

Indiana

Compliance Program: Code of Conduct

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

- Billing Indiana's Medicaid program for services not rendered
- Submitting a false claim for payment
- Making or using a false record to get a false claim paid
- Making or using a false record to avoid payments
- Participating in kickbacks

Civil and Criminal Penalties for False Claims or Statements

A violation of these Indiana laws may result in civil penalties of \$5,000 per claim, plus three times the amount of damages sustained by the state government. In addition, a person who violates the Indiana Medicaid Fraud law, specifically IC 35-43-5-7.1, commits a crime **punishable** by up to eight years imprisonment and a fine not to exceed \$10,000.

Civil Lawsuits

Like the federal False Claims Act, Indiana 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 Indiana laws, including the IFCA and Indiana's Whistle-blower statutes, 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 IFCA. These laws also

vide for certain monetary awards and equitable relief to the prevailing plaintiff including compensation for lost wages and statement to a former position.

employees who work for private employers must first notify the employer in writing of any suspected illegal activity, policy or practice before disclosing it to the appropriate government agency unless the employer is believed to be involved in the illegal conduct. The purpose of this particular requirement is to give the employer a reasonable opportunity to correct the activity, policy or practice.

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 Conduct or regulatory violation, or (2) refused to violate The Society's Code of Conduct or 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.

Examples of Indiana Laws

Examples of Indiana laws summarized above include: (1) The Indiana False Claims and Whistleblower Protection Act, IC 5-11-5.5; (2) Medicaid, IC 35-43-5-7.1; (3) Anti-kickback law IC 12-15-24-2; and (4) Protection of Private Whistle-blower's law, IC 22-5-3-3. If you have questions about any of these requirements, you may contact The Society's Compliance Solutions Hotline at 1-800-631-6142. The primary 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 Indiana False Claims Act

Executive Summary

The Indiana False Claims Act ("IFCA") helps the state combat fraud and recover losses resulting from fraud in programs, purchases, or contracts.
Ind. Code Ann. §§ 5-11-5.5-5.

Liability and Damages/Statute of Limitations

Actions that violate the IFCA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring with another person to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the governmental entity.

The minimum civil penalty is \$5,000 per claim. Damages of up to three times the amount that the state sustains because of the violation may also be awarded. The courts will waive penalties for IFCA violations and reduce damages if the false claims are voluntarily disclosed.

A civil suit must be filed within six years after the date that the violation was discovered, but no more than ten years after the violation was committed.

Qui Tam Actions/Whistleblower Protections

A private person (or *qui tam* plaintiff) can sue for violations of the IFCA. Individuals who report fraud receive between 10 and 15 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 private person litigates the case on his or her own as a *qui tam* action. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.

The IFCA contains protections for whistleblowers. Employees who suffer discrimination due to their disclosure of fraudulent activity may be awarded: (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had except for the discrimination, and (3) compensation for any costs or damages they have incurred.

Summary of Key Provisions

False Claims §§ 5-11-5.5-2 to 5-11-5.5-9

Liability § 5-11-5.5-2

The following actions constitute false claims violations:

- Knowingly submitting a false claim for payment or approval;
- Knowingly making or using a false record or statement to get a false claim paid or approved;
- Delivering to the state less property than the amount of the receipt, where the person has possession or control of the governmental state's money or property and intends to defraud the state;
- Making or delivering a receipt without knowing that the information on the receipt is true, where the person is authorized to make or deliver the receipt and intends to defraud the state;
- Knowingly receiving (as a pledge of an obligation or debt) public property from any person who has no legal right to sell or pledge the property;
- Knowingly making or using a false record to avoid an obligation to pay money or transmit property to the state;
- Conspiring with another person to perform any of the above-mentioned acts; and
- Causing or inducing another person to perform any of the above-mentioned acts.

A person will be liable for:

- A civil penalty of at least \$5,000 for each false claim;
- Up to three times the amount of damages that the state sustained because of the violations; and
- The costs of a civil suit to recover penalties or damages.

Eligibility for Reduction in Penalty § 5-11-5.5-2

The court must eliminate the civil penalty and can reduce the damages to two times the amount that the state sustains:

- The person committing the violation disclosed all information known to him or her to state officials within thirty days of obtaining the information;
- The person fully cooperated with the investigation of the violation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person's disclosure, and the person had no actual knowledge of an investigation into such violation.

Statute of Limitations § 5-11-5.5-9

A civil suit must be brought within six years after the violation was discovered by a state official who is responsible for investigating false claims, but no more than ten years after the date on which the violation is committed.

Certain Actions Barred § 5-11-5.5-7

A private person (or *qui tam* plaintiff) cannot file a complaint or civil suit:

- If he or she is an incarcerated offender;
- Against the state, a state officer, a judge, a justice, a member of the general assembly, a state employee, or an employee of a political subdivision, if the action is based on information already known to the state.
- Based on allegations in a civil suit or an administrative proceeding in which the state is already a party; or
- Based on the public disclosure of allegations unless he or she is the original source, e.g. an individual who has direct and independent knowledge of the information on which the allegations are based and 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; legislative, administrative, or other public report, hearing, audit, or investigation ; or a news media report.

Definitions § 5-11-5.5-1

Claim

"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 person, if any portion of the requested money or property is funded by or will be reimbursed by the state.

Person

"Person" means any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

Civil Actions for False Claims § 5-11-5.5-3

Responsibilities of the Attorney General or Inspector General

The Attorney General or Inspector General may investigate false claim violations and file civil suits for false claims violations.

Actions by Private Person or *Qui Tam* Actions

A *qui tam* plaintiff also has the right to file a civil complaint alleging a false claims violation on behalf of the state. The court may dismiss a suit if either the Attorney General or Inspector General files a motion to dismiss and explains why dismissal is appropriate. If a *qui tam* plaintiff alleges a false claims violation, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the Attorney General and the Inspector General. Once the action is filed, no one other than the Attorney General or Inspector General is allowed to intervene or file a lawsuit based on the same facts.

If the Attorney General or Inspector decides to file a civil suit, he or she assumes responsibility for prosecuting the action and is not bound by the acts of the private person who initially filed the complaint. If the Attorney General or Inspector General decides not to file a civil suit, the *qui tam* plaintiff still has the right to prosecute the case. The Attorney General or Inspector General can intervene later upon a showing of good cause.

Indiana

Award to Private Person or *Qui Tam* Plaintiff

If the Attorney General or Inspector General prosecutes a case initiated by a *qui tam* plaintiff and the state prevails, the *qui tam* plaintiff will receive between 10 and 15 percent of the recovery plus reasonable costs and attorney fees.

If the *qui tam* plaintiff prosecutes the action on his or her own, he or she will receive between 25 and 30 percent of the proceeds of the amount recovered plus reasonable costs and attorney fees.

If the Attorney General or Inspector General prosecutes a case initiated by a *qui tam* plaintiff and the evidence is based primarily on publicly available information, the *qui tam* plaintiff's recovery will be limited to no more than 10 percent. Publicly available information includes that found in a criminal, civil, or administrative hearing; a legislative, administrative, or other public report, hearing, audit, or investigation; or a news media report.

If the court finds that the private person planned and initiated the fraudulent activity or was convicted of a crime relating to violation of the IFCA, the *qui tam* plaintiff is not guaranteed any award.

If the court finds that a lawsuit brought by a *qui tam* plaintiff is frivolous, the court may require that person to pay the defendant reasonable costs and attorney fees.

The state is not liable for the expenses, costs of attorney fees of a private party for any action brought under the IFCA.

Employer Interference with Employee Disclosures

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

4

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.

