Topic: False Claims	**Department:** Entire Agency
Original effective date: 3/11/02 (part of another policy)	**Last revision date:** 10/30/19
Owner: VP for Quality and Compliance	**Frequency of reviews:** Annual
Internal/Regulatory Reference(s) (all that apply): 31 USC 3729; 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	
Related documents/Links:	

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

Additional Information: The Arc will do everything it can to keep fraud from happening. If it does happen, The Arc will do everything it can to find it. There are laws that were written to help make sure fraud doesn't occur. These are called "False Claims Acts". The federal government has one and so does New York State. Please also read The Arc's policies on, "Internal monitoring and auditing" and "Non-compliance detection and response, and confidential communications." These will tell you some of the things we do at The Arc of see if fraud is happening.

Definitions:

- False Claim: a bill we send to the government that isn't true or right. When staff write down the services they provide, The Arc uses that to get paid from the government. We submit a "claim" to them. It's like a bill. It shows what services we did and they pay us money for those services. We submit separate claims or bills for each unit of service.
- If we submit a false claim, we could end up getting money we shouldn't from the government. If we do this on purpose, it's called fraud. On purpose is also called "knowingly". Example: we knew we were sending them a bill that wasn't true, but we sent it anyway. And we knew we were going to get paid for it. Knowingly can also mean that we were pretty sure the claim wasn't true, but we sent it anyway.
- False Claims Acts: Federal and NYS laws that tell us what a false claim is and what penalties we could get if we submit a false claim. Both laws apply to The Arc.

Examples: A claim is false if …

- It says we provided a service we never provided
- It says we provided more services than were provided
- It says we provided a service that someone doesn't really need
- The Medicaid rules weren't followed. This can mean that someone didn't write down what they did soon enough. This includes things like monthly summaries. It can also mean that people didn't sign things they should have or were late signing things.

Things staff can't do: Staff have not followed the false claims acts if they …

- Make someone else send in a false claim. Example: a staff person writes that they did a service they never did. They don't tell anyone what they did. The finance office assumes that what the person wrote is true. They would have no reason to think differently. They go ahead and send the claim to the government and we get paid. The person who did not follow the False Claims Act was the staff person who wrote that they did something they never did.
- Work together with someone else to send in a claim that wasn't true. This other person could be a coworker who promises not to tell.
- Are supposed to pay money back to the government because they shouldn't have gotten it, but they don't. Example: we discover that we accidentally got money from the government that we shouldn't have. If we don't pay it back within 60 days, we have broken the false claims act law.

Qui tam/whistleblower lawsuits: The Arc can get sued if someone thinks were are submitting false claims. This can be anyone. They don't have to be a staff or someone linked to the agency. The person is called a whistleblower. They would go to the government. If the government thinks the lawsuit looks good, they will take the lead. If they do and it's proven that the agency was sending in false claims, the person who started the lawsuit can get between 15 and 25% of whatever the agency has to pay back to the government. If the government doesn't help out with the lawsuit, the person could get between 25 and 30% of whatever the agency has to pay back.

The Arc can't treat people differently if they tell the government they think it's sending in false claims. This means that if someone got fired or demoted or treated badly, they can get their job back. They also might get some compensation for their trouble. If they had to hire a lawyer, their legal fees might be covered too.

Penalties and paybacks:

Federal government: Up to 3 times what we got paid for the claim, and between $10,957 and $21,916 for each claim that wasn't true.

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 wasn't true.

Other related laws:

<u>The Federal Program Fraud Civil Remedies Act:</u>

This is another law that helps to keep fraud from happening. It came out in 1986. This law says that people cannot send in a claim if they believe the claim is false or has information in it that isn't true. When this law is broken, the Department of Health and Human Services investigates. Agencies can be fined up to $5000 per claim. They could also have to pay back twice what they originally got for the claim. Under false claims, the law is broken when the claim is paid. Under this law, the law is broken when the claim is sent in. Also, it's not a prosecutor who decides if this law is broken. It's the Department of Health and Human Services, which is an administrative agency.

New York State False Claims Act:

This is almost exactly like the federal false claims act. The main difference is that the fines are lower. With this law, the agency could have to pay between $6000 and $12,000 for each false claim. This is less than the federal law. This law also talks about "knowingly" just like the federal law. Lawsuits can happen the same way too. And, people can't be treated differently for telling the state if they think The Arc is sending in false claims.

Social Services Law 145-b:

This law says that it's against the law to try and get paid by the government by sending in a bill or claim that isn't true. This also means trying to hide the fact that it's untrue. The government could ask for 3 times back what we were originally paid. They can also fine us up to $2000 for each time we broke the law. If we break the law again within the next 5 years, we could be fined up to $7500 for each time we broke the law. This is especially true if we sent in bills for things we never did or that said we did more than we did. If it's proven people broke this law, they will be guilty of a misdemeanor.

Penal law article 155, Larceny:

Larceny happens when someone tries to get something that belongs to someone else by tricking them, lying to them or committing fraud. A false claim is a lie and it's used to trick the agency into getting money it shouldn't. 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 $1000
- 3rd for property valued over $3000
- 2nd for property valued over $50,000
- 1st for property valued over $1 million

Social services law 366-b:

It's a misdemeanor if someone tries to get Medicaid by lying or committing fraud. This means if they hide things or pretend to be someone else too. It's also a misdemeanor if someone plans to commit fraud and lies to get more Medicaid than they should or to get services under Medicaid.

Penal law article 175:

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

- 175.05. This is falsifying business records. This means writing down things that aren't true or leaving important information out so that they can commit fraud. It also means making changes to things that written down so that they can commit fraud. This is a misdemeanor.
- 175.10. This is falsifying business records in the first degree. This is the same as 175.05 but someone also planned to do another crime or hide this one. This is a felony.

- 175.35. This is called "offering a false instrument for filing" in the first degree. This means that someone sent something in like a claim for payment to the state when they knew it wasn't true or correct. This is a felony.

Penal law article 176:

This law has to do with insurance claims. It includes Medicaid. The degree of the crime is based on how much the claim was for. Any false claim over $1000 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 has to do with health insurance claims. It includes Medicaid. The degree of the crime is also based on how much the claim was for. It is a felony if a company gets $3000 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 who does things like:

- Sharing that they think someone is committing fraud
- Sharing that the agency is not following the law and it's putting people at risk
- Testifying against and employer
- Refusing to break the law too when asked by their employer

Under this law, the employee has to tell their employer first what they think is going on. They also have to give their employer a chance to fix it first before this law kicks in. A civil suit can be brought by an employee who thinks they've been treated differently for doing any this. If an employee lies and says that their employer is doing something illegal when they aren't, the employee may have to pay the employer's legal fees.

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. This law says that agencies like The Arc can't treat staff different because the staff thinks the people we support aren't being well cared for and they report it. The employee has to tell the agency first or this law doesn't apply. The only times this wouldn't apply are:

- If someone is in real danger and it can't wait
- If the staff really believes that telling their boss won't change anything.

If the agency treats staff different for doing this, the staff can sue for their job, any lost pay, and legal fees. The agency can also be fined up to $10,000.

Procedure	
Task:	**Responsible party:**
1. Staff need to report if they think something is happening that shouldn't be, like something illegal. They should tell someone in management. This is so the agency can fix what's happening and stop it from happening again.	Staff
2. If a false claim is found, The Arc will look to figure out who is responsible for it being false. This would be the person who didn't follow the Medicaid rules or who wrote down that they did something when they didn't and we got paid.	VP for Quality and Compliance or designee
3. Refer to the policy on accurate and timely documentation of services.	Staff
4. If staff wants, they can call the government if they think something is happening that shouldn't be.	Staff
5. Staff can't be treated differently if they report something they really think is happening that shouldn't be.	HR, Administration, Management
6. There could be discipline for anyone who treats a staff person differently for reporting something they really think is happening.	HR, Administration, Management

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	Reasons for changes not documented.	P Dancer