



# Policy

## DETECTING AND PREVENTING WASTE, FRAUD AND ABUSE, FALSE CLAIMS RECOVERY AND WHISTLEBLOWER PROTECTION

**FUNCTION**

Administration

**PAGE**

1 of 5

**ISSUED**

July 2007

**REVISED**

12/13; 1/18

### PURPOSE

This policy attempts to meet the requirement in Section 6032 of the Deficit Reduction Act of 2005 that covered entities establish written policies for all employees of the entity (including management), and of any contractor or agent of the entity, that provide detailed information about the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any state laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste and abuse in federal healthcare programs [as defined in section 1128B(f)]; and that covered entities include as part of such written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste and abuse; and the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste and abuse.

### POLICY

It is the policy of The Evangelical Lutheran Good Samaritan Society (the Society) to obey the law and strive to eliminate waste, fraud and abuse with respect to payments to the Society from federal or state programs providing payment for resident care. The Society also seeks to comply with applicable state, federal and local laws and regulations regarding resident care. This policy applies to all employees, management, contractors and agents of the Society.

This policy and the information contained in it shall be available to all employees and to all applicable current and future agents and contractors of the Society.

This policy includes the following information concerning tools the Society, federal and state agencies and individuals use to fight fraud, waste and abuse in the administration of federal and state health programs:

- Federal False Claims Act;
- Administrative remedies found in the Program Fraud Civil Remedies Act;
- State laws (in states the Society operates) pertaining to civil or criminal penalties for false claims or statements and whistleblower protections under such laws;
- A summary of protections for employees who report compliance concerns;
- The role of such laws in preventing and detecting fraud, waste and abuse in federal and state healthcare programs; and
- The Society's existing policies and procedures for detecting and preventing fraud.

A detailed description of the forgoing points follows.

## 1. The Federal False Claims Act

**Summary of Provisions:** The False Claims Act (FCA) was enacted to prevent, detect and remedy waste, fraud and abuse in federal contracting programs, including its healthcare programs. The FCA prohibits knowingly making a false claim against the government. A “knowing” violation includes actual knowledge that a claim is false or deliberate ignorance or reckless disregard of whether a claim is true or false. False claims can take the form of “knowingly” overcharging for a product or service, delivering less than the promised amount or type of service, underpaying money owed to the government and charging for one thing while providing another.

**Penalties:** The FCA imposes civil penalties and is not a criminal statute. Therefore, no proof of specific intent is required.

Persons (including organizations such as a nursing facility) may be fined a civil penalty of not less than \$5,500 nor more than \$11,000, plus three (3) times the amount of damages sustained by the government for each false claim. The amount of damages in healthcare terms is the amount paid for each false claim that is filed.

### Qui Tam (Whistleblower) Provisions

A person with direct and independent knowledge of information regarding a false claim may bring an action under this law (called a *qui tam* relator or whistleblower suit) 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. 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 on its own initiative may also initiate a case under the FCA.

After the 60-day period, or any extensions, has expired, the government may pursue the matter in its own name or decline to proceed. If the government declines to proceed, the person bringing the action 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.

Any case must be brought within six years of the filing of the false claim.

**Antidiscrimination:** Anyone initiating a *qui tam* case may not be discriminated or retaliated against in any manner by their employer. The employee is authorized under the FCA to initiate court proceedings to make themselves whole for any job-related losses resulted from any such discrimination or retaliation.

## 2. 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 FCA.

The Act is quite similar to the FCA in many respects, 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.

- Specifically, a person violates the PFCRA if he/she knows or has reason to know he/she is submitting a claim that is
  - False, fictitious or fraudulent; or,
  - Includes or is supported by written statements that are false, fictitious or fraudulent; or,
  - 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
  - For payment for property or services not provided as claimed.

A violation of this prohibition carries a \$5,000 civil penalty for each such wrongfully filed claim. In addition, an assessment of two times the amount of the claim may be made, unless the claim has not actually been paid.

- A person also violates the PFCRA if they submit a written statement which they know or should know:
  - Asserts a material fact which is false, fictitious or fraudulent; or,
  - Omits a material fact and is false, fictitious or fraudulent as a result of the 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.

### 3. **State Fraud and Abuse Laws**

Many states in which the Society operates have laws that deal with false or fraudulent claims made to government programs. As the Society operates in 24 states, a summary of each of these states’ laws is not listed within the body of this policy, though are available to employees and contractors via the Society’s public website at [www.good-sam.com](http://www.good-sam.com) by clicking on the **Links** option at the bottom of the page. A written copy will be made available upon request. These state summaries are incorporated into this policy by reference.

### 4. **Protections for Employees Who Report Compliance Concerns**

“Whistleblowers” are generally individuals who observe activities or behavior that may violate the law in some manner. These individuals report their observations either to management or to governmental agencies. Laws have been enacted to protect these individuals. Protections afforded to *qui tam* relators or whistleblowers are discussed above under the section describing the federal FCA.

If an employee witnesses any actual or potential violation of a law, regulation or nursing facility policy or if an employee witnesses any other actual or potential misconduct, he or she has a duty to report, in good faith, the matter to his or her supervisor. If the employee feels that appropriate action has not been taken, the employee should report any actual or potential compliance concern by either (a) contacting the Compliance Officer or (b) making a report through the Society's Compliance Solutions Hotline, which may be used to report compliance concerns anonymously. The Society's Compliance Solutions Hotline may be contacted from 7 a.m. to 7 p.m. Monday through Friday at (800) 631-6142. The Society will investigate the merits of any compliance concerns.

The Society has adopted a policy that prohibits retaliation against any employee who, in good faith, reports a compliance concern. This policy also provides for disciplinary action to be taken against any employee who engages in retaliatory conduct.

**5. The Role of Such Laws in Preventing and Detecting Fraud, Waste and Abuse in Federal and State Healthcare Programs**

The laws described in this policy create a comprehensive scheme for controlling waste, fraud and abuse in federal and state healthcare programs by giving appropriate governmental agencies the authority to seek out, investigate and prosecute violations. Enforcement activities are pursued in three available forums: criminal, civil and administrative. This provides a broad spectrum of remedies to battle this problem.

Moreover, whistleblower statutes and protections for individuals reporting waste, fraud and abuse in good faith encourage reporting of waste, fraud and abuse, creating broader opportunities to prosecute violators. Whistleblower statutes, such as the federal FCA, create reasonable incentives for this purpose. Employment protections create a level of security employees need to help in prosecuting these cases.

**6. The Society's Existing Policies and Procedures for Detecting and Preventing Fraud**

The Society is deeply committed to detecting and preventing fraud and abuse of government health programs. Consistent with this commitment the Society operates a Compliance Program whose operational definition includes that collective set of systems, policies and procedures and organizational support structure the Society has put into place to assure compliance with laws and regulations. The Society's Compliance Program is described in the Society's Compliance Program Guidelines. The Society's Compliance Program Guidelines are in written format in common areas of Society workplaces (e.g., in break rooms and by time clocks) and on the Society's public website at [www.good-sam.com](http://www.good-sam.com).

The following list of policies and tools assist Society employees and others in detecting and preventing fraud and abuse and are housed in the Compliance Program Guidelines:

- a. The Society has created a tool called the Compliance Program Roadmap. The Compliance Program Roadmap summarizes government concerns (many related to health program fraud and abuse) with references to Society policy and procedure addressing each concern. The Compliance Program Roadmap is presented to all new employees at general orientation.

- b. All Society employees have an affirmative responsibility for reporting perceived misconduct, including actual or potential violations of laws and regulations. The Society operates a toll-free hotline for employees, residents, family members and visitors to report any compliance concerns they have, including those related to fraud and abuse.
- c. Society policy directs that reasonable steps will be taken to investigate and correct indications of non-compliance with laws and regulations both at the location-level and more globally Society-wide.
- d. Society policy forbids the acceptance and/or offering of kickbacks and/or inducements in exchange for the referral of Society purchases and/or residents to and from Society locations and services. Purchase and referral decisions are to be made on the basis of value added benefits.
- e. The Society's most basic set of policies and procedures intended to prevent fraud and abuse is its Code of Ethics. The Society's Code of Ethics sets forth basic expectations of the Society's employees and contractors regarding ethical behavior at work. An expository that describes in greater detail the intent of each of the points in the Code of Ethics is available.

The following partial list of Code of Ethics points applies specifically to the Society's expectations and the role of Society employees and contractors in the Society's effort to detect and prevent fraud and abuse:

- I will strive to understand and comply with all applicable laws and regulations governing my action and conduct in regard to my duties and responsibilities.
- I will do my part to make sure our residents and clients – and others making payment on our residents' and clients' behalf – are billed only for services for which there is complete and truthful documentation. As such I will never deliberately alter or falsify clinical, financial or employment records.
- I will not knowingly and willfully ignore errors or problems or misrepresent facts. I will immediately attempt to resolve issues, and if I cannot, I will bring them to the attention of a supervisor.
- I will exercise good stewardship in all purchasing and referral decisions and base them on principles of cost effectiveness and value added benefits.
- I will perform my duties in a way that promotes the public's trust in The Evangelical Lutheran Good Samaritan Society.
- I will apply ethical standards and be honest and forthright in any representations I make to residents, clients and people in the community.

In conclusion, the government has enacted laws whose intent is to prevent fraud, waste and abuse of public health programs. These laws often provide for civil and criminal penalties. The Society is similarly committed to preventing fraud, waste and abuse of public health programs and has enacted policies and procedures and other tools that support and compliment the government's intent and laws.