

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.

Section 6032 of the Federal Deficit Reduction Act of 2005 (DRA) requires entities making or receiving annual Medicaid payments of \$5 million or more to adopt written policies for all employees that provide detailed information about the Federal False Claims Act, relevant states laws (e.g. the New York False Claims Act and the Program Fraud Civil Remedies Act) and whistleblower protection under such laws, and policies for detecting and preventing fraud, waste and abuse. The DRA also directs covered entities to distribute such information to employees, contractors, and agents.

TLCN is committed to complying with applicable requirements of the DRA. TLCN maintains a robust compliance program and seeks to educate its employees and business partners about the fraud and abuse laws. TLCN expects its employees and contractors to take compliance seriously. TLCN has a no tolerance policy for employee or contractors who are involved in any unlawful activity. TLCN expects that you, as our business partner, share our goals of eliminating fraud and abuse.

To assist TLCN in meeting its legal and ethical obligations, any employee who 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 federally or state funded health care program is required to report such information. Any compliance concerns should be reported to TLCN's Compliance Department at 914-365-6365. If you prefer to report anonymously, TLCN has also established an anonymous and confidential compliance hotline: 877-3954966. TLCN strictly prohibits retaliation or retribution for reporting concerns in good faith.

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  
Scarsdale, NY 10801**

## **Purpose**

TLCN is committed to providing services lawfully and ethically. Accordingly, TLCN has developed a comprehensive compliance program and policies and procedures to ensure compliance with relevant laws. To comply with Section 6032 of the DRA, entities such as TLCN complying with the requirements of Section 6032 of the Federal Deficit Reduction Act (DRA) and to detecting and preventing fraud, waste or abuse.

## **Policy**

TLCN prohibits the knowing submission of a false claim for payment from a federal or state funded health care program. To assist TLCN in meeting its legal and ethical obligations, any employee who 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 federally or state funded health care program is required to report such information to the Compliance Department. Any employee who reports such information will have the right and opportunity to do so anonymously and will be protected against retaliation and intimidation for coming forward with such information both under TLCN's internal compliance policies and procedures and federal and state law. Nonetheless, TLCN retains the right to take appropriate action against an employee who has participated in a violation of federal or state law or our policies, or who intentionally makes a false claim. Failure to report and disclose or assist in an investigation of fraud and abuse is grounds for disciplinary action.

TLCN is committed to investigating any suspicions or reports of fraud, waste, or abuse. Such an investigation may include (but are not limited to) interviewing employees or third parties, collaborating with an internal oversight authority (e.g. general counsel), contracting with an external authority, and providing feedback to the reporting source.

In addition to steps taken as part of an investigation, TLCN is committed to preventing fraud, waste, and abuse through 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 and complying with all components of TLCN's Compliance Program. In furtherance of this policy, TLCN has appended information about its policies and certain relevant federal and state laws to this policy.

## **Procedures**

**Dissemination of Information Generally:** This policy will be posted on the TLCN website.

### **Dissemination of Information to Employees:**

**DRA Training**—Staff will be required to attend compliance training. This training includes a specific discussion of federal and state fraud and abuse laws, whistleblower protections, and TLCN's policies and procedures for detecting and preventing fraud, waste and abuse. Relevant policies will be distributed during training, and/or posted in locations accessible to 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, and to new employees at orientation.

**Dissemination of Information to Contractors**—TLCN will disseminate this policy to its contractors by directing contractors to the TLCN website. For purposes of this policy, "Contractors" means 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.

**Revisions of DRA Information**—TLCN may revise this policy from time to time. TLCN will also revise this policy as needed to comply with federal and state regulatory changes and guidance.

**Reporting of Potential Fraud, Waste or Abuse**—Any employee or Contractor 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**

- Employees and Contractors have a duty to disclose to and seek guidance from an appropriate supervisor, manager, or TLCN’s Compliance Officer, if they believe any employee, Contractor, or other person associated or doing business with TLCN has engaged, is engaging, or may engage in any conduct that violates any federal or state law related to healthcare fraud, waste or abuse (including those with descriptions appended to this policy.).
- An employee that suspects a violation should report concerns to their supervisor or manager; or to one of the following hotlines:
  1. **TLCN Anonymous Compliance Hotline—877-395-4966, or**
  2. **TLCN’s Compliance Officer—914-365-6365**
- Concerns may also be reported in person, in writing, by telephone to **914-365-6365**, or by email to [jkurtz@tlcn.org](mailto: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.

**D. Failure to Report**—Failure to report and disclose or assist in an investigation of fraud, waste or abuse is a violation of the compliance program and this policy and may result in disciplinary action.

**Responsibilities**—The Compliance Officer is responsible for administering TLCN’s Compliance Program, including this policy. 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.

## **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. Additionally, the FCA establishes liability for any person who knowingly makes, uses, or causes to be made or used, a false statement to get a false or fraudulent claim paid by the federal government and conspiring to defraud the federal government by getting a false or fraudulent claim allowed or paid.

A person may act “knowingly” by having actual knowledge, deliberately ignoring the truth or falsity of the information, or acting in reckless disregard of the truth or falsity of the information. In other words, an individual does not have to specifically intend to defraud the government to act “knowingly.”

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, and
- 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.

### **2. PROGRAM FRAUD CIVIL REMEDIES ACT (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.

### **3. 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.

#### **4. NEW YORK SOCIAL SERVICES LAW**

Under New York Social Services Law § 145-b, 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. The law also empowers the New York State Department of Health to impose monetary penalties on a person who causes Medicaid payments to be made if the person knew that the services were improper, unnecessary or excessive, the provider was suspended or excluded from the Medicaid program, or the care, services or supplies were not provided or not provided as claimed, among other things.

Under New York Social Services Law § 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 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 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 for 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.

#### **5. NEW YORK 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:

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.