

South Dakota

South Dakota 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 South 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, the South Dakota false claims and fraud and abuse laws and regulations impose liability on persons or organizations that make or cause to be made false Medicaid claims to the government for payment, or who make or cause to be made a false record or statement to get a claim or invoice paid by the government. These South Dakota laws apply to Medicaid reimbursement and prohibit, among other things:

- Making a false claim to the State for payment;
- Making any false representation in order to obtain authorization to provide a good or service;
- Making any false representation for use by another in order to obtain a Medicaid good or service;
- Making a false statement to qualify as a Medicaid provider;
- Submitting any Medicaid enrollment application, cost report or invoice for payment that contains a false material statement;
- Participating in kickbacks or rebates; and
- Intentionally failing to retain the necessary records upon which a Medicaid claim or payment rate is based.

Civil and Criminal Penalties for False Claims or Statements

A violation of these South Dakota laws may result in civil penalties including payment of interest on the amount of the excess payment, as well as a civil penalty of \$2,000 for each false claim or statement and/or up to three times the amount of damages sustained by the State government, including the cost of investigation and litigation.

In addition, violations of these laws are punishable as a Class 5 felony. The intentional failure to retain the necessary records upon which a Medicaid claim or payment rate is based is a Class 1 misdemeanor. Violations of any of these laws may also result in termination from participation in the Medicaid program. These penalties are in addition to any other available civil or criminal remedies.

Civil Lawsuits

Currently, unlike the Federal False Claims Act, South 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. Such civil actions must be filed within six years from the time that the cause for action accrues. 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 South Dakota laws prohibit public employers and certain private employers from retaliating against employees because of their good faith disclosure of information about a violation of a law, or a violation that poses a risk to public or patient health, safety or welfare. The State anti-retaliation laws allow public employees to file a grievance for retaliation against them for reporting a violation of state law, and prohibit certain private employers from retaliating against either staff members who report suspected abuse, neglect or exploitation against any person with developmental disabilities, or against the person with the disability. South Dakota law does not appear to contain similar protections for other private employers. 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 South Dakota Laws

The South Dakota laws summarized above include: (1) false claims, fraud and abuse laws and criminal and civil penalties, S.D. Codified Laws §§ 22-45-1 – 22-45-11; and Anti-Retaliation laws, S.D. Codified Laws §§ 3-6A-52 and 27B-8-43. If you have questions about any of these requirements, you may contact The Society's Compliance Solutions Hotline at 1-800-631-6142.