

## Texas

### **Texas False Claims Laws**

This is a supplement to The Evangelical Lutheran Good Samaritan Society's ("The Society") Employee Handbook for employees who work in Texas. 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 Texas Medicaid Fraud Prevention Law ("TMFPL"), the Texas False Claims Act ("TFCA") and other Texas 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 Texas laws apply to Medicaid reimbursement and prohibit, among other things:

- Billing Texas's Medicaid program for services not rendered
- Making or using a false record or statement to get a false claim paid
- Conspiring to get a false claim paid
- Concealing or failing to disclose information that affects the right to a Medicaid benefit or payment
- Making a false statement or misrepresentation about the conditions of operation of a facility so that it may obtain Medicaid certification
- Charging, soliciting or accepting anything of value as a condition to the provision of service to a Medicaid recipient
- Submitting a claim for a product or service rendered by a person not licensed to provide the product or service or not licensed as claimed
- Submitting a claim for a service or product that has not been approved by the treating practitioner, that is inadequate or inappropriate, or a product that has been debased or mislabeled
- Making a claim and failing to indicate the type of license and the identity of the health care provider

### **Civil and Criminal Penalties for False Claims or Statements**

A violation of these Texas laws may result in civil penalties of \$1,000 to \$15,000 per claim, plus two times the amount of damages sustained by the state and revocation of the provider's Medicaid provider agreement for up to a period of 10 years. Additionally, violation of the TMFPL constitutes a crime punishable by imprisonment for up to 99 years and a fine not to exceed \$10,000.

### **Civil Lawsuits**

Like the federal False Claims Act, Texas law also allows civil lawsuits to be filed by the state government or by private citizens, including employees. If the private citizen is successful in the lawsuit, he/she may share a percentage of any monetary recovery and

give an award for reasonable attorney's fees and costs. However, if the private plaintiff is convicted of a crime related to the legislation that is the subject of the civil suit, the plaintiff shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. If the state chooses not to join the civil suit, then the court must dismiss the action and the private plaintiff will not be allowed to pursue the claim. Additionally, the Texas Health and Human Services Commission may grant an award to an individual who reports activity that constitutes fraud or abuse of funds in the state Medicaid program.

### **Retaliation**

Under federal law and Society policy, various Texas laws, 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 the law. 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 government law or regulation, will be subject to disciplinary action up to and including separation of employment. For additional information, please see the "Fair Treatment Policy" section of the Employee Handbook and section IV "Reporting Compliance Concerns" of The Society's Compliance Program Handbook.

### **Examples of Texas Laws**

Some Texas laws summarized above include: (1) The Texas Medicaid Fraud Prevention Law, Tex. Human Resources Code §§ 36.001-36.013; (2) The Texas False Claims Act, Tex. Human Resources Code § 32.039; (3) Tex. Government Code. § 531.101; and (4) Texas Health & Safety Code §§ 161.132-161.134. If you have questions about any of these requirements, you may contact The Society's Compliance Solutions Hotline at 1-800-631-6142.

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## The Texas Medicaid Fraud Prevention Law

### Executive Summary

The Texas Medicaid Fraud Prevention Law ("FPL") combats fraud and abuse by health care providers participating in the Medicaid Program. Tex. Hum. Res. Code Ann. §§ 36.001.

### Liability and Damages

- Actions that violate the FPL include: (1) making a false statement or concealing information that affects the right to a Medicaid benefit or payment, (2) submitting a claim for Medicaid payment for a product or service rendered by a person who is not licensed to provide that product or service or fails to indicate the license of the practitioner who actually performed the service, (3) submitting a claim for a service or product that has not been approved by the treating health care practitioner, or (4) conspiring to defraud the state by obtaining an unauthorized payment from the Medicaid program or its fiscal agent.
- The law requires restitution of the value of any Medicaid payment plus interest, damages of two times the value of the payment, and a civil penalty of \$5,000 to \$15,000 for each violation that results in an injury to a disabled person, an elderly person, or a person younger than 18 years of age. If the violation does not result in such an injury, the law requires a civil penalty of \$1,000 to \$10,000 for each violation and damages of two times the value of the payment. A court may waive the civil penalties and award two times the amount of the payment if the defendant voluntarily discloses the violations.

### Whistleblower Provisions

- Private individuals who report fraud receive between 10 and 25 percent of the total amount recovered if the state prosecutes the case. A private individual cannot prosecute a case on his or her own. The FPL contains important protections for whistleblowers.
- Employees who suffer discrimination because of their involvement in false claims actions 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 they have incurred.

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## Summary of Key Provisions

### False Claims

#### False Claims § 36.002

The following actions constitute FPL false claims violations:

- Knowingly making (or causing to be made) a false statement or misrepresentation of facts on an application for a contract, benefit, or payment under the Medicaid program, or a document that is used to establish a person's eligibility for Medicaid benefits;
- Knowingly concealing or failing to disclose information that affects the right to a Medicaid benefit or payment;
- Knowingly receiving a benefit or payment on behalf of another and using it for something other than that for which it was intended;
- Knowingly making (or causing to be made) or inducing a false statement or misrepresentation on the conditions of operation of a facility so that it may obtain Medicaid certification;
- Knowingly charging, soliciting, or accepting a gift, money, donation as condition to the provision of service to a Medicaid recipient;
- Knowingly submitting a claim for payment under the Medicaid program for a product or service rendered by a person who is not licensed to provide the product or service, or is not licensed as claimed;
- Knowingly making a claim under the Medicaid program for a service or product that has not been approved by the treating health care practitioner, a service or product that is inadequate or inappropriate, or a product that has been debased, mislabeled or is otherwise inappropriate;
- Making a claim and knowingly failing to indicate the type of license and the identify of the health care provider; and
- Conspiring to defraud the state by obtaining an unauthorized payment from the Medicaid program or its fiscal agent.

Managed care providers operating under a contract are also liable for failure to provide Medicaid beneficiaries with the services required under the contract, or engaging in fraudulent activities in connection with the enrollment of individuals.

#### Liability § 36.052

The person or entity will be liable for:

- Restitution of the value of any payment provided under the Medicaid program;
- Interest on the value of the payment at the interest rate in effect on the day the payment was received;
- A civil penalty of \$5,000 to \$15,000 for each violation that results in an injury to a disabled person, an elderly person, or a person younger than 18 years of age; or \$1,000 to \$10,000 for each violation that does not result in such an injury; and
- Two times the value of the payment.

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### **Eligibility for Reduction in Damages § 36.052**

The court must waive the civil penalties if:

- The person committing the violation disclosed all information known to him or her to the attorney general within thirty days of obtaining the information; and
- At the time, the attorney general had not yet begun an investigation .

### **Definition of Claim § 36.001**

"Claim" means a written or electronically submitted request or demand that is signed by a provider or fiscal agency and identifies a product or service that was to have been provided to a Medicaid recipient as reimbursable under the Medicaid program, and includes information that is used to determine a rate of payment under the Medicaid program.

## **Civil Actions**

### **Action by Attorney General § 36.051**

The attorney general has the authority to investigate or prosecute a case, or to seek an injunction from the court to restrain a person or entity from committing an unlawful act.

### **Actions by Private Persons §§ 36.101-36.107**

A private individual has the right to bring a civil suit on behalf of himself or herself and the state. § 36.101.

If a private person alleges false claims violations, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the attorney general. § 36.102.

If the state chooses not to file a civil suit, the court must dismiss the action. § 36.104. If the state decides to proceed with the civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the private plaintiff. § 36.107

Once a complaint is filed, no person other than the state may intervene or file a suit based on the same facts. § 36.106

### **Certain Actions Barred § 36.114**

A private individual cannot bring an action based on allegations that are the subject of a civil suit or administrative proceeding to which the state is already a party. `

A private individual cannot bring a suit 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 or civil hearing; a legislative or administrative report, hearing, audit, or investigation ; or from the news

media.

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**Award to Private Plaintiff § 36.111**

If the state prosecutes a case initiated by a private plaintiff and obtains an award or settlement, the private plaintiff will receive between 10 and 25 percent of the recovery. The court will consider the private plaintiff's contribution to the investigations and proceedings in determining the award. If the case is primarily based on public disclosures of information other than those provided by the private plaintiff, the courts may award the to the *qui tam* plaintiff whatever amount they consider appropriate up to seven percent of the proceeds.

If the court finds that the private 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 person is convicted of criminal conduct arising from their role in the fraud or false claims violation, the court must dismiss the person from the civil action and bar him or her from receiving any share of the proceeds.

**State Not Liable Expenses § 36.114**

The state is not liable for any expenses incurred by a private person in bringing a civil action.

**Whistleblower Protection**

**Employer Interference with Employee Disclosures § 36.115**

Any employee who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against because of his or her involvement in a false claims action is entitled to all relief necessary to make that person whole including:

- Reinstatement with the same seniority status that the employee would have had except for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained because of the discrimination, including reasonable costs an attorney fees.

The protected false claims activities include investigating, initiating, testifying, or otherwise assisting in a civil action. An employee is entitled to bring an action in the appropriate district court for damages.

