



**Corporate Compliance  
Policies and Procedures  
March 2025**

Compliance Committee Review: 3/21/2025

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## **Standards of Conduct**

### **Purpose:**

The Arc of Rensselaer County (“the Agency”) is committed to conducting its business ethically and in conformance with all federal, state and local laws, regulations, and interpretations thereof, and with the Agency’s Standards of Conduct. To support this commitment, the Agency will maintain and update as appropriate a written Standards of Conduct to provide guidance on Affected Individuals and organizational responsibilities related to compliance. Affected Individuals is defined as “All persons who are affected by the required provider’s risk areas including the required provider’s employees, the Chief Executive Officer and other senior administrators, managers, contractors, agents, subcontractors, independent contractors, and governing body and corporate officers.” The Standards of Conduct addresses specific issues related to reimbursement, financial relationships, quality of care, and other critical areas.

### **Policy:**

1. The Agency will develop, maintain, and update as appropriate a written Standards of Conduct to provide Affected Individuals with guidance on requirements for conduct related to employment or engagement by the Agency.
2. The Standards of Conduct will describe important parts of the Compliance Program including, but not limited to employee ethics, conflict of interest, and employee hotline.
3. All Affected Individuals will be provided a copy of the Standards of Conduct and participate in training on compliance-related issues at orientation or commencement of engagement and/or on an annual basis.

### **Procedures:**

1. The Compliance Officer is responsible for the development and annual, at minimum, update of the Agency’s Standards of Conduct.
2. The Agency’s Board of Directors will be responsible for final approval of the Standards of Conduct.
3. The Standards of Conduct will be written at a basic reading level, avoiding complex language and legal terminology. At a minimum, it will address critical areas such as compliance with laws and regulations, human resource practices, quality of care/service, conflicts of interest, proprietary rights, confidentiality, and reimbursement practices.
4. The Standards of Conduct will address specific areas of potential fraud or similar wrongdoing (e.g., claims development, submission processes).
5. The Standards of Conduct will address human resources related compliance issues such as sexual harassment and discrimination, as well as the Agency’s commitment to quality of care and service.
6. Applicable policies and the Standards of Conduct will be provided to all Affected Individuals. Copies will be provided to all Affected Individuals upon orientation or commencement of engagement with the Agency. All recipients of the documents will sign and date a receipt that acknowledges: (a) receiving copies, (b) reading and understanding the contents, and (c) agreeing to abide by the provisions of the documents.

7. The Compliance Officer will ensure that all Affected Individuals receive training annually related to the contents of the Standards of Conduct and other related compliance issues, to help them understand how they apply to everyday work situations. The Compliance Officer will ensure that records are maintained to document the receipt of training.
8. The Compliance Officer will include in his or her report to the Agency Compliance Committee and Board of Directors the status of training, along with any recommendations for updating or improving the contents of the Standards of Conduct.
9. The Compliance Officer is responsible for investigations of possible violations of the Standards of Conduct as it relates to compliance and recommending disciplinary action has been taken when necessary.
10. Written confidentiality and non-retaliation policies will be referenced and included as part of the Standards of Conduct for the purpose of encouraging communication and the reporting of incidents of suspected fraud or other wrongdoing.
11. The Standards of Conduct will include instructions to report fraud, abuse, suspected violations of the Standards of Conduct, or other suspected wrongdoing directly to the Compliance Officer or other supervisory personnel.
12. The Standards of Conduct will provide written guidance on how Affected Individuals may report suspected violations of Federal or State law, regulations, interpretations thereof, or the Standards of Conduct without fear of retribution or retaliation to an organization hotline or other mechanism that bypasses management.
13. The Standards of Conduct will include a description of disciplinary mechanisms utilized by the Agency and the procedures for addressing disciplinary actions.

## **Conflict of Interest**

### **Purpose:**

All Affected Individuals of the Agency have an obligation to conduct business within guidelines that prohibit actual or potential conflicts of interest. This policy is established to ensure that services and business activities are conducted in an objective manner and are not motivated by desire for personal or financial gain.

### **Policy:**

1. Affected Individuals are required to disclose any actual or potential conflict of interest and seek guidance on how to handle the situation. Conflict of Interest is defined as:

Any situation in which financial or other personal considerations may compromise or appear to compromise (1) a person's business judgment; (2) delivery of services; or (3) the ability for a person to do his or her job. An actual or potential conflict of interest occurs when a person is in a position to influence a decision that may result in a personal gain for that person or for a relative as a result of business dealings. For the purpose of this policy, a relative is any individual who is related by blood or marriage, or whose relationship with the person is similar to that of persons who are related by blood or marriage.

2. Business dealings with outside entities should not result in unusual gain for those entities, the Agency or a person. Unusual gain refers to bribes, product bonuses, special fringe benefits, unusual price breaks, and other windfalls designed to ultimately benefit the Agency, the person, or both.
3. The Agency's materials, products, designs, plans, ideas, and data are the property of the Agency and should never be given to an outside firm or individual except through normal channels with appropriate prior authorization. Any improper transfer of material or disclosure of information, even though it is not apparent that a person has personally gained by such action, is prohibited.

### **Procedures:**

1. An Affected Individual with questions or concerns about potential conflicts of interest will promptly address the issue with appropriate management staff and/or the Compliance Officer. Management staff will consult with the Compliance Officer before responding to a concern or question about a potential conflict of interest.
2. Actual or potential conflicts of interest must be disclosed to appropriate management personnel, human resources, or the Compliance Officer.
3. Members of management, job titles that involve substantial discretionary authority, and the Board of Directors will complete a Conflict of Interest Disclosure Statement annually.
4. Affected Individuals must seek guidance and approval from appropriate management personnel prior to pursuing any business or personal activity that may constitute a conflict of interest.
5. Outside employment may not interfere with the employee's ability to perform his or her job with the Agency. In addition, Agency employees may not compete against the Agency, or have any ownership interest in a competitor.
6. The Compliance Officer will investigate any violations of this policy.

## Business Courtesies for Referrals

### Purpose:

The Agency recognizes that there are legitimate and lawful reasons to accept or provide reasonable business courtesies. However, in healthcare, business courtesies pose a risk for conflicts of interest, and fraud and/or abuse related to anti-kickback laws and regulations. The Anti-Kickback law prohibits the offer of payment, solicitation or receipt of any form of remuneration for the referral of Medicare or Medicaid recipients.

The purpose of this Policy is to assure that the Agency complies with federal Anti-Kickback laws. The Policy provides guidance for providing business courtesies.

For the purpose of this policy, the following definitions apply:

- a. **Business Courtesies:** Business courtesies include items of value given to another free of cost. Examples include gifts, entertainment, and /or Agency sponsored or hosted social events.
- b. **Immediate Family Member:** An immediate family member of a person includes:
  - The person's spouse;
  - Natural or adoptive parent, child or sibling;
  - Stepparent, stepchild, stepbrother or stepsister;
  - Father-in-law, mother-in-law; son-in-law; daughter-in-law; brother-in-law; or sister-in-law;
  - Grandparent or grandchild; and
  - Spouse of a grandparent or grandchild.
- c. **Potential Referral Source:** A potential referral source includes health care professionals who could reasonably be a source of referral of patients to the Agency for services or treatment.

### Policy:

1. It is the Agency's policy that gifts, entertainment, and other benefits will not be provided to a potential referral sources and/or to his or her immediate family, except as permitted by this Policy.
2. This Policy only pertains to relationships with individuals and entities outside the Agency; it does not pertain to actions between the Agency and its employees, or to actions among Agency employees.
3. Any business courtesies involving physicians or other individuals or entities in a position to refer patients or services to the Agency must strictly follow Agency policies and be in conformance with all federal, state and local laws, regulations, and rules.

### Procedures:

1. Affected Individuals may not offer a potential referral source and/or his or her immediate family members business courtesies unless the following criteria are met:
  - The business courtesy is not based, directly or indirectly, on the volume or value of referrals or other business generated by the potential referral source;
  - The business courtesy does not consist of cash or the equivalent of cash;

- The business courtesy is not solicited by the potential referral source or the referral source's practice or employees;
  - The business courtesy does not exceed \$519 in value or cause the total value of business courtesies extended to the potential referral source or immediate family to exceed \$519 for the calendar year;
  - The business courtesy does not violate the federal Anti-Kickback statute or any federal, state or local law governing claims submission; and
  - The business courtesy is not extended to a physician group.
2. All Affected Individuals must receive prior approval from the Compliance Officer before extending business courtesies to potential referral sources and/or their immediate family members. The Compliance Officer will record any business courtesy extended to a potential referral source or his/her immediate family members. The Compliance Officer will ensure that the aggregate value of business courtesies does not exceed \$519 in a calendar year.

## **Compliance Committee**

### **Purpose:**

The Agency is committed to the operation of an effective compliance program. Therefore, the Agency established the Compliance Committee to monitor results of its compliance functions and determine the Agency's strategy for promoting compliance.

### **Policy:**

1. The Compliance Committee is appointed by Executive Management and the Compliance Officer to advise and assist the Compliance Officer with the implementation of the Compliance Plan.
2. Membership shall be comprised of, at a minimum, senior management/leadership. The Committee also includes members of The Agency's Board of Directors.
3. The Compliance Committee will provide oversight of the Compliance Officer's activities.

### **Procedures:**

The Compliance Committee shall be responsible for the following:

1. Analyzing the regulatory environment where the Agency does business, including regulatory and legal requirements with which it must comply;
2. Reviewing and assessing existing policies and procedures that address risk areas for possible incorporation into the Compliance Plan;
3. Working with departments to develop standards, policies and procedures that address specific risk areas and to encourage compliance according to legal and ethical requirements;
4. Developing internal systems and controls to carry out compliance standards, policies and procedures;
5. Monitoring internal and external audits to identify potential non-compliance issues;
6. Implementing corrective and preventative action plans and follow-up to determine effectiveness;
7. Developing a process to solicit, evaluate and respond to compliance-related complaints and problems;
8. Advocating for the allocation of sufficient funding, resources and staff for the Compliance Officer to fully perform their responsibilities; and
9. The Compliance Committee will meet no less frequently than quarterly.
10. No less frequently than annually, review and update the Compliance Committee Charter.



## Exclusion Screening

### Purpose:

The Agency is committed to maintaining high quality care and service as well as integrity in its financial and business operations. Any Affected Individual will be screened.

### Policy:

1. It is the policy of the Agency not to employ, contract with, or conduct business with an individual or entity excluded from participation in federally sponsored health care programs, such as Medicare and Medicaid.
2. The Agency will conduct exclusion (sanction) screening of all proposed Affected Individuals upon hire or engagement with the Agency.
3. On a monthly basis, the Agency will screen all Affected Individuals and verify that none have been excluded from the Federal healthcare program.

### Procedures:

1. The Agency will conduct exclusion checks to verify that Affected Individuals have not been excluded from federal healthcare programs. An exclusion check is a search of the following to determine if the individual or entity's name appears on either list:
  - a) Sam.Gov: An exclusion record identifies parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non Financial assistance and benefits.  
<https://sam.gov/content/exclusions>
  - b) Office of Inspector General/U.S. Department of Health & Human Services: Exclusions Database  
<https://exclusions.oig.hhs.gov/>
  - c) New York State Office of Medicaid Inspector General: Medicaid Exclusions  
<https://omig.ny.gov/medicaid-fraud/medicaid-exclusions>
  - d) New York State Department of Health: Office of Professional Medical Conduct (OPMC): Physician and Physician Assistant Disciplinary and Other Actions  
<http://www.health.state.ny.us/nysdoh/opmc/main.htm>and/or  
  
New York State Department of Education (other licensed professionals)  
<https://www.op.nysed.gov/verification-search>
2. An exclusion check will be performed on all applicants prior to hire as part of the employment screening process and for others, at commencement of engagement with the Agency.

3. On a monthly basis, through a report sent by third party company on the 20<sup>th</sup>, the Agency will verify that all Affected Individuals have not been excluded from Federal healthcare programs. The process is as follows:
  1. The exclusion screening is completed through a third-party entity and results will be provided to the Agency, to include the Compliance Officer, in three separate reports (Staff, Vendor, Board).
  2. If there are findings, the subsequent report will be forwarded to a specific agency employee for review.
    - a. Staff Report – Director of Human Resources
    - b. Vendor Report – Chief Financial Officer
    - c. Board Report – Administrative Assistant
  3. Results of the individual review will be provided to the Compliance Officer.
  4. If the exclusion check indicates that any individual or entity has been excluded from Federal healthcare programs, the individual or entity cannot be employed by or conduct business with the Agency.
4. The Agency representative responsible for the arrangement with a contractor shall be responsible for notifying Human Resources of the need to conduct an exclusion check prior to entering into an agreement with a contractor.
  - a. Contracts with contractors will contain a certification that the contractor and its employees are not excluded by the Federal government.
5. In addition to exclusion screening, the licensing credentials of medical/healthcare professionals employed by the Agency or with whom they establish a contractual business relationship will be verified with appropriate licensing and disciplining authorities, including any adverse actions taken against the individuals that might impair their performance of duties, or fiduciary responsibilities on behalf of the Agency. The process will include, but not be limited to, physicians and other health care practitioners for whom a license is required for the performance of their duties. The screening and verification will be conducted as part of the hiring process or prior to entering a contractual agreement and at least annually thereafter.
6. Human Resources shall maintain the results of all exclusion checks for new hires.
7. An annual audit of new employee records and new contractors with which the Agency enters into a business relationship will be conducted by the Compliance Officer to verify that this policy is enforced. A report of this audit will be made to the Agency's Compliance Committee and Board of Directors, along with any recommendations for remedial actions or improvement to the process as part of the annual compliance report.

## **Contractors**

### **Purpose:**

Contractors, agents, subcontractors, and independent contractors shall be collectively referred to as “contractors”. For the purposes of this policy, a contractor is defined as an entity who, on behalf of the Agency, furnishes, or otherwise authorizes the furnishing of Medicaid health care items or services, performs billing or coding functions. Or, is involved in the monitoring of health care provided by the Agency.

### **Policy:**

1. Contracts with all contractors are subject to the Compliance Program to the extent it is related to their contracted roles and responsibilities with the identified risks.
2. All new contracts with contractors will be initially executed for a period of 2 years and may be subsequently renewed for two-year periods at a time.

### **Procedures:**

1. Prior to the end of the two-year contract period, the Agency will meet with the contractor to review the contract. The contract will either be renewed for another two years or terminated.
2. As part of the internal audit review process, contractual work completed by the contractor will be reviewed to ensure compliance with the requirements of the Compliance Program.
3. Failure to adhere to the Compliance Program requirements will include termination of the contract.

## Compliance Training

### Purpose:

The development and implementation of regular, effective education and training seminars for Affected Individuals is an integral part of the Compliance Program. The Compliance Program includes a training plan that outlines compliance subjects or topics required for all affected individuals, timing and frequency of the trainings, which affected individuals are required to attend specific trainings, how attendance for each training is recorded, and how periodic evaluation of training effectiveness is completed. Compliance education is divided into two general components. First, all Affected Individuals must receive an introduction to the Compliance Program. Second, Affected Individuals whose work is linked to identified risk areas, such as documentation and submission of billing claims and others as they emerge, should receive specialized compliance education pertaining to their functions and responsibilities.

### Policy:

1. All Affected Individuals will receive training related to the Agency's overall Compliance Program.
2. Affected Individuals in identified risk areas will receive more detailed education related to their functions and responsibilities.
3. Completion of training is mandatory and is a condition of continued employment or engagement with the Agency.

### Procedures:

1. The Compliance Officer is responsible for developing the compliance education curriculum, and for monitoring and ensuring that compliance training and orientation meet the policy standards on this subject.
2. Compliance education trainings must include an explanation of the structure and operation of the Compliance Program. They will also introduce the Compliance Officer to the people receiving training.
3. Compliance education trainings, at a minimum, will include information on the following aspects of the compliance program:
  - Role of the Compliance Officer and Compliance Committee
  - Risk areas and organizational experience
  - Written policies and procedures
  - Standards of Conduct and other related written guidance
  - How Affected Individuals can ask questions and report potential compliance-related issues to the Compliance Officer or Leadership/Senior Management, including Compliance Hotline
  - Obligation of Affected Individuals to report suspected illegal or improper conduct and the procedures for submitting such reports
  - Protection from intimidation and retaliation for good faith participation in the Compliance Program
  - Disciplinary standards as it relates to the Compliance Program and prevention of Medicaid fraud, waste and abuse
  - Response to compliance issues and implementation of corrective actions

- False Claims Act

4. Comprehensive education materials will be developed to facilitate the compliance training sessions and to ensure that a consistent message is delivered to all Affected Individuals. Education protocols and materials must be standardized, so as to evidence that everyone attending a seminar receives the same instruction.
5. As part of his or her initial orientation, each Affected Individual shall receive training within the first thirty (30) days of employment or engagement with the Agency.
6. Each Affected Individual will receive information about the Agency's compliance program and objectives, and a written copy of the Standards of Conduct, Compliance Plan and Compliance Policies and Procedures. Each Affected Individual will sign an acknowledgement that they are aware of and will abide by the Corporate Compliance Program and Standards of Conduct.
7. Annual training and/or information will be provided to all Affected Individuals about the Agency's compliance program and requirements. The training will also focus on any changes in Federal or State laws and regulations.
8. All education and training relating to the Corporate Compliance Program will be verified by attendance and/or a signed acknowledgement of receipt of training or by a post-test.
9. Affected Individuals will be provided with the opportunity to seek clarification or more information on any aspect of the Compliance Program.
10. Only properly trained individuals will be used to provide compliance education and training. Compliance Program trainers must be knowledgeable of the (a) Compliance Program; (b) applicable Federal laws and regulations; (c) requirements of the Federal Sentencing Guidelines; (d) relevant organization policies/procedures; (e) operations of the compliance program; and (f) content of the Standards of Conduct.
11. The Compliance Officer is responsible for coordinating with management to ensure that specialized compliance education occurs in identified risk areas.
12. Managers shall assist the Compliance Officer in identifying areas that require specific training and are responsible for communication of terms of the Compliance Plan to all independent contractors doing business with the Agency.
13. The Compliance Officer is also responsible for submitting periodic reports to the Agency's and Compliance Committee and the Board of Directors on all education seminars related to the Compliance Program.

## **Reporting of Compliance Concerns and Non-retaliation**

### **Purpose:**

The Agency recognizes that a critical aspect of its Compliance Program is the establishment of a culture that promotes prevention, detection, and resolution of instances of conduct that do not conform to federal and state requirements, as well as the organization's ethical and business policies.

To promote this culture, the Agency has established a compliance reporting process and a strict non-retaliation policy to protect employees and others who report problems and concerns in good faith from retaliation. Any form of retaliation or retribution can undermine the compliance resolution process and result in a failure of communication channels in the organization.

### **Policy:**

1. All Affected Individuals have an affirmative duty and responsibility to promptly report any known or suspected misconduct, including actual or potential violations of laws, regulations, policies, procedures, the Agency's Corporate Compliance Plan or the Agency's Standards of Conduct.
2. The Agency will maintain an anonymous Compliance Hotline. The Hotline number is (518) 687-1395. Affected Individuals may report their compliance concerns confidentially to the Compliance Officer through use of the Compliance Hotline.
3. An "open-door policy" will be maintained at all levels of management to encourage Affected Individuals to report problems and concerns. This is to ensure Affected Individuals to report to Supervisors if they do not feel comfortable initially reporting to the Compliance Officer or calling the Compliance Hotline.
4. Any form of retaliation against any Affected Individual who reports a perceived problem or concern in good faith is strictly prohibited.
5. Any Affected Individual who commits or condones any form of retaliation will be subject to discipline/sanctions up to, and including, termination of relationship with the Agency.
6. Affected Individuals cannot exempt themselves from the consequences of their own misconduct by reporting the issue, although self-reporting may be considered in determining the appropriate course of action.

### **Procedures:**

#### **Applicable to all Affected Individuals:**

1. Knowledge of misconduct, including actual or potential violations of laws, regulations, policies, procedures, or the Agency's Standards of Conduct, must be immediately reported to management, the Chief Human Resources Officer, the Compliance Officer, or the Compliance Hotline.
2. Confidentiality will be maintained to the fullest extent and allowable by law. Affected Individuals should be aware that the Agency is legally required to report certain types of crimes or potential crimes and infractions to external governmental agencies.

3. Affected Individuals may report their compliance concerns confidentially to the Compliance Hotline and choose not to provide their identity. Callers should be aware, however, that it might not be possible to preserve anonymity if they identify themselves, if they provide other information that identifies them, if the investigation reveals their identity, or if they inform others that they have called the Compliance Hotline.
4. If a caller wishes to make a report anonymously to the Compliance Hotline, no attempt will be made to trace the source of the call or identify of the person making the call.
5. The Compliance Hotline number will be published and visibly posted in a manner consistent with employee notification in locations frequented by Agency employees and in all training materials.
6. The Agency will not impose any disciplinary or other action in retaliation against any individual who makes a report or complaint in good faith regarding a practice that the individual believes may violate the Agency's Corporate Compliance Plan, Standards of Conduct, its Compliance Policies and Procedures, or any of the laws, rules or regulations by which the Agency is governed. "Good faith" means that the individual believes that the potential violation actually occurred as he or she is reporting it.
7. The Agency strictly prohibits its Affected Individuals from engaging in any act, conduct or behavior which results in, or is intended to result in, retaliation against any Affected Individual for reporting his or her concerns relating to a possible violation of the Agency's Corporate Compliance Plan, Standards of Conduct, its Compliance Policies and Procedures, or any of the laws, rules or regulations by which the Agency is governed.
8. If an Affected Individual believes in good faith that he/she has been retaliated against for reporting a compliance complaint or concern or for participating in any investigation of such a report or complaint, the person should immediately report the retaliation to the Compliance Officer or the Compliance Hotline. The report should include a thorough account of the incident(s) and should include names, dates and specifics events, the names of any witnesses and the location or name of any document that supports the alleged retaliation.
9. Knowledge of a violation or potential violation of this policy must be reported directly to the Compliance Officer or the Compliance Hotline.

**Applicable to Management (which includes Executives, Directors, Managers, and Supervisors):**

1. Management must take appropriate measures to ensure that all levels of management support this policy and encourage the reporting of problems and concerns.

**Applicable to the Compliance Officer:**

1. The Compliance Officer will be responsible for the investigation and follow-up of any reported retaliation against an Affected Individual for reporting a compliance concern or participating in the investigation of a compliance concern.
2. The Compliance Officer will report the results of an investigation into suspected retaliation to the Agency's Compliance Committee and the Board of Directors.

## Applicable Federal and State Laws

### Purpose:

The Agency is committed to prompt, complete and accurate billing of all services provided to individuals. The Agency and its Affected Individuals shall not make or submit any false or misleading entries on any claim forms. No Affected Individual shall engage in any arrangement or participate in such arrangement at the direction of another person, including any supervisor or manager, that results in the submission of a false or misleading entry on claims forms or documentation of services that result in the submission of a false claim.

It is the policy of the Agency to detect and prevent fraud, waste and abuse in Federal healthcare programs. This Policy explains the Federal False Claims Act (31 U.S.C. §§ 3729 – 3733), the Administrative Remedies for False Claims (31 USC Chapter 38 §§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 the Agency has put into place to prevent any violations of federal or New York State laws regarding fraud or abuse in its health care programs.

This policy applies to all Affected Individuals, including contractors.

### Deficit Reduction Act of 2005 (DRA) (Title 42 United States Code § 1396-a(a)(68))

The DRA requires entities that receive \$5 million or more in annual Medicaid payment to establish written policies and procedures for all Affected Individuals. Such policies provide detailed information pertaining to the following:

1. Detailed information about the Federal False Claims Act;
2. Administrative remedies for false claims and statements;
3. Applicable state laws that provide civil or criminal penalties for making false claims and statements;
4. “Whistleblower” protections for Affected Individuals; and
5. Preventing and detecting fraud, waste, and abuse.

### The False Claims Act (31 U.S.C. §§ 3729-3733)

The False Claims Act is a federal law designed to prevent and detect fraud, waste and abuse in federal healthcare programs, including Medicaid and Medicare. Under the False Claims Act, anyone who “knowingly” submits false claims to the Government is liable for damages up to three times the amount of the erroneous payment plus mandatory penalties of \$5,500 to \$ 11,000 for each false claim submitted.

The law was revised in 1986 to expand the definition of “knowingly” to include a person who:

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

False Claims suits can be brought against individuals and entities. The False Claims Act does not require proof of a specific intent to defraud the Government. Providers can be prosecuted for a wide variety of conduct that leads to the submission of a false claim.

Some examples include:



- Knowingly making false statements;
- Falsifying records;
- Submitting claims for services never performed or items never furnished;
- Double-billing for items or services;
- Using false records or statements to avoid paying the Government;
- Falsifying time records used to bill Medicaid; or
- Otherwise causing a false claim to be submitted.

### **Whistleblower or “Qui Tam” Provisions:**

In order to encourage individuals to come forward and report misconduct involving false claims, the False Claims Act contains a “Qui Tam” or whistleblower provision.

The Government, or an individual citizen acting on behalf of the Government, can bring actions under the False Claims Act. An individual citizen, referred to as a whistleblower or “Relator,” who has actual knowledge of allegedly false claims may file a lawsuit on behalf of the U.S. Government. If the lawsuit is successful, and provided certain legal requirements are met, the whistleblower may receive an award ranging from 15% - 30% of the amount recovered.

### **Employee Protections:**

The False Claims Act prohibits discrimination by the Agency against any employee for taking lawful actions under the False Claims Act. Any employee who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the employee in False Claims actions is entitled to all relief necessary to make the employee whole. Such relief may include reinstatement, double back pay, and compensation for any special damages, including litigation costs and reasonable attorney fees.

- Of note, Whistleblower provisions and protections are applicable to former employees.

### **Administrative Remedies for False Claims (31 USC Chapter 38. §§3801-3812)**

This federal statute allows for administrative recoveries by federal agencies including the Centers for Medicare and Medicaid Services, which operates the Medicare and 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. The agency receiving the claim may impose a monetary penalty of up to \$5,500 per claim and damages of twice the amount of the original 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 imposition of fines and penalties is made by the administrative agency, and not by prosecution in the federal court system.

## **New York State Laws**

### **A. Civil and Administrative Laws**

#### **Social Services Law § 363-d: Provider Compliance Program**

Every provider of medical assistance program items and services shall adopt and implement a Compliance Program. The program shall be designed detect and correct payment billing mistakes and

fraud, acting as quickly and efficiently as possible to resolve payment discrepancies and inaccurate billings. The provider will further impose systemic checks and balances to prevent future recurrences. Providers are responsible for adopting and implementing the following compliance program elements per 18 NYCRR Part 21:

1. Written Policies and Procedures and Standards of Conduct
2. Compliance Officer
3. Compliance Committee
4. Training and Education
5. Lines of Communication
6. Discipline
7. Auditing and Monitoring

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

The New York State False Claims Act closely tracks the federal False Claims Act. It imposes fines on individuals and entities that file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. The penalty for filing a false claim is \$6,000 - \$12,000 per claim and the recoverable damages are between two and three times the value of the amount falsely received. In addition, the false claim filer may be responsible for the government's legal fees.

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. If the suit eventually concludes with payments back to the government, the party who initiated the case can recover 15% - 30% of the proceeds, depending upon whether the government participated in the suit. 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**

It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Services program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device. The State or the local Social Services district may recover up 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 amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of up to \$ 10,000 per violation. If repeat violations occur within five years, a penalty up to \$ 30,000 may be imposed if they involve more serious violations of the Medicaid rules, billing for services not rendered, or providing excessive services.

### **Social Service Law §145-c: Sanctions**

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the person's and the person's family needs are not taken into account for a period of six months to five years, depending upon the number of offenses.

## **B. Criminal Laws**

## **Social Service Law §145: Penalties**

Any person, who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor.

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

Any person who, with intent to defraud, presents for payment any false or fraudulent claim for furnishing services or merchandise, knowingly submits false information for the purpose of obtaining Medicaid compensation greater than that to which he/she is legally entitled to, or knowingly submits false information in order to obtain authorization to provide items or services shall be guilty of a Class A misdemeanor.

Any person who obtains or attempts to obtain, for himself or others, medical assistance by means of a false statement, concealment of material facts, impersonation, or other fraudulent means is guilty of a Class A misdemeanor.

## **Penal Law Article 155: Larceny**

The crime of larceny applies to a person who, with intent to deprive another of property, obtains, takes or withholds the property by means of a trick, embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior. This law has been applied to Medicaid fraud cases.

## **Penal Law Article 175: Written False Statements**

There are four crimes in this Article that relate to filing false information or claims. Actions include falsifying business records, entering false information, omitting material information, altering an agency's business records, or providing a written instrument (including a claim for payment) knowing that it contains false information. Depending upon the action and the intent, a person may be guilty of a Class A misdemeanor or a Class E felony.

## **Penal Law Article 176: Insurance Fraud**

This Article applies to claims for insurance payment, including Medicaid or other health insurance. The six crimes in this Article involve intentionally filing a false insurance claim. Under this article, a person may be guilty of a felony for false claims in excess of \$1,000.

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), he/she knowingly provides false information or omits 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 he/she is 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.

## **Policy:**

1. The Agency will provide training in this Policy and Procedure to all its Affected Individuals during orientation or commencement of engagement with the Agency.

2. The Agency will perform billing activities in a manner consistent with the regulations and requirements of third-party payors, including Medicaid and Medicare.
3. The Agency will conduct regular auditing and monitoring procedures as part of its efforts to assure compliance with applicable regulations.
4. Any Affected Individual who has any reason to believe that anyone is engaging in false billing practices or false documentation of services is expected to report the practice according to The Agency's Reporting of Compliance Concerns and Non-Retaliation Policy and Procedures.
5. Any form of retaliation against any employee who reports a perceived problem or concern in good faith is strictly prohibited.
6. Any Affected Individual who commits or condones any form of retaliation will be subject to discipline/sanctions up to, and including, termination of relationship with the Agency.

**Procedures:**

1. The Compliance Officer will ensure that all Affected Individuals receive training related to the contents of this Policy and the False Claims Act. The Compliance Officer will ensure that records are maintained to document the receipt of training.
2. The Compliance Officer will assure that this Policy and Procedure is attached to any contract with outside contractors or agents (as defined by this policy)

## **Enforcement of Compliance Standards (Discipline) and Incentives**

### **Purpose:**

The Agency is committed to conducting its business ethically and in conformance with all federal, state and local laws, regulations, interpretations thereof, and the Agency's Standards of Conduct. To support this commitment, the Agency has developed procedures for disciplinary actions to be taken for violations of the Agency's Corporate Compliance Program and/or Standards of Conduct.

### **Policy:**

1. Affected Individuals who, upon investigation, are found to have committed violations of applicable laws and regulations, the Corporate Compliance Program, the Standards of Conduct, or the Agency's Corporate Compliance Policies and Procedures will be subject to appropriate disciplinary/sanction action, up to and including termination of relationship with the Agency.
2. The following actions may result in disciplinary action:
  - Authorization of or participation in actions that violate the law, regulations and/or Corporate Compliance Program, including the Standards of Conduct;
  - Failure to report a compliance violation by a peer or subordinate;
  - Failure to cooperate in a compliance investigation;
  - Retaliation against an individual for reporting a possible compliance violation or participating in an investigation.
3. Discipline will be appropriately documented in the disciplined person's file, along with a written statement of reason(s) for imposing such discipline. Such documentation will be considered during regular and promotional evaluations and during the decision-making process regarding future contractual relationships.
4. The Compliance Officer, Associate Executive Director, and the Chief Human Resources Officer (or designee) will be responsible for assuring that disciplinary actions related to non-compliance with the law, regulations and the Corporate Compliance Program, including the Standards of Conduct, are consistent with actions taken in similar instances of non-compliance.

### **Procedures:**

1. To the extent possible, disciplinary action will be taken in accordance with the Agency's Employee Handbook.
2. When the determination is made that a compliance violation has occurred, the Compliance Officer will notify the Chief Executive Officer and/or the Associate Executive Director(s), the individual's supervisor or representative for independent contractors, the Agency's Compliance Committee, and the Board of Directors as appropriate. Examples of violations may include:
  - a. Authorization of or participation in actions that violate law, regulations and the Corporate Compliance Plan, including the Code of Conduct and all related policies and procedures;
  - b. Failure to report any violation of a peer or a subordinate;
  - c. Failure to cooperate in an investigation;
  - d. Retaliation against an individual for reporting a possible violation;

- e. Failure to act as an honest, reliable and trustworthy service provider.
3. The Compliance Officer, Associate Executive Director, and Chief Human Resources Officer (or designee) shall work in collaboration with the appropriate supervisor/manager in determining disciplinary/sanction action related to an instance of non-compliance. Factors that may be considered in determining the level of disciplinary action to be taken include:
    - a. Whether the violation was committed knowingly;
    - b. Whether the individual lied or was otherwise dishonest during the investigation;
    - c. Whether there was a pattern of misconduct;
    - d. Whether the individual attempted to cover up the violation;
    - e. Whether the violation involved retaliation against other persons who reported violations in good faith;
    - f. Whether the employee deliberately failed to check whether a particular course of action was prohibited;
    - g. Whether the violation was criminal in nature;
    - h. Whether the individual cooperated with the investigation of the violation;
    - i. Whether the individual received personal benefit;
    - j. Whether the individual voluntarily reported the violation;
    - k. Whether the seriousness of the damage caused by the violation; and
    - l. Whether a Person We Support was or could have been harmed as a result of the violation.
    - The Agency will apply progressive discipline as per the Employee Handbook.
    - The Corporate Compliance Officer and/or the Chief Human Resource Officer will consult with the Chief Executive Officer and Counsel as appropriate, to determine the response to a violation, including those by an independent contractor.
  4. Throughout the process of determining the appropriate disciplinary action to be taken in each instance of non-compliance, the Corporate Compliance Officer and/or the Chief Human Resource Officer will be responsible for ensuring that the disciplinary action to be taken is consistent with that taken in similar instances of non-compliance.
  5. The Compliance Officer and/or the Chief Human Resources Officer (or designee) shall consult with the Compliance Committee, the Chief Executive Officer, and legal counsel, as necessary, to determine the appropriate disciplinary/sanction action to be taken.
  6. The Corporate Compliance Officer shall serve as a liaison with the Chief Human Resource Officer who is responsible for the engagement with an independent contractor who has committed a violation as described in this policy. Administration is responsible to report to the Corporate Compliance Officer when an independent contractor commits a violation.
  7. The Chief Human Resources Officer (or designee) or program administrator is responsible for reporting disciplinary actions taken as a result of violations of the Agency's Standards of Conduct and/or Corporate Compliance Program to the Compliance Officer.
  8. Human Resources will maintain a written record of disciplinary actions, and will reference these records when necessary to ensure consistency in application of disciplinary measures related to compliance violations.

9. The Compliance Officer shall report regularly to the Agency's Compliance Committee and not less than annually to the Board of Directors, regarding such actions.

**Incentives:**

The agency believes in recognizing employees when they do well. The agency wants employees to succeed and values them working to the best of their abilities. Employees are supported and encouraged to do the right thing and act in the best interest of the organization and individuals we support. Some things the agency might do to support the staff are:

- Personal recognition by a coworker or supervisor
- Notes of appreciation
- Special awards
- Personalized awards
- Public recognition in the agency's newsletter, agency-wide communications or other publications
- Offer training opportunities, such as conferences or seminars
- Offer opportunities to participate in projects, trainings, or committees.

## **Internal Auditing and Monitoring**

### **Purpose:**

The Agency has developed and implemented a Compliance Program in an effort to establish, in part, effective internal controls that promote adherence to applicable federal and state laws and requirements. An important component of the Compliance Program is the use of audits and/or other evaluation techniques to monitor compliance and assist in the reduction of identified problem areas.

The Agency recognizes the need for internal controls, but also realizes that resources are limited. Therefore, this policy focuses on the Agency's resources to effectively and efficiently audit and monitor risk areas.

### **Policy:**

1. The Agency will conduct ongoing auditing and monitoring of identified risk areas related to compliance including but not limited to billing, fiscal management, clinical operations, and service provision.
2. Executive Management will ensure that ongoing auditing and monitoring is properly conducted, documented and reported.

### **Procedures:**

1. The Compliance Officer will recommend and facilitate auditing and monitoring of identified risk areas related to compliance. Risk areas may be identified through the regular course of business, external alerts, or internal reporting channels.
2. The audits and reviews conducted by the Quality Assurance/Compliance Department and leadership/program management will examine the Agency's compliance with specific rules and policies through activities such as on-site visits, personnel interviews, general questionnaires, clinical record reviews to support claims for reimbursement, and documentation reviews. The Quality Assurance/Compliance Department and leadership/program management will conduct and/or oversee compliance reviews with guidance and assistance from the Compliance Officer.
3. The Compliance Officer will determine the sample size and sample criteria prior to each audit. All review tools will be standardized throughout the Agency and approved by the Compliance Officer.
4. The Compliance Officer will verify completion of compliance reviews and any corrective measures arising from them. Leadership and the Compliance Officer will address any weaknesses identified by the compliance review process. The Compliance Officer will validate any corrective measures through review and signature.
5. The Compliance Officer will complete an annual Compliance Program Self-Assessment. Results will be provided to senior leadership, Corporate Compliance Committee, and Board of Directors.
  - a. Risks identified through the annual assessment will be itemized and shall include specific corrective actions to reduce each identified risk area. Corrective actions may include, but are not limited to, development or revision of trainings, modification to the audits, and review/revision of agency policies and procedures.



6. Any correspondence from any regulatory agency charged with administering a federal, state or local funded program received by any department of the Agency will be copied and promptly forwarded to the Compliance Officer for review and subsequent discussion by the Compliance Committee.
7. Program management will immediately notify the Compliance Officer of any visits, audits, investigations, or surveys by any regulatory agency or authority. Results (oral or written) of any visits, audits, investigations, or surveys will be forwarded to the Compliance Officer promptly upon receipt by Agency personnel.
8. Annually, leadership of each department will conduct a Risk Assessment through a standardized form. Completed assessments will be provided to the Compliance Officer. Results will be compiled into an Annual Risk Assessment Report.
  - a. Risks identified through each department's assessment will be itemized.
  - b. The Compliance Officer and senior leadership will develop corrective action(s) for each risk in an effort reduce said risk area. Corrective actions may include, but are not limited to, development or revision of trainings, modification to the audits, and review/revision of agency policies and procedures.
  - c. Identified risk areas will drive the both Corporate Compliance/Quality Assurance audit schedule as well as the Corporate Compliance Work Plan.
9. The Compliance Officer will be responsible to periodically, but no less than annually, report to the Compliance Committee on the general status of compliance reviews, the outcome of compliance auditing and monitoring, corrective actions taken, and the effectiveness of such corrective actions.

## **Reimbursement Practices and Billing Errors**

### **Purpose:**

The Agency is committed to accuracy and integrity in all its billing, coding, and other reimbursement operations.

### **Policy:**

The Agency is committed to ensuring that its reimbursement practices comply with all federal, state and local laws, regulations, guidelines, and policies. The Agency prohibits the intentional submission for reimbursement of any claim that is false, fraudulent, or fictitious. Furthermore, the Agency is committed to ensuring against the accidental submission of any claim that is false or inaccurate.

This Policy includes a commitment to ensure accurate billing of claims for services that are actually rendered and deemed medically necessary. This Policy and the following Procedures have been adopted to ensure that general guidance is available for all Affected Individuals.

### **Procedures:**

1. The Compliance Officer is responsible for ensuring that all reimbursement and billing procedures contained in this Policy and Procedures are integrated into the Agency's operations.
2. All Affected Individuals will receive compliance training that will reinforce the following policies:
  - Anyone that has knowledge of a problem related to reimbursement (e.g., submission of a claim that is false or contains false information) must report that problem to management or the Compliance Officer directly or through the hotline
  - Failure to report a known problem related to reimbursement will subject an Affected Individual to disciplinary/sanction action.
  - Anyone reporting a problem or concern in good faith will be protected by the Non-Retaliation Policy.
3. The Compliance Officer is responsible for ensuring that the Standards of Conduct provides adequate general guidance concerning appropriate reimbursement practices.
4. The Compliance Officer is responsible for making sure that the compliance training program includes training on reimbursement practices.
5. All services rendered to individuals shall be documented in a proper and timely manner so that only accurate and properly documented services are billed.
6. Claims will be submitted only when appropriate documentation supports the claim and only when such documentation is maintained for audit and review. The documentation, which may include service recipients' records, shall include the identity and title or professional certification of the individual providing or ordering the service.
7. Each Agency program will develop and maintain written procedures for the documentation of services. Procedures may include, at a minimum, the following:
  - Attendance records;

- Receipt and maintenance of service plans (including but not limited to Life Plan, Individualized Educational Plan, Treatment Plans, and Habilitation Plans);
  - Service documentation requirements specific to the respective program;
  - Definition of contemporaneous documentation;
  - Attestation and review prior to submission to billing personnel; and
  - The forms used for documentation and billing purposes.
8. The Compliance Officer, and Associate Executive Director of the program involved, must approve the billing and documentation procedures and/or any revisions to procedures or forms before implementation.
  9. Program and reimbursement staff shall use their best efforts to communicate effectively and accurately with each other to assure compliance and avoid the potential for billing irregularities and/or errors.
  10. The Compliance Officer is responsible for responding, in a timely manner, to all problems, concerns, or questions related to reimbursement practices. The Compliance Officer is also responsible for ensuring that appropriate remedial actions are taken for any irregularities uncovered.
  11. If a billing error is discovered, the billing error should be immediately reported to the Compliance Officer and Associate Executive Director of the program involved. The Agency's Chief Executive Officer and Chief Financial Officer will also be notified.
  12. The Compliance Officer is responsible for the investigation of any billing errors or irregularities. Appropriate steps will be taken to prevent recurrence.
  13. Any overpayment received as a result of a billing error will be promptly repaid to the appropriate payer, with interest, if appropriate.
  14. A report of irregularities, the results of investigations and the remedial actions taken will be included in the compliance report provided to the Compliance Committee as needed, and at least annually to the Agency's Board of Directors.
  15. The Compliance Officer will work with the responsible management staff overseeing reimbursement functions to verify on an as needed basis that all reimbursement and billing manuals and materials are current and accurate.
  16. The Compliance Officer, through the internal audit review process, validates that management properly verified reimbursement procedures and practices. A report on the results of this review will be made annually to the Compliance Committee.

## **Investigation of Compliance Issues**

### **Purpose:**

The Agency has implemented a Corporate Compliance Program in an effort to establish a culture within the organization that promotes prevention, detection and resolution of misconduct. This is accomplished, in part, by establishing communication channels for Affected Individuals to report problems and concerns. Affected Individuals are encouraged to report issues via the traditional chain of command, Human Resources, Compliance Hotline, or directly to the Compliance Officer. The Compliance Officer is responsible for responding to compliance issues that are raised through the various communication channels. This policy is designed to establish a framework for managing and responding to compliance issues that are raised to the Compliance Officer.

### **Policy:**

The Agency will respond to reports or reasonable indications of suspected non-compliance by commencing a prompt and thorough investigation of the allegations to determine whether a violation has occurred.

The Compliance Officer is responsible for resolving compliance-related issues; however, Affected Individuals should not be discouraged from using any specific communication channel. Affected Individuals who report non-compliance related issues or concerns to the Compliance Officer or the Compliance Hotline will be politely redirected to the appropriate department or individual. In instances where the employee seeks confidentiality or reports anonymously, the Compliance Officer shall redirect the report to the appropriate department or individual.

### **Procedures:**

1. The Compliance Officer will conduct or oversee all internal investigations involving compliance related issues and shall have the authority to engage outside legal counsel or other consultants, as needed.
2. Before investigating of any compliance-related issue, the Compliance Officer shall have a full understanding of the relevant laws, regulations, and government issuances.
3. Upon report or notice of alleged non-compliance, the Compliance Officer will conduct an initial inquiry into the alleged situation. The purpose of the initial inquiry is to determine whether there is sufficient evidence of possible non-compliance to warrant further investigation. The initial inquiry may include documentation review, interviews, audit, or other investigative techniques.
4. If, during the initial inquiry, the Compliance Officer determines that there is sufficient evidence of possible noncompliance with any criminal, civil, or administrative law to warrant further investigation, the issue should be turned over to legal counsel.
  - There are circumstances when the Compliance Officer may request outside assistance for investigating compliance issues. This may entail consultation regarding a compliance matter or turning over the full investigation to an outside entity.
5. For investigations that do not involve legal counsel, the Compliance Officer will determine what personnel possess the requisite skills to examine the particular issue(s) and will assemble a team of investigators, as

needed. The Compliance Officer will also decide whether the Agency has sufficient internal resources to conduct the investigation or whether external resources are necessary.

6. The Compliance Officer shall work with the other identified staff and/or external resources to develop a strategy for reviewing and examining the facts surrounding the possible violation. The Compliance Officer will consider the need for an audit of billing practices and determine the scope of interviews.
7. The Compliance Officer will maintain all notes of interviews and reviews of documents as part of the investigation file.
8. The Compliance Officer should ensure that the following objectives are accomplished:
  - Complainant is fully debriefed;
  - Appropriate internal parties are notified;
  - Cause of problem, desired outcome, affected parties, applicable guidelines, possible regulatory or financial impact are identified;
  - A complete list of findings and recommendations is provided;
  - The necessary corrective action measures, (e.g., policy changes, operational changes, system changes, personnel changes, training/education) are determined;
  - The investigation is documented.
9. Upon receipt of the results of an investigation, depending upon the scope and severity of the identified violations, the Compliance Officer may consult with outside legal counsel, the Chief Executive Officer, and/or the Compliance Committee to determine: (a) the results of the investigation and the adequacy of recommendations for corrective actions, (b) the completeness, objectivity and adequacy of recommendations for corrective actions; and/or (c) further actions to be taken as necessary and appropriate.
10. Upon conclusion of an investigation, the Compliance Officer will organize the information in a manner that enables the Agency to determine if an infraction did, in fact, occur. The Compliance Officer will track the investigation, responsible parties and due dates in a compliance log. The log will include the resolution of the investigation as closed or fully resolved.
11. The Compliance Officer will be responsible for reporting the results of all investigations to the Agency's Chief Executive Officer, Executive Management Team, Compliance Committee and the Board of Directors.
12. Affected Individuals have an obligation to participate in an investigation into possible non-compliance. Such participation may include things such as interviews and documentation review.