment or approval that could lead to NYSFCA liability include:

- Filing a claim for service not rendered;
- Filing a claim for services not medically necessary;
- Submitting a claim containing known false information, and
- Billing for inadequate or substandard care.

Like the FCA, the NYSFCA establishes a right of action and civil recovery for whistleblowers. A relator may bring an action on behalf of the State or local government for alleged violations of the NYSFCA by filing a complaint with the New Yorks State Supreme Court which remains under seal for at least 60 days.

Health care providers who are found to have violated the NYSFCA may pay a civil penalty of not less than \$6000 and no more than \$12,000 per claim, plus treble damages.

### **III. STATE CIVIL AND ADMINISTRATIVE LAWS**

#### *False Statements (N.Y. Soc. Serv. Law ss 145-b)*

It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any social service program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device.

#### *Sanctions (N.Y. Soc. Serv. Law ss 145-c)*

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the individual's needs shall not be taken into account for a period of time when determining his or her needs, or that of his or her family, for public assistance.

#### *Provider Sanctions (18 N.Y.C.R.R. ss 515.1, et seq.)*

18 N.Y.C.R.R. ss 515.1 through 515.10 of the Department of Social Services regulations provide that a person who engages in fraudulent conduct such as the making of false claims or false statement in claiming a medical assistance payment may be subject to sanctions, including exclusion from participation in the Medicaid program "for a reasonable time." These regulations also provide sanctions for, among other things, failure to disclose; conversion, bribes and kickbacks; unacceptable record-keeping; employment of sanctioned person; excessive services; failure to meet recognized standards, factoring; denial of services; and solicitation of clients.

### **IV. STATE CRIMINAL LAWS REGARDING FALSE CLAIMS AND RETALIATION**

The following statutes have been applied to Medicaid fraud cases:

#### *Penalties (N.Y. Soc. Serv. Law ss145)*

Any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, may be charged with a misdemeanor.

#### *Penalties for Fraudulent Practices (N.Y. Soc. Ser. Law ss 366-b)*

Any person who obtains or attempts to obtain, for himself or others, medical assistance by means of a false statement, concealment of material facts or other fraudulent means, or who knowingly submits false information to obtain greater Medicaid compensations, may be charged with a Class A misdemeanor.

*Larceny Code (N.Y. Penal Law ss 155)*

Any person who, with the intent to deprive another of his property, obtains, takes, or withholds the property by means of trick, embezzlement, or scheme to defraud may be charged with the crime of larceny.

*False Written Statements (N.Y. Penal Law ss 175-177)*

Depending on the facts filing false information as either business records or in regard to claims for health insurance payment, including Medicaid, may be chargeable either as a misdemeanor or a felony punishable by fines and/or imprisonment.

## **V. WHISTLEBLOWER PROTECTIONS**

*Federal False Claims Act (31 U.S.C. ss3730(h))*

The FCA provides for protection for a relator from retaliation. An employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against because of lawful acts conducted in furtherance of an action under the FCA may bring an action in Federal court. Remedies include reinstatement, double back pay, plus interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

*N.Y. False Claims Act. (N.Y. Finance Law ss 191)*

The State False Claims Act also provides protection for a relator from retaliation. Any employee, contractor or agent who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts conducted in furtherance of an action under the NYSFCA may bring an action in court. Remedies include reinstatement, double back pay, plus interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

*Retaliatory Personnel Actions (N.Y. Labor Law ss 740, 741)*

Employees subject to retaliatory personnel actions by employers for disclosing information about an employer's policies or activities to a supervisor, regulatory agency, law enforcement agency or other similar agency may bring an action in court for relief seeking reinstatement, back pay, and litigation costs including attorneys' fees. Protected disclosures are those that assert (i) the employer is in violation of a law and the violation creates a substantial and specific danger to the public health or safety, or (ii) the employer is engaged in an activity which constitutes health care fraud under Penal Law ss177, or (iii) the employee in good faith believes the health care employer's policies, practices or activities constitute "improper quality of patient care" (which relates to matters which may present a substantial and specific danger to the public health or safety or a significant threat to the health of a specific patient). The protection against retaliation shall not apply unless the employee first brought the improper quality of patient care matter to a supervisor's attention and gave the employer a reasonable opportunity to correct the alleged violation, unless there is imminent threat to public health or safety or to the health of a specific patient and the employee reasonable believes in good faith that reporting to a supervisor would not result in corrective action.

## **VI. FURTHER GUIDANCE**

For a more detailed discussion of these laws, a summary that has been prepared by the Office of the Medicaid Inspector General may be found at:

[http://www.omig.state.ny.us/data/images/stories//relevant\\_fca\\_statutes\\_7307.pdf](http://www.omig.state.ny.us/data/images/stories//relevant_fca_statutes_7307.pdf)