

The Lutheran Care Network

Policy and Procedure: Compliance with Deficit Reduction Act of 2005

The Lutheran Care Network (TLCN) is committed to conducting business with integrity and in compliance with applicable federal and state laws and regulations. For this reason, we have an extensive Compliance Program in place to be followed by all employees and persons or entities with which we have contractual agreements.

As a healthcare provider participating in the Medicaid Program, we are obligated to comply with the terms and requirements of the Deficit Reduction Act of 2005 (DRA). In accordance with the DRA, we have adopted written policies for all employees that provide detailed information about the Federal and New York State False Claims Acts, the Program Fraud Civil Remedies Act, other relevant state laws, the whistleblower protections under such laws and TLCN's policies for detecting and preventing fraud, waste and abuse.

The DRA also requires that we provide this information to all contractors and agents for your adoption. Accordingly, we are attaching a summary of applicable DRA Federal and State Statutes and are providing you with information on TLCN's Compliance Program.

As one of our partners, TLCN strongly encourages you to report any concerns to the Compliance Department at 914-365-6365. TLCN has also established a Compliance Hotline as a mechanism for reporting confidentially and anonymously activities that may involve ethical violations or criminal conduct: **877-395-4966**. Retaliation or retribution for reporting issues "in good faith" is prohibited at TLCN.

TLCN has a no tolerance policy for employees, agents, or vendors (Covered Persons) who are involved in any unlawful activity. To that end, we expect that you share our goals of eliminating fraud and abuse and that you will comply with your obligations under the DRA.

If you have any questions or require additional information, please contact the Compliance Department at 914-365-6365 or send your concerns to:

**The Lutheran Care Network
Attention: Compliance Officer
700 White Plains Road, Suite 377
Scarsdale, NY 10801**

Purpose

The Lutheran Care Network (TLCN) is committed to complying with the requirements of Section 6032 of the Federal Deficit Reduction Act (DRA) and to detecting and preventing fraud, waste or abuse.

Policy

The Lutheran Care Network prohibits the knowing submission of a false claim for payment from a Federal or State funded health care program. This policy provides information regarding Federal and State statutes pertaining to false claims and statements, whistleblower protections under these laws and TLCN's policies and procedures for detecting and preventing fraud, waste and abuse.

A. Federal and State Statutes and Whistleblower Protections—detailed information regarding these laws is outlined in the attachment to this policy.

B. TLCN's Policies and Procedures—TLCN maintains a comprehensive Compliance Program which sets forth its compliance policies and procedures for detecting and preventing fraud, waste and abuse. Information regarding TLCN's Compliance Program is provided to employees and is available from the Compliance Office.

C. Education—TLCN strives to educate its staff on fraud and abuse laws, including the importance of submitting accurate claims and reports to the Federal and State governments, as well as complying with all components of TLCN's Compliance Program. This policy applies to TLCN employees, physicians and contractors, subcontractors or agents that, on behalf of TLCN, furnish or authorize the furnishing of health care items or services, perform billing or coding functions, or that monitor the health care provided by TLCN.

Procedures

Dissemination of Information to Employees:

DRA Training—Staff will be required to attend Compliance training, including a specific discussion of Federal and State fraud and abuse laws, as well as whistleblower protections and TLCN's policies and procedures for detecting and preventing fraud, waste and abuse. The Policy will be distributed during training, and/ or posted in locations accessible to our TLCN employees. Staff will sign a completion certification at the end of the training.

Compliance Program Information—The Employee Compliance Manual will be provided to current TLCN employees, as well as to new employees at Orientation.

Dissemination of Information to Vendors and Contractors—TLCN will disseminate DRA information and applicable law to its contractors and will require adoption of same. "Contractors" include contractors, subcontractors, agents and vendors that furnish or authorize the furnishing of health care items or services, perform billing or coding functions, or that monitor the health care provided by TLCN. The policy will be posted on the TLCN website.

Revisions of DRA Information—TLCN will revise the policy, Compliance with Deficit Reduction Act of 2005 as necessary to comply with Federal and State regulatory changes and guidance.

Reporting of Potential Fraud, Waste or Abuse—Any employee that reasonably suspects or is aware of the preparation or submission of a false claim or report or any other potential fraud, waste or abuse related to a federal or state funded health care program is required to report such information.

A. Reporting Process

- Covered Persons have a duty to disclose to and seek guidance from an appropriate supervisor, manager, or TLCN's Compliance Officer, if they believe any Covered Person or other person associated or doing business with TLCN has engaged, is engaging, or may engage in any conduct that violates the FCA, the NYSFCA, and any related law, rule, or regulation.
- An employee that suspects a violation should report concerns to their Supervisor or Manager; or
- The employee should report the concern to:
 1. **TLCN Corporate Compliance Hotline—877-395-4966**
 2. **TLCN Compliance Officer—914-365-6365**
- Failure to report and disclose or assist in an investigation of fraud, waste or abuse is a violation of the compliance program and may result in disciplinary action.
- Concerns may also be reported in person, in writing, by telephone to **914-914-365-6365**, or by email to jkurtz@tlcn.org.

B. Non-Retaliation—any employee of TLCN that reports information regarding potential fraud, waste or abuse in good faith may do so anonymously and will be protected against retaliation for reporting the information under Federal and State law, as well as TLCN policies.

C. Investigations—TLCN will promptly investigate any reports of potential or actual fraud, waste or abuse and will initiate appropriate action to correct the situation and against the employee that committed the violation.

Responsibilities—The Compliance Officer is responsible for administering TLCN's Compliance Program. It is the responsibility of all TLCN employees to comply with the Compliance Program and related policies and to report any violations or potential violations of fraud, waste or abuse.

The following is a SUMMARY OF FEDERAL AND STATE LAWS RELATING TO FILING FALSE CLAIMS

1. FEDERAL FALSE CLAIMS ACT (31 U.S.C. § 3729 et seq.)

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

Some examples that could lead to FCA liability include:

- Billing for services never performed or items never furnished;
- Falsifying records;
- Filing a claim for medically unnecessary services;
- Billing for inadequate or substandard care
- Using inaccurate information which results in filing a false cost report

Under the whistleblower provisions of the FCA, a private person, also known as a qui tam relator or whistleblower, may bring a civil action on behalf 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 15-30% percent of the amount recovered by the government.

Effective in February, 2017, health care providers who are found to have violated the FCA may pay a minimum civil penalty of not less than \$10,957 and not more than \$21,916 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. § 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 a person knows or has reason to know is false, fictitious, or fraudulent, or that contains an omission of material fact.

2. NEW YORK STATE FALSE CLAIMS ACT (State Finance Law §§ 187-194)

The New York State False Claims Act closely tracks the FCA. It imposes fines on individuals and entities that knowingly present, or cause to be presented, false or fraudulent claims for payment by any State or local government, including health care programs such as Medicaid. Under the whistleblower provisions of the NYS False Claims Act, a private person, also known as a qui tam 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 NYS False Claims Act liability include:

- Billing for services never performed or items never furnished;
- Filing a claim for medically unnecessary services;
- Submitting a claim that contains known false information; and
- Billing for inadequate or substandard care.

Similar to the FCA, the NYS False Claims Act 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 NYS False Claims Act by filing a complaint with the New York State Supreme Court, which remains under seal for at least 60 days.

Health care providers who are found to have violated the NYS False Claims Act may pay a civil penalty of not less than \$6,000 and no more than \$12,000 per claim, plus treble damages.

3. STATE CIVIL AND ADMINISTRATIVE LAWS False Statements

N.Y. Soc. Serv. Law § 145-b, False Statements

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

N.Y. Soc. Serv. Law § 145-c, Sanctions

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 person and the person's family needs are not taken into account for a period of time from 6 months to 5 years, depending on the number of offenses.

18 N.Y.C.R.R. §§ 515.1, et seq., Provider Sanctions

18 N.Y.C.R.R. §§ 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 statements 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 persons; excessive services; failure to meet recognized standards; factoring; denial of services; and solicitation of clients.

4. STATE CRIMINAL LAWS REGARDING FALSE CLAIMS AND RETALIATION

The following statutes have been applied to Medicaid fraud cases.

N.Y. Soc. Serv. Law § 145, Penalties

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.

The law also empowers the New York State Department of Health to impose a monetary penalty on any person who, among other actions, causes Medicaid payments to be made if the person knew or had reason to know that:

?

- the payment involved care, services, or supplies that were medically improper, unnecessary, or excessive;
- the care, services or supplies were not provided as claimed;
- the person who ordered or prescribed the improper, unnecessary, or excessive care, services, or supplies was suspended or excluded from the Medicaid program at the time the care, services, or supplies were furnished; or
- the services or supplies were not, in fact, provided.

Soc. Serv. Law § 366-b, Penalties for Fraudulent Practices

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 compensation, may be charged with a Class A misdemeanor.

N.Y. Penal Law § 155, Larceny

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

N.Y. Penal Law §§ 175-177 False Written Statements

Depending on the action and intent, 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

31 U.S.C. § 3730(h), Federal False Claims Act

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. Finance Law § 191, N.Y. False Claims Act

The New York State False Claims Act also affords 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.

N.Y. Labor Law §§ 740, 741 Retaliatory Personnel Actions

New York law affords protections to employees who may notice and report inappropriate activities. 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 § 177, 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 employee's disclosure is protected under this law only if 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 reasonably believes in good faith that reporting to a supervisor would not result in corrective action.