

Arkansas

Arkansas State False Claims Laws

This is a supplement to The Evangelical Lutheran Good Samaritan Society's ("The Society") Employee Handbook for employees who work in Arkansas. 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 Arkansas Medicaid Fraud False Claims Act and the Arkansas Medicaid Fraud Act impose liability on persons or organizations 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 Arkansas laws apply to Medicaid reimbursement and prohibit, among other things:

- Making a false statement of a material fact in any application for payment;
- Making a false statement of a material fact for use in determining rights to a payment;
- Concealing an event that affects the right to payment with an intent to fraudulently secure the payment in a greater amount than due or when no payment is authorized;
- Converting a payment to a use other than for the benefit of the person for whom it was received;
- Making a claim for physician services when the person providing the service is not a licensed physician;
- Participating in kickbacks or rebates;
- Charging for services at a rate in excess of the rates established by the State or soliciting or receiving a gift or money in addition to payments for Medicaid patients;
- Making a false statement of material fact with respect to information required by laws, rules, regulations, provider agreements or certification; and
- Participating in the Medicaid program after having been found guilty of Medicaid fraud, theft of public benefits or abuse of adults, or employing someone who has been found guilty of these crimes.

Civil and Criminal Penalties for False Claims or Statements

Violations of the Arkansas Medicaid Fraud False Claims Act may result in civil penalties of three times the amount of payments fraudulently received; \$5,000 to \$10,000 per violation; restitution, including the cost of investigation and other monetary damages; and the reasonable expenses of the Attorney General for the costs of its investigation and prosecution of the case. If the fraudulent activity is self-reported, the liability may be reduced.

In addition to fines, the Medicaid Fraud Act imposes criminal liability for violations.

A person who violates the law is guilty of: (1) a Class A misdemeanor if the amount of payments illegally claimed is \$200 or less; (2) a Class C felony if the amount of payments illegally claimed is greater than \$200 but less than \$2,500; and (3) a Class B felony if the amount of payments illegally obtained is \$2,500 or more. In addition to fines, persons found guilty of Medicaid fraud must make full restitution to the Arkansas Department of Health and Human Services and pay three times the amount of all payments illegally received from the Arkansas Medicaid program. In addition, fines of up to \$3,000 per claim may be imposed. Violations of these laws could be considered the taking or obtaining of the property with the purpose of depriving the owner of the property, which may be considered criminal theft of property under Arkansas law.

Violations of the Medicaid Fraud False Claims Act or the Medicaid Fraud Act may result in termination from participation in the Medicaid program. The unavailability of records documenting goods or services provided to Medicaid recipients, which impairs a civil action under the Medicaid Fraud False Claims Act, may be considered a Class D felony. Otherwise, failure to maintain such records may be a Class A misdemeanor.

Civil Lawsuits

Unlike the federal False Claims Act, the Arkansas Medicaid Fraud False Claims Act and the Medicaid Fraud Act allow actions to recover monetary damages to be filed only by the state government and not by private citizens or employees. However, these laws do allow the courts to grant monetary rewards to a person for information that leads to the trial and punishment of persons who violate the Medicaid fraud laws. The amount of the reward is up to 10% of the aggregate penalty and not more than \$100,000.

No Retaliation

Like federal law and Society policy, the Arkansas Whistle-Blower Act, prohibits public employers from discharging, discriminating, threatening or retaliating against public employees because of their: (1) good faith disclosure of information about a waste of public funds, property or manpower, or a suspected violation of a law, rule or regulation; (2) lawful participation in a false claims inquiry or administrative review; or (3) their refusal to assist employers in violating laws such as the Arkansas Medicaid Fraud False Claims Act and the Medicaid Fraud Act. Arkansas law does not appear to contain similar protections for non-public employees. Nevertheless, The Society expects employees to adhere to Federal law and to The Society's policy prohibiting retaliation.

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 Arkansas Laws

The Arkansas laws summarized above include: (1) The Arkansas Medicaid Fraud False Claims Act, Ark. Code Ann. §§ 20-77-901 – 20-77-911; (2) the Arkansas Medicaid Fraud Act, Ark. Code Ann. §§ 5-55-101 – 5-55-114; and (3) the Arkansas Whistle-Blower Act, Ark. Code Ann. §§ 21-1-601 – 21-1-608. If you have questions about any of these requirements, you may contact The Society’s Compliance Solutions Hotline at 1-800-631-6142.