

Topic: False Claims	Department: Entire Agency
Original effective date: 3/11/02 (part of another policy)	Last revision date: 9/25/24
Owner: VP for Quality and Compliance	Frequency of reviews: Annual
Internal/Regulatory Reference(s) (all that apply): 31 USC 3729-3730; NYS Finance Law 187-194; NYS Social Services law 145-b; NYS Penal law article 155; NYS Social Services Law 366-b; NYS penal law articles 175-177; NYS labor law parts 740 & 741; 42 USC 1396a(a)(68)	
Related documents/Links: Please see references within the document	

Policy: It is the policy of The Arc of Monroe (“The Arc”) that business, administrative and support functions promote personal and organizational outcomes, and sound fiscal practices.

Additional Information: This policy applies to all persons who are affected by the agency’s risk areas (to the degree that they are so affected) including our employees, the CEO and other senior management, managers, contractors, agents, subcontractors, independent contractors, students, interns, volunteers, vendors consistent with the “Vendor Management Policy,” the Board of Directors, and Board committees; hereafter referred to as “affected parties.”

The Arc is committed to and has an obligation to comply with all applicable federal and state standards. This includes, but is not limited to, The US Centers for Medicare and Medicaid Services (CMS), The NYS Department of Health (DOH), and Office for People with Developmental Disabilities (OPWDD).

“Good faith” means that the person reporting the concern believes it to be true and accurate, to the best of their knowledge.

The Arc will do everything in its power to prevent fraud from happening and to respond effectively and efficiently if we believe it is. Please review the policy, “Internal monitoring and auditing” for information on how we assess for potential non-compliance.

While we would prefer that compliance-related concerns be reported directly to us, we acknowledge and support people’s right to report to the state or federal government. Please cross reference the policy “Non-compliance detection and response, and Confidential Communications” for more detailed information on reporting concerns. Staff are always able to report concerns anonymously or confidentially via our Hotline: 585-448-3588 or at <https://ethcomp.com/arcofmonroe> .

Both the federal and New York state governments have developed laws called “False Claims Acts” which are designed to respond consistently and effectively if/when they receive complaints of fraud by providers such as The Arc.

Definitions:

- **False Claim:** A “claim” is a request for payment, such as an invoice or bill, for services and supports that we have provided which we send to the government for payment. A “false claim” is a claim that isn’t accurate, meaning it doesn’t reflect the services we provided or we don’t have adequate documentation to support the claim. The law is considered violated at the time the false claim is paid by the government.

- If we submit a false claim, we could receive money from the government that we are not entitled to. Examples include: we knew we were sending them a bill that wasn't true, but we sent it anyway – knowing or believing that we were going to get paid for it. “Knowingly” also includes suspecting or having reason to believe that a claim is false, but submitting it for payment anyway.
- False Claims Acts: Federal and NYS laws that explain what false claims are and what penalties we could receive if it's proven that we submitted a false claim. Both laws apply to The Arc. False Claims Acts require that the defendants know, deliberately ignore, or recklessly disregard the falsity of their claims, but do not require a specific intent to defraud for the false claims acts to apply.

Examples: A claim is false if ...

- It indicates that we provided a service we never provided
- It indicates that we provided more services than were provided
- It indicates that we provided a service that someone doesn't really need (cross reference policy on Medical and Clinical Necessity)
- The Medicaid rules weren't followed, such as incomplete documentation, completing documentation late (outside designated timelines), not signing documentation, etc.

Staff are not allowed to:

- Make someone else send in a false claim, such as knowingly submitting false documentation which results in finance office staff submitting a false claim.
- Work together with someone else to send in a claim that was false (collusion or conspiracy).
- Keep payments for services that they know we should not have received (e.g., we discover and confirm that we received money from the government that we shouldn't have and don't pay it back within 60 days).

Qui tam/whistleblower lawsuits: The Arc can get sued if someone believes that we are submitting false claims. Anyone can issue a complaint or file a lawsuit: they don't have to be a staff person or someone linked to the agency. The person is called a whistleblower and typically complaints like this are made to the government. The government will review the information provided by the person and if they think there is merit to it, they may take the lead on the lawsuit. If this happens and it's proven that the agency was submitting false claims, the whistleblower can receive between 15% and 25% of whatever the agency has to pay back to the government (the settlement). If the government chooses not to take the lead on the lawsuit, the whistleblower can still proceed on their own. If they prove in court that The Arc submitted false claims, they could receive between 25% and 30% of whatever the settlement is.

The Arc and all of its staff are prohibited from treating people differently if they reported a compliance concern to any government agency. This means that we cannot intimidate, retaliate against or take any employment or other action specifically because they reported a concern to the government. If it's determined that we did so, the whistleblower will be entitled to their former job (if fired or demoted) and may receive additional compensation for being retaliated against. In addition, the agency may also be responsible for any legal fees they may have incurred in proving the retaliation. Please cross reference the policy, “Whistleblower, Non-intimidation and Non-retaliation” for additional information.

Paybacks and penalties: The following fines and penalties may apply if false claims are confirmed:

Federal government: Up to 3 times what we got paid for the claim, and between approximately \$14,000 and \$28,000 for each claim that was determined to be false.

New York State: Up to 3 times what we got paid for the claim, and between \$6,000 and \$12,000 for each claim that was determined to be false.

Other related laws:

The Federal Program Fraud Civil Remedies Act:

This is another law from 1986 that helps to respond to and discourage fraud from occurring. Per this law, people are prohibited from submitting a claim if they believe it is false or contains any false information. The federal Department of Health and Human Services is responsible for investigating complaints made under this law. Agencies can be fined up to \$5,000 for each false claim and pay back twice what they originally got for the claim. While under the False Claims Acts, violation of the law occurs when the claim is paid, under this law, the violation occurs when the claim is sent in. The determination of violation of the law is made by the Department of Health and Human Services, which is an administrative agency (versus a prosecutor).

Social Services Law 145-b:

This New York state law, similar to others, states that it is illegal to try to receive funds from the government by sending in false claims or by trying to hide the fact that such claims are false. The government could ask for up to 3 times back what we were originally paid and fine us up to \$2,000 for each false claim. If it's determined that we violated this law again within the following 5 years, we could be fined up to \$7,500 for each subsequent false claim. Anyone found guilty of violating this law will be guilty of a misdemeanor.

Penal law article 155, Larceny:

Larceny occurs when someone attempts to take something that belongs to someone else. People who commit fraud with the government can be charged with larceny. These are all felonies. There are 4 degrees of larceny:

- 4th for property valued over \$1,000
- 3rd for property valued over \$3,000
- 2nd for property valued over \$50,000
- 1st for property valued over \$1 million

Social services law 366-b:

A staff person will be charged with a class A misdemeanor if it's believed that they:

- Deliberately attempted to obtain Medicaid funds through deception, concealment, fraud, or impersonation; or
- Intended to commit fraud by deliberately and actively attempting to receive more Medicaid funds than they were entitled to.

Penal law article 175:

There are 4 parts of the law that have to do with claims that are false.

- 175.05: Falsifying business records in the second degree (a class A misdemeanor). This occurs when, while attempting to commit fraud, a person:
 - Makes or causes to be made a false entry into a business record; or
 - Alters, erases, obliterates, deletes, removes or destroys a true entry in the business records; or
 - Omits making a true entry in the business record in violation of a duty to do so (by law or their role); or
 - Prevents the making of a true entry or causes the omission thereof in the business records.
- 175.10. Falsifying business records in the first degree (a class E felony). This occurs when a staff person commits the crime of “falsifying business records in the second degree” and at the same time, intends to commit another crime, or to aid or conceal the commission thereof.
- 175.30. Offering a false instrument for filing in the second degree (a class A misdemeanor). This occurs when a person, knowing the instrument (aka, the documentation) contains a false statement or false information, offers or presents the documentation to a public office, public servant, public authority or public benefit corporation with the knowledge that it will be filed with, registered or recorded in or otherwise become a part of the records of such parties
- 175.35. Offering a false instrument for filing in the first degree (a class E felony). This occurs when a person commits the offense of offering a false instrument for filing in the second degree, but does so with intent to commit fraud.

Penal law article 176:

This law relates to insurance fraud and includes Medicaid (which is a form of health insurance). The degree of the crime is based on how much the claim was for. Any false claim over \$1,000 is a felony under this law. Committing insurance fraud more than once is also a felony.

Penal law article 177, Health Care Fraud:

This law also relates to health insurance fraud, including Medicaid. The degree of the crime under this law is also based on how much the claim was for. It is a felony if a company gets \$3,000 or more in a year through false claims under this law.

New York State labor law part 740:

This law says that an employer cannot treat an employee differently (including intimidation or retaliation) for:

- Reporting that they think someone is committing fraud
- Reporting their belief that the agency is not following the law, which is putting people at risk
- Testifying against an employer
- Refusing to violate federal or staff law if/when asked to do so by their employer

Under this law, the employee first has to report their concerns to their employer and give their employer a chance to address or correct the concern before they can report it to the government. An employee who thinks they've been treated differently for reporting concerns can file a civil suit under this law. On the flip side, if it's determined that an employee made a false report (claiming something was happening that was not), the employee may be responsible for The Arc's legal fees to fight such a report.

New York State labor law part 741:

The Arc is considered a “health care employer” because it provides services that help people live healthy lives. Under this law, The Arc can't treat staff differently if an employee reports, in good faith, that the people

supported by The Arc are not well cared for. The employee is required to tell the agency first before reporting it to the state, except in the following instances:

- They believe that someone is in real danger and waiting for the agency to respond will take too long; or
- The staff really believes that telling their supervisor won't change anything.

If staff believe they were treated differently for doing this, they can sue to regain their job (if they were fired or demoted), for any lost wages, and for legal fees. The agency can also be fined up to \$10,000 if this is proven to have occurred.

Procedure	
Task:	Responsible party:
General Guidelines:	
1. Affected parties are required to report if they believe that something illegal, unethical or against policy is occurring. We prefer they report to someone within the agency so that we can take responsibility for the concern and respond effectively to it (please see policy on "Non-compliance detection and response, and Confidential Communications" for additional information). However, staff always have the right to report a concern to the government if they prefer.	Affected parties
2. No affected party can be treated differently, including intimidation or retaliation, by any other member of agency staff or another affected party strictly for having reported a concern in good faith. Please cross reference the policy, "Whistleblower, Non-intimidation and Non-retaliation" for more information.	Affected parties
3. If it is determined that such intimidation or retaliation has occurred, the person will receive disciplinary action up to and including termination from employment or separation from the agency.	HR
4. If it is determined that we submitted a false claim, The Arc will investigate to determine how this happened and who may be responsible. Those responsible for submitting false claims or causing them to be submitted will receive discipline up to and including termination from employment. If their actions rise to the level of a crime, law enforcement will be notified.	VP for Quality and Compliance or designee; HR; Manager
5. Refer to the policy "Accurate and timely documentation of services" for information on the agency's standards and requirements for legal documentation of services.	Affected parties
Manager Responsibilities:	
1. Managers have a responsibility to understand the agency's documentation standards and that systems, processes and procedures have been established to meet them.	Managers
2. Managers have a responsibility to support, within their programs and the agency as a whole, a culture of openness and safety where affected parties can raise concerns without fear of retaliation or intimidation.	Managers
3. Managers are obligated to actively respond to reported concerns, including any that allege retaliation or intimidation, seeking support from HR, their leadership or the VP for Quality and Compliance as appropriate.	Managers

4. Managers have a responsibility to understand key provisions of both the federal and NYS False Claims Acts, and any other false-claims-related laws, regulations or statutes referenced in this policy.	Managers
5. As appropriate and when necessary, managers will remind the staff they support and other affected parties they work with as to what constitutes a false claim, the agency’s policy regarding them, systems in place to prevent them, and actions that will be taken if it’s determined they have occurred.	Managers
6. Managers will also remind affected parties as appropriate and when necessary that intimidation or retaliation of any kind against someone who reported a concern in good faith either to The Arc or the government is strictly prohibited and if confirmed, could result in termination of employment or separation from the agency.	Managers
VP for Quality and Compliance:	
1. The VP for Quality and Compliance acts as the agency’s Compliance Officer, as required in NYS law.	VP for Quality and Compliance
2. Has primary responsibility for administering the agency’s compliance program, and related policies and procedures.	VP for Quality and Compliance
3. Acts as a resource for agency staff, managers, and leadership, in supporting an environment and culture conducive to affected parties feeling free to report concerns. They will provide agency staff and leadership with clarity and guidance in understanding and applying the false claims acts and related laws.	VP for Quality and Compliance
4. With the support of the executive management team, the board and/or legal counsel, will be the primary contact for any false-claims-act-related inquiries, investigations or actions taken by the government.	VP for Quality and Compliance

Document revision record:

Revision Date	Release Date	Reason for change	Approver
12/29/06	12/29/06	Reasons for changes not documented. Part of another policy.	P Dancer
7/27/07	7/27/07	Reasons for changes not documented. Part of another policy.	P Dancer
5/30/08	5/30/08	Reasons for changes not documented.	P Dancer
9/24/10	9/24/10	Reasons for changes not documented.	P Dancer
6/4/12	6/4/12	Reasons for changes not documented.	P Dancer
7/22/16	7/22/16	Reasons for changes not documented.	P Dancer
5/22/17	5/22/17	Reasons for changes not documented.	P Dancer
11/9/18	11/9/18	Reasons for changes not documented.	P Dancer
10/30/19	10/30/19	Transitioned to new procedural format.	P Dancer
6/23/21	7/13/21	Updated and clarified content; added discrete sections for managers and VPQC	ICC
9/9/22	9/9/22	Added references to 42 USC 1396a(a)(68) and 31 USC 3730	ICC
3/15/23	3/15/23	Added a statement regarding our commitment and obligation to comply with government standards; specified whom the policy applies to	ICC

7/26/23	7/26/23	Spelled out an acronym; added a link to another document; corrected a statement missing some words; clarified bullet 5 under manager responsibilities	ICC
6/28/24	7/18/24	Added some cross references to other related policies; added clarifying language; changed the federal fines and penalties to an approximate range;	ICC
9/25/24	9/25/24	Added Board committees to affected parties	ICC