

North Dakota

North Dakota False Claims Laws

This is a supplement to The Evangelical Lutheran Good Samaritan Society's ("The Society") Employee Handbook for employees who work in North Dakota. 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, North Dakota's Medicaid provider integrity laws and regulations impose liability on persons or organizations that submit or cause to be submitted false or fraudulent claims or false information or reports for the purpose of obtaining payment from the government. These North Dakota laws apply to Medicaid reimbursement and prohibit, among other things:

- Presenting a false or fraudulent claim for care or services;
- Submitting false information to obtain greater compensation than that to which entitled;
- Submitting false information for the purpose of meeting prior authorization requirements;
- Submitting a false or fraudulent application to obtain provider status;
- Submitting false Medicaid cost reports;
- Failing to disclose records of services provided to Medicaid recipients;
- Failing to comply with the terms of the Medicaid provider agreement;
- Overutilizing the Medicaid program by inducing or providing unnecessary services; and
- Participating in kickbacks or rebates.

Administrative, Civil and Criminal Sanctions for False Claims or Statements

A violation of these North Dakota laws may result in the imposition of sanctions by the North Dakota Department of Human Services, including recovery of overpayments, termination from participation in the Medicaid program, and prosecution under applicable state or federal laws. Imposition of sanctions by the North Dakota Department of Human Services does not preclude subsequent or simultaneous civil or criminal court actions.

Civil Lawsuits

Currently, unlike the Federal False Claims Act, North Dakota law appears to allow civil lawsuits to recover monetary damages to be filed only by the State government and not by private citizens or employees. There is no provision for a private citizen to share a percentage of any monetary recoveries.

No Retaliation

Like federal law and Society policy, various North Dakota laws prohibit public employers and private employers from retaliating or discriminating against employees because of their good faith disclosure of information about a violation of a law or rule, their good faith participation in a false claims inquiry or their refusal to assist employers in any activity that the employee believes is in violation of a law or rule. Employers (public and private) are prohibited from discharging, disciplining, threatening discrimination or penalizing an employee for any of these actions, and employers who willfully violate the law are guilty of an infraction. The law authorizes employees to bring a civil lawsuit for injunctive relief or actual damages or both. The court may award reinstatement, back-pay, injunctive relief, reinstatement of fringe benefits or any combination of these remedies.

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 North Dakota Laws

The North Dakota laws summarized above include: (1) Medicaid provider integrity, N.D. Cent. Code § 50-24.1-01.3; N.D. Admin. Code §§ 75-02-05-01 – 75-02-05-08 and 72-02-06-02(4); remedies N.D. Cent. Code §§ 32-03-01 – 32-03-56; and (2) Whistleblower protections, N.D. Cent. Code §§ 34-01-20 (see also, N.D. Cent. Code § 50.10.1-05 and N.D. Admin. Code § 75-03-25-13, prohibiting retaliatory action for providing information to the long-term care ombudsman). If you have questions about any of these requirements, you may contact The Society's Compliance Solutions Hotline at 1-800-631-6142.