

Leslie, Knott, Letcher, Perry Community Action Council, Inc.
Policy Regarding False Claims, Whistleblower Protection, Fraud Prevention and Detection

1. General Statement of Policy

1.1 It is the policy of LKLP, hereinafter referred to as “the Agency or LKLP,” to comply with all applicable federal, state and local laws and regulations, both civil and criminal.

1.2 It is also the policy of the Agency to require staff, volunteers, vendors and subcontractors to comply with applicable Agency Policy, including those on confidentiality and ethics, and the applicable local, state and federal regulations, policies, procedures and standards of conduct.

1.3 This Policy summarizes the provision of the Agency’s Compliance Program and the requirements of the Federal Deficit Reduction Act of 2005, 42USC §1396 (a) (68), and provides information to LKLP staff, volunteers, vendors and subcontractors regarding important federal and state laws. The provisions, standards and requirements of the program will be reviewed with each new employee, volunteer, vendor and subcontractor.

2. Scope

2.1 This policy applies to all employees and volunteers in those departments of LKLP providing Medicaid health care items or services for which Medicaid payments are made.

2.2 This policy also applies to all subcontractors and vendors or agents who furnish or authorize the furnishing of Medicaid services on behalf of the Agency, or perform billing or coding function of are involved in the monitoring the care provided by LKLP.

3. Administration

3.1 This policy will be implemented by LKLP through the Board of Directors, Human Resources Director, and other administrative or managerial staff.

4.1 Each employee or agent of LKLP will strive to act in accordance with provisions of any applicable local, state or federal laws, and all LKLP agency policies and will encourage other employees or agents to act the same.

4.2 No employee or agent of LKLP has authority to act contrary to the provisions of any applicable laws or agency policies or to authorize, direct or condone such action by any other employee or agent

4.3 Any employee or agent of LKLP who has knowledge of activities that he or she believes may violate a law, rule or regulation has an obligation, promptly after learning of such activities, to report the matter to his or her immediate supervisor or LKLP HR Director. Reports may be made anonymously and employees will not be penalized for reports made in good faith; see also, whistleblower protection laws described in Appendix A. Failure to report known violations,

failure to detect violations due to negligence or reckless conduct and intentionally making false reports shall be grounds for disciplinary action, including termination. The appropriate form of discipline will be case-specific, and in accordance with KY Civil Service Law and/or existing collective bargaining agreements.

4.4 LKLP will take steps to communicate its standards and procedures to all employees and agents by disseminating information that explains in a practical manner what is required. This will include distribution of this policy. The agency Bylaws and this policy are available on the LKLP website at www.lklp.org.

4.5 LKLP will take steps to achieve compliance with its standards by utilizing monitoring and auditing systems reasonably designed to detect misconduct by its employees and agents and by having in place and publicizing a reporting system whereby employees and other agents can report misconduct within the agency without fear of retribution. LKLP maintains an open door policy for employees to speak confidentially with the HR Director and all administrative staff and managers.

4.6 After a suspected violation has been reported, LKLP, through the HR Director, will take reasonable steps to respond appropriately and to prevent further similar violations, including any necessary modifications to its program to prevent and detect violations of law.

4.7 All members of the LKLP workforce should be knowledgeable about several important federal and state laws that help to prevent and detect waste, fraud and abuse in federal health care programs such as Medicare and Medicaid. In addition, individuals who, in good faith, report suspected non-compliant behavior are protected by both federal and state law. Please see Appendix A to this policy for a description of these laws.

4.8 This policy is intended to communicate current policies regarding compliance. LKLP reserves the right to change, modify, or waive all provisions herein. If any employee has a question concerning a particular provision contained herein or concerning any practice not addressed in this document, then he or she should consult with the HR Director.

4.9 All contractors and agents who furnish or authorize the furnishing of Medicaid services on behalf of LKLP, or perform billing or coding functions or are involved in monitoring the care provided by the agency are required to communicate these policies and procedures to their employees and are responsible for making sure that the communication occurs.

5. DISTRIBUTION

5.1 This policy and Procedure will be distributed to LKLP employees via the agency's web page. In addition, hard copies will be provided to new employees during the orientation process and current employees in those departments providing Medicaid health care items or services for which Medicaid payments are made.

Appendix A

False Claims Act (31 USC §§3729-3733).

The False Claims Act ("FCA") provides, in pertinent part, that:

(a) Any person who (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; (3) conspires to defraud the Government by getting a false or fraudulent claim paid or approved by the Government;. . . or (7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person

(b) For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

31 U.S.C. § 3729. While the False Claims Act imposes liability only when the claimant acts "knowingly," it does not require that the person submitting the claim have actual knowledge that the claim is false. A person who acts in reckless disregard or in deliberate ignorance of the truth or falsity of the information, also can be found liable under the Act. 31 U.S.C. 3729(b).

In sum, the False Claims Act imposes liability on any person who submits a claim to the federal government that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not

provided. The False Claims Act also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. An example of this may include a government contractor who submits records that he knows (or should know) is false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to which he may not be entitled, and then uses false statements or records in order to retain the money. An example of this so-called “reverse false claim” may include a hospital who obtains interim payments from Medicare throughout the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare program.

In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States. 31 U.S.C. 3730 (b). These private parties, known as “*qui tam* relators,” may share in a percentage of the proceeds from an FCA action or settlement.

Section 3730(d)(1) of the FCA provides, with some exceptions, that a *qui tam* relator, when the Government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(d)(2) provides that the relator shall receive an amount that the court decides is reasonable and shall be not less than 25 percent and not more than 30 percent.

Administrative Remedies for False Claims (31 USC Chapter 38. §§ 3801 – 3812)

This statute allows for administrative recoveries by federal agencies. If a person submits a claim that the person knows is false or contains false information, or omits material information, then the agency receiving the claim may impose a penalty of up to \$5,000 for each claim. The agency may also recover twice the amount of the claim.

Unlike the False Claims Act, a violation of this law occurs when a false claim is submitted, not when it is paid. Also unlike the False Claims Act, the determination of whether a claim is false, and the imposition of fines and penalties is made by the administrative agency, not by prosecution in the federal court system.

Whistleblower Protection Federal False Claims Act (31 U.S.C. § 3730 (h)).

The FCA provides protection to *qui tam* relators who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. 31 U.S.C. 3730(h). Remedies include reinstatement with comparable seniority as the *qui tam* relator would have had but for the discrimination, two times the

amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.