



## **Corporate Policy: MEDICAID FRAUD & WHISTLEBLOWER PROTECTIONS**

**Policy Category:** Legal Policies

**Policy Owner:** Chief Legal Officer

**Subject:** Medicaid Fraud & Whistleblower Protections policy

**Effective Date:** 5/6/2019

**Last Review Date:** 5/14/2019

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### **MEDICAL FRAUD & WHISTLEBLOWER PROTECTIONS**

#### **I. SCOPE:**

This policy applies to all employees and contractors of Bethesda Lutheran Communities.

#### **II. POLICY STATEMENT AND PURPOSE:**

Bethesda Lutheran Communities (“BLC”) will provide Medicaid-funded services and make claims for payment for such services in accordance with applicable Federal and State law. All employees and contractors of BLC are obligated to provide Medicaid services in accordance with all State and Federal law governing the Medicaid program, and to act with honesty and integrity as an organization respecting Medicaid. Any person who believes that BLC has acted contrary to Federal or State law regarding Medicaid-funded services (or any other government-funded services) is encouraged to immediately report any concerns. BLC prohibits retaliation of any kind against persons for making a report or complaint of a concern related to Medicaid or other government-funded services or a claim for payment for such services.

#### **III. POLICY:**

BLC provides and bills for care and services to beneficiaries of state and federal healthcare benefit programs, most significantly Medicaid-funded programs that provide supports for persons with intellectual and developmental disabilities. It is essential that all billing claims are complete and accurate. BLC and several state and

federal healthcare benefit programs provide protections for individuals who report known or suspected fictitious or fraudulent claims.

### **A. Federal False Claims Act**

The Federal False Claims Act (FCA) was enacted during the Civil War to fight fraud in supplying goods to the Union Army. The law has undergone many changes and now applies to any federally funded contract or program, other than tax fraud, including Medicaid and Medicare. The FCA imposes liability on any person or entity who: 1) knowingly files a false or fraudulent claim for payment to Medicaid, Medicare or any other federally funded health care program; 2) knowingly uses a false record or statement to obtain payment on a false or fraudulent claim from Medicaid, Medicare or any other federally funded health care program; 3) conspires to defraud Medicaid, Medicare or any other federally funded health care program by attempting to have a false or fraudulent claim paid; or 4) knowingly uses (or causes to be used) a false record or statement to conceal, avoid, or decrease an obligation to pay money or transmit property to the Federal Government. "Knowingly" means: 1) having actual knowledge that the information on the claim is false; 2) acting in deliberate ignorance of whether the claim is true or false; or 3) acting in reckless disregard of whether the claim is true or false. In the case of healthcare services, a false claim may include overbilling for a product or service, delivering less than the promised type of goods or services, underpaying money owed to the government and charging for services not provided. The FCA imposes civil penalties but is not a criminal statute. Therefore, no proof of specific intent as required for violation of a criminal statute is necessary. Fines between \$5,500 and \$11,000 plus three times the amount of damages sustained by the government for each false claim may be applied. The amount of damages in healthcare would be the amount paid for each false claim filed.

### **B. Qui Tam Whistleblower Provisions**

Anyone may bring an action under this law in federal court. The case is initiated by causing a copy of the complaint and all available relevant evidence to be served on the federal government. Any case must be brought within six years of the filing of the false claim. The case will remain sealed for at least 60 days and will not be served on the defendant so the government can investigate the complaint. The government may obtain additional time for good cause. The government may also initiate its own investigation under the FCA. After the 60 day investigation period, plus any extension periods, the government will either choose to join the complaint or decline to proceed. If the government declines to proceed, the person bringing the complaint has the right to conduct the action on their own in federal court. If the government proceeds with the case, the qui tam relator bringing the action will receive between 15 and 25 percent of any proceeds, depending upon the contributions of the individual to the success of the case. If the government declines to pursue the case, the qui tam relator will be entitled to between 25 and 30 percent of the proceeds of the case, plus reasonable expenses and attorney's fees and costs awarded against the

defendant. Note that many of the state false claims act laws contain similar whistleblower provisions. See the BLC network policies resource for state-specific laws.

### **C. Non-Retribution and No Retaliation**

Anyone initiating a qui tam case may not be discriminated or retaliated against in any manner by their employer. An employee is authorized under the FCA to initiate court proceedings to make themselves whole from any job related losses resulting from any such discrimination or retaliation. The organization's Confidential Disclosure Program and state and federal whistleblower statutes and protections for individuals encourage reporting of fraud, waste and abuse in good faith.

### **D. Program Fraud Civil Remedies Act**

The Program Fraud Civil Remedies Act (PFCRA) creates administrative remedies for making false claims separate from and in addition to, the judicial or court remedy for false claims provided by the False Claims Act. The PFCRA is quite similar to the FCA but is somewhat broader and more detailed, with differing penalties. The PFCRA deals with submission of improper claims or written statements to a federal agency. A violation of the PFCRA has occurred when an individual knows or should have known that a submitted claim is (i) false, fictitious or fraudulent, or (ii) includes or is supported by written statements that are false, fictitious or fraudulent, or (iii) includes or is supported by a written statement that omits a material fact; the statement is false, fictitious or fraudulent as a result of the omission; and the person submitting the statement has a duty to include the omitted facts, or (iv) for payment of property or services not provided as claimed. A violation of the PFCRA carries a \$5,000 civil penalty for each such wrongfully filed claim. In addition, an assessment of two times the amount of the claim can be made, unless the claim has not actually been paid. A person also violates the PFCRA if they submit a written statement they know or should know (i) asserts a material fact which is false, fictitious or fraudulent, or (ii) omits a material fact and is false, fictitious or fraudulent as a result of an omission. In this situation, there must be a duty to include the fact and the statement submitted contains a certification of the accuracy or truthfulness of the statement. A violation of the prohibition for submitting an improper statement carries a civil penalty of up to \$5,000.

### **E. State False Claims Acts**

Many states have laws similar to the Federal False Claims Act and the Program Fraud Civil Remedies Act. These laws provide federal and state funded healthcare beneficiary programs with a method to control fraud, waste and abuse by giving appropriate government agencies the authority to seek out, investigate and prosecute violations. Enforcement activities are pursued in three ways: criminal, civil and administrative. Individuals may learn about specific state False Claims Act statutes,

as well as other remedies, and whistleblower protections by checking in the BLC network policies resource.

#### **F. Organizational Efforts to Prevent and Detect Fraud, Waste and Abuse**

BLC provides general and specific compliance training and has procedures in place to prevent and detect fraud, waste and abuse. An individual who becomes aware of or suspects any type of fraud, waste or abuse may report this information BLC's internal anonymous whistleblower system by calling 1-855-350-9397 or by web report at <https://secure.ethicspoint.com/domain/media/en/gui/27074/index.html>.

Alternatively, you may write the Corporate Compliance and Privacy Officer at Bethesda Lutheran Communities, Inc., 600 Hoffmann Dr., Watertown, WI 53094. All reporters may remain anonymous. Anonymous calls and communications will be investigated and acted upon in the same manner as calls where the caller or writer identifies his/her identity. Efforts will not be made to determine the identity of an individual making an anonymous report unless the individual admits to engaging in improper conduct. Individuals are encouraged to describe the conduct or incident in sufficient detail to enable the organization to investigate the matter.

#### **G. Investigation of Reports**

Investigation of reported known or suspected violations will be prompt, appropriate and confidential. The findings of the investigation and recommended corrective and/or disciplinary actions will be coordinated by the Corporate Compliance and Privacy Officer or designee.

#### **H. Corrective Action**

Once a reported violation is substantiated through an investigation, corrective action will be initiated. When appropriate, the affiliated facility will return any overpayment amounts, notifying the correct governmental agency of the overpayment situation. Corrective action will be taken promptly to prevent similar occurrences.

### **IV. ADDENDUMS:**

State	Addendums and Resources
California	N/A
Colorado	N/A
Illinois	N/A
Indiana	N/A

Kansas	N/A
Michigan	N/A
Minnesota	N/A
Missouri	N/A
New Jersey	N/A
Oregon	N/A
Texas	N/A
Washington	N/A
Wisconsin	N/A

**V. SIGNATURE, TITLE AND DATE OF APPROVAL**

This policy must be electronically signed by the person listed below before it is considered approved.

Approved:



Chief Legal Officer

Date Approved: 5/15/19

**VI. REVISION HISTORY**

This section includes dates of past reviews and revisions.

2/10/2011: Previous policy effective date