

	Compliance Department False Claim Statutes and Whistleblower Protections	Issued:
		9/28/2023
Policy & Procedure #: COM-005	Page # 1 of 6	Last Reviewed/Update Date 9/28/2023

FALSE CLAIMS STATUTES AND WHISTLEBLOWER PROTECTIONS

Purpose

The purpose of this policy is to delineate Variety Child Learning Center's (VCLC's) commitment to adhere to all aspects of the False Claims Act including definitions of false claims.

Policy Overview

VCLC is committed to prompt, complete and accurate billing of all services provided to people receiving supports. VCLC and its employees, contractors and agents shall not make or submit any false or misleading entries on any bills or claim forms, and no employee, contractor or agent shall engage in any arrangement or participate in such an arrangement at the direction of another person, including any supervisor or manager, that results in such prohibited acts.

Further, it is the policy of VCLC to detect and prevent fraud, waste, and abuse in federal healthcare programs. This Policy pertains to the Federal False Claims Act (31 U.S.C. §§ 3729 – 3733), the Federal Program Fraud Civil Remedies Act (31 USC §§3801-3812), the New York State False Claims Act (State Finance Law §§187-194) and other New York State laws concerning false statements or claims and employee protections against retaliation. This policy also sets forth the procedures we have put into place to prevent any violations of Federal or New York State laws regarding fraud or abuse in its health care programs.

Scope

This Policy applies to all employees, including management, and all contractors and agents of VCLC.

Overview of Relevant Laws

I. Federal Laws

Federal False Claims Act (31 U.S.C. §§ 3729 – 3733):

Overview

The False Claims Act is one of the laws the United States Government uses to prevent and detect fraud, waste, and abuse in federal health care programs. The False Claims Act establishes liability for any person who “knowingly” submits a false claim either (1) directly to the United States Government or (2) to a contractor or grantee of the United States Government, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest. A violation of the False Claims Act can result in a civil penalty between \$13,508 and \$27,018 for each false claim submitted, plus up to three times the amount of the damages sustained by the Government due to the violations(s).

The False Claims Act defines “knowingly” to mean that a person:

- Has actual knowledge of the false claim;

	Compliance Department False Claims Statutes and Whistleblower Protections	Issued:
		9/28/2023
Policy #: COM-005	Page # 2 of 6	Last Reviewed/Update Date:
		9/28/2023

- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information and no proof of specific intent to defraud is required. Specifically, the False Claims Act may be violated by the following acts:
 - Knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval.
 - Knowingly making or using, or causing to be made or used, a false record or statement material to a false claim.
 - Conspiring to commit a violation of the False Claims Act.
 - Knowingly making, using, or causing to be made or used, a false record or statement material to an obligation to pay money or transmit property to the Government or knowingly concealing or avoiding or decreasing an obligation to pay money or transmit property to the Government.

Applicability

Among other things, the False Claims Act applies to claims submitted for payment by federal health care programs, including Medicaid.

Examples

A few examples of actions that violate the False Claims Act include knowingly:

- Billing for services that were not actually rendered.
- Charging more than once for the same service.
- Billing for medically unnecessary services.
- Falsifying time records used to bill Medicaid.

Methods of Enforcement

The Government, or an individual citizen acting on behalf of the Government (a “relator”), can bring actions under the False Claims Act. If a relator brings an action under the False Claims Act, the Government has a period of time to investigate the allegations and decide whether to join the lawsuit. If the Government elects to join the lawsuit, the relator is entitled to 15-25% of any recovery. If the Government elects not to join the lawsuit, the relator may still proceed with the action and is entitled up to 30% of any recovery.

Employee Protection

The False Claims Act prohibits discrimination by VCLC against an employee, contractor, or agent for taking lawful actions in furtherance of an action under the False Claims Act. Under the False Claims Act, any employee, contractor, or agent who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts in furtherance of an action under the False Claims Act is entitled to all relief necessary to make the employee, contractor, or agent whole.

Federal Program Fraud Civil Remedies Act (31 USC Chapter 38. §§3801-3812):

The Program Fraud Civil Remedies Act of 1986 is a federal law that provides for administrative

	Compliance Department False Claims Statutes and Whistleblower Protections	Issued:
		9/28/2023
Policy #: COM-005	Page # 3 of 6	Last Reviewed/Update Date:
		9/28/2023

recoveries by federal agencies including the Department of Health and Human Services, which operates the Medicaid Programs. The law prohibits the submission of a claim or written statement that the person knows or has reason to know is false, contains false information or omits material information. Violations of this law are investigated by the Department of Health and Human Services and monetary sanctions may be imposed in an administrative hearing setting. Monetary sanctions may include penalties of up to \$11,803 per claim and damages of twice the amount of the original claim.

II. New York State Laws

New York State False Claims Act (State Finance Law §§187-194):

New York State False Claims Act closely tracks the Federal False Claims Act and its provisions are very similar. This Act provides that anyone who “knowingly” submits false claims to the Government is liable for damages up to three times the value of the amount falsely received plus mandatory penalties between \$6,000 and \$12,000 for each false claim submitted.

The False Claims Act defines “knowingly” to mean that a person:

- Has actual knowledge of the false claim.
- Acts in deliberate ignorance of the truth or falsity of the information.
- Acts in reckless disregard of the truth or falsity of the information.

The Government, or an individual citizen acting on behalf of the Government (a “relator”), can bring actions under the New York State False Claims Act. In addition, the New York State False Claims Act prohibits discrimination against an employee for taking lawful actions in furtherance of an action under the Act. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in furtherance of an action under the False Claims Act is entitled to all relief necessary to make the employee whole.

Social Service Law §145-b: False Statements

Under this section it is unlawful to knowingly make a false statement or representation, or to deliberately conceal any material fact, or engage in any other fraudulent scheme or device, to obtain or attempt to obtain payments under the New York State Medicaid program. In the event of a violation of this law, the local Social Services district or the State has a right to recover civil damages equal to three times the amount incorrectly paid. In the case of non-monetary false statements, the local Social Service district or State may recover three times the damages (or \$5,000, whichever is greater) sustained by the government due to the violation. In addition, the Department of Health may impose a monetary penalty of up to \$2,000 per violation. If repeat violations occur within 5 years, a penalty up to \$7,500 per violation may be imposed if they involve more serious violations of Medicaid rules, billing for services not rendered or providing excessive services.

Social Service Law §145-c: Sanctions

Under this section, if any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, then the

	Compliance Department False Claims Statutes and Whistleblower Protections	Issued: 9/28/2023
		Last Reviewed/Update Date: 9/28/2023
Policy #: COM-005	Page # 4 of 6	

person's, the person's family's needs shall not be taken into account for determining the needs of that person or those of their family: (1) for a period of 6 months if a first offense; (2) for a period of 12 months if a second offense, or upon an offense which resulted in the wrongful receipt of benefits in an amount of between \$1000 and \$3900 and (3) for a period of 18 months if a third offense or upon an offense which resulted in the wrongful receipt of benefits in excess of \$3900 and five years for four or more offenses.

Social Service Law §145: Criminal Penalty

Under this section, any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor. That crime is punishable by fines and by imprisonment for up to one year.

Social Service Law § 366-b: Penalties for Fraudulent Practices

Under this section any person who, with intent to defraud, presents for payment any false or fraudulent claim for services or merchandise, or knowingly submits false information for the purpose of obtaining compensation greater than that to which they are legally entitled to shall be guilty of a Class A misdemeanor.

Penal Law Article 155: Larceny

Under this Article, the crime of larceny applies to a person who, with intent to deprive another of his property, obtains, takes, or withholds the property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud, or similar behavior. This Article has been applied to Medicaid fraud cases. This crime is punishable by fines and imprisonment for up to twenty-five years based on degree of larceny.

Penal Law Article 175: False Written Statement

Under this Article, four crimes relating to falsifying business records or filing a false instrument have been applied in Medicaid fraud prosecutions. These crimes are punishable by fines and imprisonment for up to four years based on degree and class of crime.

Penal Law Article 176: Insurance Fraud

This Article establishes the crime of insurance fraud. A person commits such a crime when they intentionally file a health insurance claim, including Medicaid, knowing that it is false. This crime is punishable by fines and imprisonment for up to twenty-five years based on degree and class of crime.

Penal Law Article 177: Health Care Fraud

This Article establishes the crime of health care fraud. A person commits such a crime when, with the intent to defraud Medicaid (or other health plans, including non-governmental plans), they knowingly and willfully provide false information or omit material information for the purpose of requesting payment for a health care item or service and, as a result of the false information or omission, receives such a payment in an amount to which they are not entitled. Health care fraud is punished with fines and jail time based on the amount of payment inappropriately received due to the commission of the crime.

	Compliance Department False Claims Statutes and Whistleblower Protections	Issued:
		9/28/2023
		Last Reviewed/Update Date:
Policy #: COM-005	Page # 5 of 6	9/28/2023

Procedure

General Principles

VCLC has an established compliance program in which the Compliance Officer is responsible for the day to day operation as documented in the Compliance Program Manual.

VCLC must provide training to all its employees regarding this Policy and will share this Policy with all contractors and agents.

Billing activities must be performed in a manner consistent with Medicaid and other payer regulations and requirements and in accordance with VCLC's documentation/billing policies.

To assist in its efforts to detect and prevent fraud, waste, and abuse, VCLC conducts regular audit and monitoring procedures.

Reporting Responsibilities

Each trustee, officer, employee, and volunteer of VCLC has an obligation to report in accordance with the Non-Retaliation and Non-Intimidation, alias Whistleblower Policy, (a) questionable or improper accounting or auditing matters, and (b) actions and suspected actions that are illegal, fraudulent or in violation of the Compliance Program Manual. Concerns should be brought to VCLC's Compliance Officer by calling 516-921-7171 ext. 2115 or calling anonymously to VCLC Compliance Hotline at 516-368-8306.

VCLC will respond appropriately to violations of law, regulations, and its own Compliance Program Manual to protect the agency and to continue to improve our reputation as a reliable and trustworthy organization.

Non-Retaliation & Non-Intimidation

VCLC will not intimidate any employee into not reporting any compliance related concern to any government entity nor will it retaliate against any employee for taking any lawful action under the Federal False Claims Act (31 U.S.C § 3730(h)) and NYS False Claims Act (State Finance Law §191). Moreover, we will not retaliate against any employee, volunteer, contractor, or agent for reporting any potential compliance concern, as described in our Non-Retaliation and Non-Intimidation Policy, alias Whistleblower Policy.

No trustee, director, officer, or employee who in good faith reports a Concern shall be subject to intimidation, harassment, retaliation, or adverse employment consequences. An employee who retaliates against someone who has reported a violation in good faith is subject to discipline up to and including termination of employment under the New York Labor Law §740 and New York Labor Law §741. In adherence to the Whistleblower Policy, VCLC encourages and enables employees and others to raise serious concerns within VCLC prior to seeking resolution outside VCLC.

Personnel Manual and Contract Agreements

The tenets of this policy will be included in the personnel manual and attached to all contracts with outside contractors or agents.

	Compliance Department False Claims Statutes and Whistleblower Protections	Issued:
		9/28/2023
Policy #: COM-005	Page # 6 of 6	Last Reviewed/Update Date:
		9/28/2023

Acknowledgement of False Claims Statutes and Whistleblower Protections Policy

I have read, understood and will comply with Variety Child Learning Center’s False Claims Statutes and Whistleblower Protections Policy.

Name: _____

Date: _____

Signature: _____