

Topic: False Claims	Department: Entire Agency
Original effective date: 3/11/02 (part of another policy)	Last revision date: 11/5/25
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); PPACA: Publ. No 111-148, 124 Stat 119; New York Laws State Finance, Article 13	
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).

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 following policies for more information:

- “Internal monitoring and auditing” for information on how we assess for potential non-compliance
- “Accurate and timely documentation of services; and Medicaid fraud, waste and abuse” for information on what constitutes fraud, waste and abuse; and
- “Management of situations reported to the compliance office” for information on how situations are assessed and responded to

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

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:

- Claim:
 - Any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that:
 - Is presented to an officer, employee or agent of the state or federal government; or
 - Is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the government's behalf or to advance a government program or interest and if the state or federal government:
 - Provides or has provided any portion of the money or property requested or demanded; or
 - Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and
 - Does not include requests or demands for money or property that the government has paid to an individual as compensation for government employment, or as an income subsidy with no restrictions on the individual's use of the money or property
- False Claim: A claim that isn't accurate, meaning it doesn't accurately reflect the services we provided, we don't have adequate documentation to support the claim, or it violates any provisions listed below in the regulatory language. The laws are 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. As an example: we knew we were sending them a claim that wasn't accurate, but we sent it anyway – knowing or believing that we were going to get paid for it.
- 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. Please refer to the regulatory language below for the actual language of these acts.
- Good faith: the person reporting the concern believes it to be true and accurate, to the best of their knowledge.
- Knowing or knowingly: A person, with respect to information:
 - Has actual knowledge of the information;
 - Acts in deliberate ignorance of the truth or falsity of the information; or
 - Acts in reckless disregard of the truth or falsity; and
 - Requires no proof of specific intent to defraud
- Material: Having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property

Regulatory language:

Any person who:

1. Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval

2. Knowingly make, uses or causes to be made or used, a false record or statement material to a false or fraudulent claim
3. Conspires to commit a violation of any part of this section on regulatory language
4. Has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property
5. Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
6. Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or
7. Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

(for the federal government), is liable to the United States Government of a civil penalty of approximately \$14,000 to \$28,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 USC 2461), plus 3 (three) times the amount of damages which the Government sustains because of the act of that person (e.g., the amount overpaid to The Arc); and/or

(for the NYS government), is liable to the NYS government of a civil penalty of approximately \$5,000 to \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 USC 2461), plus 3 (three) times the amount of all damages, including consequential damages, which the NYS government sustains because of the act of that person (e.g., the amount overpaid to The Arc).

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.
- Time records are used to bill Medicaid were falsified

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 Arc. 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 Arc was submitting false claims, the whistleblower can receive between 15% and 25% of whatever The Arc 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 for reporting 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 Arc 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.

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, contains any false information or omits material information. The federal Department of Health and Human Services is responsible for investigating complaints made under this law. Agencies may face penalties 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, by trying to hide the fact that such claims are false, or by engaging in any other fraudulent scheme or device in order to obtain or attempt to obtain payments under the NYS 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 of the incorrectly paid claim. 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 \$10,000 per violation unless a penalty under the section has been imposed within the previous five years, in which case the penalty may be up to \$30,000. Anyone found guilty of violating this law will be guilty of a misdemeanor. This crime is punishable by fines and by imprisonment up to one year.

Penal law article 155, Larceny:

Larceny occurs when someone attempts to take something that belongs to someone else (i.e., taking or withholding someone else's property by means of trick, embezzlement, false pretense, false promise, or similar behavior). People who commit fraud with the government can be charged under this law. 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 subject party 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). A person commits this crime when they intentionally file a health insurance claim knowing that it is false. 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. A person commits such a crime when, with the intent to defraud Medicaid or other health 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 a payment in an amount to which they were not entitled. 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. Punishment can include fines and jail time.

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 Arc 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. Such an employer notification is not required where:

- There is an imminent and serious danger to public health or safety;
- The employee reasonably believes that reporting to the supervisor would result in a destruction of evidence or other concealment of the activity, policy or practice;
- Such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor;
- The employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or
- The employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct such activity, policy or practice.

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 Arc first before reporting it to the state, except in the following instances:

- They believe that someone is in real danger and waiting for The Arc 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 Arc 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 is occurring which is illegal, unethical or against policy. We prefer they report to someone within The Arc 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 Arc 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 Arc.	HR; Management
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 may 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. Please refer to the policy, “Accurate and timely documentation of services” for information on The Arc’s standards and requirements for legal documentation of services.	Affected parties
Manager Responsibilities:	
1. Managers have a responsibility to understand The Arc’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 Arc 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 Arc'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 Arc.	Managers
VP for Quality and Compliance:	
1. The VP for Quality and Compliance acts as The Arc's Compliance Officer, as required in NYS law.	VP for Quality and Compliance
2. Has primary responsibility for administering The Arc'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
5/22/25	7/23/25	Added another example of false claims, added a regulatory reference, updated details and added clarifying information for secondary fraud laws and regulations	ICC
11/5/25	11/20/25	Added regulatory language and definitions of key terms	ICC