

Illinois

This is a supplement to The Evangelical Lutheran Good Samaritan Society's ("The Society") Employee Handbook for employees who work in Illinois. As stated in our Employee Handbook, the federal False Claims Act and similar state laws assist the federal and state governments in combating fraud and recovering losses resulting from fraud in government programs, purchases and/or contracts. These laws are some of the most important laws that govern our business. Like the federal False Claims Act, the Illinois Whistleblower Reward and Protection Act ("WRPA"), the Illinois Public Assistance Fraud law, and other Illinois laws impose liability on persons or companies that make or cause to be made false or fraudulent claims to the government for payment or who knowingly make, use or cause to be made or used, a false record or statement to get a false or fraudulent claim paid by the government. These Illinois laws apply to Medicaid reimbursement and prohibit, among other things:

- Billing Illinois' Medicaid program for services not rendered
- Submitting a false claim to Illinois' Medicaid program for payment
- Conspiring to make a false claim or get one paid
- Making or using a false record or statement to obtain payments or to avoid payments owed to the State
- Participating in kickbacks

Civil and Criminal Penalties for False Claims or Statements

A violation of these Illinois laws may result in civil penalties of \$5,000 to \$10,000 per claim, plus three times the amount of damages sustained by the state government. In addition, a person who violates the Illinois Public Assistance Fraud law, commits a crime punishable by imprisonment up to 15 years.

Civil Lawsuits

Like the federal False Claims Act, Illinois law also allows civil lawsuits to be filed by the state government or by private citizens, including employees. If the private citizen (also called a *qui tam* plaintiff) is successful in the lawsuit, he/she may share a percentage of any monetary recovery and receive an award for reasonable attorney's fees and costs. However, if the state chooses not to litigate a case, and the private citizen litigates and loses, then the court may award the defendant its reasonable attorney fees and costs against the private citizen.

No Retaliation

Like federal law and Society policy, various Illinois laws, including the WRPA prohibit employers from retaliating, discriminating or harassing employees because of their lawful participation in a false claims disclosure or their refusal to assist employers in violating laws such as the WRPA. These laws also provide for certain monetary awards and

equitable relief to the prevailing plaintiff including compensation for lost wages and reinstatement to a former position.

Any employee who engages in or condones any form of retaliation against another employee because that employee either (1) reported a potential violation of The Society's Code of Ethics or regulatory violation, or (2) refused to violate The Society's Code of Ethics or a government law or regulation, will be subject to disciplinary action up to and including separation of employment. For additional guidance, please see the "Fair Treatment Policy" section of the Employee Handbook and section IV "Reporting Compliance Concerns" of The Society's Compliance Program Handbook.

Copies of Illinois Laws

The Illinois laws summarized above include: (1) The Illinois Whistleblower Reward and Protection Act, 740 Ill. Comp. Stat. §§ 175/1-175/8; and (2) The Illinois Public Assistance Fraud Statute, 305 Ill. Comp. Stat. § 5/8A 1-17. If you have questions about any of these requirements, you may contact The Society's Compliance Solutions Hotline at 1-800-631-6142. This summary and others are also posted on The Society's external web site, www.good-sam.com, then click on the "Links" tab and then click on the "Fraud and Abuse Prevention" tab.

The Illinois Whistleblower Reward and Protection Act

Executive Summary

The Illinois Whistleblower Reward and Protect Act ("WRPA") applies to fraud involving State government, local government, and public educational institution funds. 740 Ill. Comp. Stat. 175/1-175/8.

Liability and Damages/Statute of Limitations

- Actions that violate the WRPA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the State.
- Penalties of \$5,000 to \$10,000 per claim plus three times the amount of damages to the state government for WRPA violations may be imposed.
- Lawsuits must be filed within the latter of either: (1) three years after the violation is discovered by the State official responsible for investigating violations (but no more than ten years after the violation was committed), or (2) six years after the violation was committed.

Qui Tam Actions/Whistle lower Provisions

- An individual (or *qui tam* plaintiff) can sue for violations of the WRPA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the State prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The WRPA contains important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had but for the discrimination, and (3) compensation for any costs or damages incurred.

Summary of Key Provisions

False Claims Liability 175/3

False Claims 175/3(a)

The following actions constitute WRPA violations:

- Knowingly submitting (or causing to be submitted) a false claim to the State or the Illinois National Guard for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved by the State;
- Conspiring to get a false claim allowed or paid by the State;
- Delivering (or causing to be delivered) less property than the amount of the receipt, where the person with possession or control of the State money or property intends to deceive the agency or conceal the property;
- Making or delivering a receipt without completely knowing that the receipt is true, where the person authorized to make or deliver the receipt intends to defraud the State;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from an officer or employee of the State or a member of the Illinois National Guard who has no legal right to sell or pledge the property; or
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to the State.

A person will be liable to the State for:

- A civil penalty of \$5,000 to \$10,000 for each false claim; plus
- Three times the amount of damages that the State sustains because of the violations; and
- The costs of a civil suit to recover penalties or damages.

Exclusion 175/3(d)

The WRPA does not apply to claims, records, or statements made under the Illinois Income Tax Act.

Definitions 175/2-175/3

State 175/2(a)

"State" means the State of Illinois, *any* agency of State government, plus any of the following entities that elect to adopt the WRPA by ordinance or resolution: the system of State colleges and universities, any school district, any public community college district, any municipality, municipal corporations, units of local government, or *any* combination of the above under an intergovernmental agreement that includes provisions for a governing body.

Knowing and Knowingly 175/3(b)

"Knowing" and "Knowingly" means the person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information

Proof of specific intent to defraud is required.

Claim 175/3(c)

"Claim" includes *any* request or demand for money or property made to the State (including those made under contract) or to a contractor, grantee, or other recipient, if any portion of the money or property requested is funded by or will be reimbursed by the State.

Civil Actions for False Claims 175/4

Responsibilities of the Attorney General and the Department of State Police 175/4(a) The WRPA authorizes the Attorney General and the Department of State Police to investigate false claim violations that relate to State government agencies. The Attorney General has the authority to file a civil suit for false claims violations.

Actions by Private Persons or *Qui Tam* Plaintiffs 175/4(b)-175/4(c)

An individual also has the right to bring a civil suit for WRPA violations for him or herself and for the State. The suit must be filed in the name of the State. The action may be dismissed only if the court and the Attorney General consent to the dismissal in writing. 175/4(b)(1).

If a *qui tam* plaintiff alleges false claims violations, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the State. 175/4(b)(2). Once the action is filed, only the State is allowed to intervene or file a lawsuit based on the same facts. 175/4(b)(5).

If the State decides to file a civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has a right to continue as a party to the action, subject to certain limitations. 175/4(c)(1).

If the State chooses not to file a civil suit, the *qui tam* plaintiff still has a right to proceed with the action. The State can intervene later upon a showing of good cause. 175/4(c)(3).

Award to *Qui tam* Plaintiff 175/4(d)

If the State prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 25 percent of the recovery, depending on his or her contribution to the case. If the case is primarily based on disclosures other than those of the *qui tam* plaintiff, the courts cannot award him or her more than 10 percent of the recovery. 175/4(d)(1).

If the State chooses not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive between 25 and 30 percent of the award or settlement. In either case, the court will award the *qui tam* plaintiff reasonable expenses and attorney's fees. 175/4(d)(2).

If the court finds that the *qui tam* plaintiff planned and initiated the violation upon which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive. If the *qui tam* plaintiff is convicted of criminal conduct, he or she will be dismissed from the lawsuit and will not receive any monetary award. 175/4(d)(3).

If the court finds the defendant not guilty and the claim frivolous in a suit conducted by a *qui tam* plaintiff, the court may award the defendant reasonable costs and attorney fees. 175/4(d)(4).

Certain Actions Barred 175/4(e)

A legal action cannot be brought against a member of the General Assembly, a member of the judiciary, or an exempt official based on evidence already known to the State. 175/4(e)(2).

An individual cannot bring a *qui tam* action based on allegations in a civil suit or an administrative proceeding in which the State is already a party. 175/4(e)(3).

An individual cannot bring a *qui tam* action based on the public disclosure of allegations unless he or she is the original source of the information, e.g. an individual with direct and independent knowledge of the information on which the allegations are based who has voluntarily provided the information to the State before filing a civil action. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in a legislative, administrative, or Auditor General's report, hearing, audit, or investigation; or from the news media. 175/4(e)(4).

State Not Liable for Certain Expenses 175/4(1)

The State is not liable for expenses incurred by a *qui tam* plaintiff in conducting a civil action.

Whistleblower Protection 175/4(g)

An employee who is discharged, demoted, suspended, threatened, harassed, or in any way discriminated against by his or her employer because of involvement in a false claims disclosure is entitled to all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had but for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for *any* special damage sustained as a result of the discrimination (including litigation costs and reasonable attorney's fees).

The protected false claims activities include investigation for, initiation of, testimony for, or assistance in a false claims action that has been or will be filed. An employee is entitled to bring an action in the circuit court for such relief

False Claims Procedure 175/5

Statute of Limitations 175/5(b)

A civil suit must be filed within the latter of either: (1) three years after the violation was discovered or should have been discovered by the state or local governmental entity responsible for prosecuting the action (but no more than ten years after the violation was committed); or (2) six years after the violation was committed.

Burden of Proof 175/5(c)

The State or *qui tam* plaintiff must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.