

Ohio

Ohio False Claims Laws

This is a supplement to The Evangelical Lutheran Good Samaritan Society's ("The Society") Employee Handbook for employees who work in Ohio. 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. Similar to the federal False Claims Act, Ohio laws impose liability on providers or persons who commit fraud in the Ohio medical assistance program. Ohio's Medicaid fraud laws, specifically, O.R.C. §§ 2913.40, 2921.13, and 5111.03, prohibit providers from making false or misleading statements in order to receive payment for goods or services provided to Medicaid beneficiaries that is greater than the amount of reimbursement to which they are entitled. These laws prohibit, among other things:

- Billing Ohio's Medicaid program for services or goods not provided;
- Billing Ohio's Medicaid program for undocumented services;
- Making inaccurate, false or improper entries in medical records, cost reports and any other records used to support reimbursement;
- Billing Ohio's Medicaid program for medically unnecessary services;
- Characterizing non-covered services or costs in a way that secures reimbursement from Ohio's Medicaid program;
- Assigning an incorrect code to a service in order to obtain a higher reimbursement;
- Failing to seek payment from beneficiaries who may have other primary payment sources;
- Participating in kickbacks and rebates;
- Altering, falsifying, destroying, or concealing medical records, income and expenditure reports or any other records that support Medicaid reimbursement.

The Ohio laws, specifically O.R.C. § 2913.401, also prohibit any person from doing any of the following in an application for Medicaid benefits or in a document that requires a disclosure of assets for the purpose of determining eligibility to receive Medicaid benefits:

- Making or causing to be made a false or misleading statement; or
- Concealing an interest in property.

Civil and Criminal Penalties for False Claims or Statements

A violation of these Ohio laws may result in penalties of \$5,000 to \$10,000 for each falsification, three times the amount unlawfully received plus interest, payment of the government's expenses to pursue reimbursement, and exclusion from the Medicaid program for up to five years. In addition, a person who violates these laws commits a crime punishable by imprisonment for up to five years and a fine not to exceed \$10,000.

Civil Lawsuits

Currently, unlike the Federal False Claims Act, Ohio law allows 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, Ohio law prohibits 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 Ohio Medicaid fraud laws. These laws also provide for certain monetary awards and equitable relief to the prevailing plaintiff including compensation for lost wages and reinstatement to a former position.

Ohio's whistleblower law, unlike other laws, requires an employee to notify his/her employer, both orally and in writing of any suspected illegal activity, policy or practice before disclosing it to the appropriate government agency. The purpose of this particular requirement is to give the employer a reasonable opportunity to correct the activity, policy or practice. If the employer does not make a good faith effort to correct the asserted violation within 24 hours of receiving notice, the employee may file a written report of the violation with the county prosecuting attorney, law enforcement, any governmental entity that has regulatory authority over the employer or the inspector general.

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 a government law or regulation, 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 Ohio Laws

The Ohio laws summarized above include: (1) Medicaid fraud and falsification laws, Ohio Rev. Code (ORC) §§ 5111.03, 5111.101 [5111.10.1], 2913.40, 2921.13, and 109.85; (2) Medicaid eligibility fraud, ORC §§2307.65, 2913.401; (3) Whistleblower laws, ORC §§ 4113.51 to 4113.53 (private employees) and §124.34.1 (government employees). If you have questions about any of these requirements, you may contact The Society's Compliance Solutions Hotline at 1-800-631-6142.