



## **Advocates Incorporated Compliance Program Version 6.0**

### **Purpose**

Advocates (also referred to as the organization) is committed to providing high quality services and to being in full compliance with all Federal, State, and local laws and regulations. As part of this commitment, Advocates has adopted this Compliance Plan and the Standards of Conduct as the basis of its efforts to foster an organizational culture of integrity that promotes responsible and honest conduct, transparency in all business transactions, and adherence to the laws and regulations of government oversight agencies and funders.

Advocates' Compliance Plan and Standards of Conduct apply to all Affected Individuals. Affected Individuals include:

- All employees including the Executive Director and senior leadership.
- Contractors, subcontractors, independent contractors, agents.
- Corporate Officers
- Board of Directors

### **I. Policy**

It has been and continues to be Advocates' policy to comply with all applicable Federal, State, and local laws, regulations, and payer requirements. It is also Advocates' policy to work to prevent, detect, investigate and address issues related to fraud, waste, abuse, improper or illegal conduct and violations of laws and regulations. To ensure this, Advocates has established this Compliance Plan and commits to maintaining an effective Compliance Program.

### **II. Commitment**

Advocates is, and will remain, committed to our responsibility to conduct our business affairs with integrity based on sound ethical and moral standards. We will hold all Affected Individuals to these same standards.

Advocates is committed to maintaining and measuring the effectiveness of our Compliance Program and Standards of Conduct through monitoring and auditing systems reasonably designed to detect noncompliance by Affected Individuals.

Advocates is committed to the prevention of improper or illegal activities and to the detection of noncompliance, including but not limited to, any violations of laws and regulations, healthcare program requirements, the Standards of Conduct and Advocates' policies and procedures. The organization is committed to the prompt investigation and resolution of reported or detected noncompliance.

Advocates is committed to the performance of regular, periodic compliance audits by internal and/or external auditors who have expertise in Federal and State healthcare statutes, regulations, and healthcare program requirements.

### **III. Responsibility**

All Affected Individuals will report any instances of suspected or known noncompliance to their immediate supervisor, a member of the Compliance Team, a member of the Leadership Team, the Executive Director, a member of the Compliance Committee, or the Compliance Officer without fear of retaliation, retribution, or intimidation. Failure to report known noncompliance or making reports that are not in good faith will be grounds for disciplinary action, up to and including termination of employment, contract, appointment, or relationship with the organization. Reports related to harassment or other workplace-oriented issues will be referred to Human Resources.

### **IV. Policies and Procedures and Standards of Conduct**

Advocates will communicate its compliance standards and policies through required training and communication initiatives and distribution of this Compliance Plan and the Standards of Conduct to all Affected Individuals.

### **V. Compliance Officer and Compliance Committee**

Advocates has appointed a Compliance Officer who is responsible for the overall operation of the Compliance Program. A Compliance Committee works with the Compliance Officer to implement and maintain an effective Compliance Program.

### **VI. Discipline/Enforcement**

This Compliance Plan will be consistently enforced through appropriate disciplinary action including but not limited to discipline of Affected Individuals who:

- Fail to report suspected instances of noncompliance.
- Participate in non-compliant behavior; including but not limited to knowingly making false statements and/or knowingly submitting false documentation.
- Encourage, direct, facilitate, or permit actively or passively non-compliant behavior.
- Fail to participate in and/or cooperate with an investigation of possible non-compliance.

### **VII. Advocates Response**

Instances of noncompliance discovered by any means will be addressed in a timely manner. Advocates is dedicated to resolving such matters and will take all reasonable steps to prevent future violations, including modifying the Compliance Plan, policies, and procedures as necessary.

**VIII. Due Diligence**

Advocates will exercise due diligence with regard to background checks, exclusion screening and professional license verification for all Affected Individuals.

**IX. Non-Retaliation, Non-Intimidation, and Whistleblower Protections**

Advocates adheres to a firm policy of non-intimidation and non-retaliation for good faith participation in the Compliance Program.

Advocates will not take any retaliatory action against an Affected Individual who, in good faith, reports actual or suspected noncompliance or illegal activities or for good faith participation in the Compliance Program.

Advocates will not take any retaliatory action against an employee if the employee discloses certain information about the organization's policies, practices, or activities to a regulatory, law enforcement, or other similar agency or public official. Protected disclosures are those that assert that Advocates is in violation of a law that creates a substantial and specific danger to the public health and safety; or that constitute healthcare fraud under the law; or that assert that the employee, in good faith, believes constitutes improper quality of care.

**ADVOCATES's Compliance Program includes the following key elements.**

**Element 1: Policies and Procedures and Standards of Conduct**

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To support the operation of Advocates' Compliance Program, the Standards of Conduct, policies and procedures are established to provide direction to Affected Individuals and address the following components of the Compliance Plan:

- Conflict of Interest
- Reporting and investigation of noncompliance
- Non-retaliation and non-intimidation
- False Claims Act and Whistleblower protections
- Compliance Program education and training
- Auditing and monitoring
- Billing errors and overpayments
- Kickbacks and business courtesies
- Discipline for noncompliance or failure to report
- Responding to governmental investigations

All Affected Individuals are expected to be familiar with and knowledgeable about the Compliance Program, Standards of Conduct, policies, and procedures. This information can be accessed at: <https://www.advocatesincorporated.org/resources/compliance-and-quality-information/> and/or via the Employee Handbook at: <https://www.paycomonline.net/v4/ee/web.php/Doc/index>.

The Standards of Conduct serves as a foundational document that describes the organization's fundamental principles and values, and commitment to conduct its business in an ethical manner. The Standards of Conduct provides Affected Individuals with guidance on requirements for conduct related to their employment, contract, appointment, or relationship with Advocates.

When any person knows or reasonably suspects that the expectations in the Standards of Conduct and the Compliance Program have not been met, this must be reported to their immediate supervisor, a member of the Compliance Team, a member of the Leadership Team, the Executive Director, a member of the Compliance Committee, or the Compliance Officer so that each situation may be appropriately addressed. The Compliance Officer may be reached at 315-469-9931 extension 204. The Executive Director can be reached at 315-469-9931 extension 214. Reports may be made in person; by phone, fax, mail, or email; or anonymously 24 hours a day 7 days a week by calling 315-457-1271 or by completing the online automated form at:

<https://forms.office.com/Pages/ResponsePage.aspx?id=0gmtWtUjMkquEa-FrT9eAwEBCblgixlApWMSa4ILx-BUMERSMUFFS0JPWTM5V08wVkiNNFVWVcwRS4u>.

## **Element 2: Compliance Program Oversight**

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### **I. The Role of the Compliance Officer**

The Executive Director and Board of Directors of Advocates designate the Director of Compliance, Quality, and Incident Management as the Compliance Officer.

The Compliance Officer has primary responsibility for Compliance Program development, implementation, monitoring, and evaluation for effectiveness.

#### **Reporting Relationship**

The Compliance Officer has direct lines of communication to the Executive Director, the Board of Directors, the Compliance Committee, and the organization's legal counsel.

#### **Role and Responsibilities**

The Compliance Officer's primary responsibilities include:

- Overseeing and monitoring the adoption, implementation, and maintenance of the Compliance Program;
- Developing and implementing Compliance Program policies and procedures and Standards of Conduct;
- Reviewing and revising, periodically, the Standards of Conduct, the Compliance Program, and policies and procedures as changes occur within Advocates, and/or in the law, regulations, or governmental and third-party payers.
- Evaluating the effectiveness of the Compliance Program, policies and procedures, and Standards of Conduct.

- Developing, implementing, and monitoring the annual Compliance Work Plan.
- Reporting, no less frequently than quarterly, to the Board of Directors, Executive Director, and Compliance Committee on the progress of implementation of the Compliance Program.
- Assisting the Executive Director, Leadership Team, Management, and the Compliance Committee in establishing methods to improve Advocates' quality of service and to reduce vulnerability to fraud, abuse, and waste.
- Developing, coordinating, and participating in a multifaceted educational and training program that focuses on the elements of the Compliance Program and seeks to ensure that all Affected Individuals, consistent with roles and any associated risk areas, are knowledgeable of, and comply with, pertinent Federal and State standards and Advocates' Standards of Conduct.
- Collaborating with the Leadership Team to ensure that excluded individuals and entities are not employed or retained by the organization.
- Directing/supporting internal audits established to monitor effectiveness of compliance standards and the Compliance Program.
- Acting on matters related to compliance, including the flexibility to design, direct and coordinate independent internal investigations of compliance issues and/or suspected violations and collaborate with all departments and Affected Individuals to implement any resulting corrective action.
- Developing policies and programs that encourage all Affected Individuals to report suspected fraud and other improprieties without fear of retaliation.
- Providing guidance to all departments and Affected Individuals regarding policies, procedures, and government laws, rules, and regulations.
- Maintaining a reporting system, including an anonymous means to report, and responding to concerns, complaints, and questions related to the Compliance Program.
- Overseeing efforts to communicate awareness of the existence, contents, and requirements of the Compliance Program to all Affected Individuals.
- Actively participating in education and seeking information to remain current with compliance regulations.
- Promoting continuous progress toward achieving Compliance Program objectives.

## II. The Structure, Duties, and Role of the Compliance Committee

The Compliance Committee is appointed by the President of the Board of Directors and Executive Director to advise and assist the Compliance Officer with the implementation of the Compliance Program. The Compliance Committee reports directly to the Executive Director and Board of Directors.

The Compliance Committee will meet on a regular basis, but not less than quarterly. Meeting minutes will be maintained by the Compliance Officer.

The Compliance Committee is responsible for the following:

- Analyzing the regulatory environment where Advocates does business, including legal requirements with which it must comply.

- Reviewing and assessing existing policies and procedures that address risk areas for possible incorporation into the Compliance Program.
- Reviewing and monitoring Compliance Program training and education to ensure that they are effective and completed in a timely manner.
- Ensuring that the Advocates has effective systems and processes in place to identify Compliance Program risks, overpayments, and other issues and has effective policies and procedures for correcting and reporting such issues.
- Working with departments to develop standards and policies and procedures that address specific risk areas and to encourage compliance according to legal and ethical requirements.
- Coordinating with the Compliance Officer to ensure that the written policies and procedures and Standards of Conduct are current, accurate, and complete.
- Developing internal systems and controls to carry out compliance standards, Standards of Conduct, and policies and procedures.
- Coordinating with the Compliance Officer to ensure communication and cooperation by Affected Individuals on compliance-related issues, internal or external audits, or any other function or activity.
- Developing a process to solicit, evaluate, and respond to complaints and problems.
- Monitoring internal and external audits to identify issues related to non-compliance.
- Implementing corrective and preventative action plans and follow-up to determine effectiveness.
- Ensuring the development and implementation of an annual Compliance Work Plan.
- Advocating for sufficient funding, staff, and resources to be allocated to the Compliance Officer to carry out duties related to the Compliance Program.
- Ensuring that the Advocates has appropriate systems and policies in place that effectively identify risks, overpayments, and other areas of concerns including fraud, waste, and abuse.
- Monitoring and evaluating the Compliance Program for effectiveness at least annually and making recommendations for necessary modifications to the Compliance Program as applicable.
- Developing and implementing a Compliance Committee Charter. The Charter will outline the Compliance Committee's duties and responsibilities, membership, designation of a chairperson and frequency of meetings. The Charter will be reviewed and updated annually.

### **III. Delegation of Substantial Discretionary Authority**

Any employee or prospective employee who holds, or intends to hold, a position with substantial discretionary authority for the organization is required to disclose any name changes and any involvement in non-compliant activities including healthcare-related crimes. In addition, Advocates performs reasonable inquiries into the background of all prospective employees, the Executive Director, Leadership Team members, Board members, contractors, and vendors including those required by Federal and State laws and oversight agency regulations.

The following resources may be queried when conducting screening:

- a) The System for Award Management (SAM) available on the SAM website. The URL address is: <https://www.sam.gov>
- b) HHS/OIG List of Excluded Individuals and Entities. The URL address is: <http://exclusions.oig.hhs.gov/>.
- c) Medicaid Exclusions | Office of the Medicaid Inspector General. The URL address is: <https://omig.ny.gov/medicaid-fraud/medicaid-exclusions>
- d) Licensure and disciplinary record with NYS Office of Professional Medical Conduct (Physicians, Physician Assistants) (the URL address is <http://www.health.state.ny.us/nysdoh/opmc/main.htm>) and/or New York State Department of Education (other licensed professionals) (the URL address is <http://www.op.nysed.gov/opsearches.htm>).

### Element 3: Education and Training

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#### I. Expectations

Education and training are critical elements of the Compliance Program. All Affected Individuals are expected to be familiar with and knowledgeable about the Compliance Program and have a solid working knowledge of their responsibilities. Compliance Program policies, procedures and the Standards of Conduct will be communicated to all Affected Individuals through required participation in training programs.

#### II. Training Topics

- A) General-**All Affected Individuals shall participate in training on the topics identified below:
- Advocates Compliance Plan;
  - Standards of Conduct and other related written guidance;
  - Federal False Claims Act;
  - New York False Claims Act;
  - Whistleblower Protections;
  - Non-retaliation and non-intimidation policy.
  - Risk areas and organizational experience;
  - The role and responsibilities of the Compliance Officer and the Compliance Committee;
  - Communication channels (name of Compliance Officer, reporting mechanisms, anonymous reporting mechanism);
  - Expectations for reporting known or suspected fraud, waste, and abuse; illegal or unethical acts; actual or suspected violations of Federal or State laws and regulations; actual or suspected violations of the Standards of Conduct, the Compliance Program, and Advocates' policies and procedures; improper acts in the delivery or billing of services; and other wrongdoing (collectively referred to as "compliance concerns") and how the organization responds to such reports including the investigation process and corrective actions;
  - Advocates' disciplinary policy and standards;

- Prevention of fraud, waste, and abuse; and

#### **B) Targeted**

- Documentation of Services-if applicable (conducted by Training and Support Specialists)
- Coding and Billing requirements-if applicable (conducted by Finance)
- Claim Development and Submission-if applicable (conducted by Finance)

All Affected Individuals will complete the Compliance Program training as part of their orientation and annually thereafter.

Advocates will maintain a training plan. The training plan will outline the topics for compliance training and education, the timing and frequency of the training, how attendance will be tracked, and how the effectiveness of the training will be evaluated. The Compliance Officer and Compliance Committee will review and update the training plan as needed but at minimum annually.

### **III. Attendance**

All education and training relating to the Compliance Plan will be verified by attendance and/or signed acknowledgment.

Attendance at compliance training sessions is mandatory and is a condition of continued employment / contract / appointment /relationship with Advocates.

### **Element 4: Lines of Confidential Communication**

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#### **I. Expectations**

Open lines of communication between Advocates' Leadership, Management, the Compliance Officer, and each Affected Individual subject to this Compliance Plan are essential to the success of Advocates' Compliance Program and commitment to comply with all applicable laws and regulations and the prevention of Medicaid fraud, waste, and abuse.

All Affected Individuals must report compliance concerns. Failure to report is deemed misconduct and a violation of this requirement.

Every Affected Individual has an obligation to refuse to participate in noncompliant behavior, misconduct, or any wrongful course of action and to report according to the procedure listed below.

#### **II. Reporting Procedure**

If an Affected Individual witnesses, learns of, or is asked to participate in any activities that are potentially in violation of this Compliance Plan and/or Standards of Conduct, they should contact their immediate supervisor, a member of the Compliance Team, a member of the Leadership Team, the Executive

Director, a member of the Compliance Committee, or the Compliance Officer. Reports may be made in person; by mail, phone, or email; by calling the Compliance Officer at 315-469-9931 extension 204; or by mailing information to the attention of the Compliance Officer at 290 Elwood Davis Road, Suite 101, Liverpool, NY 13088. Affected Individuals may also anonymously report to the Compliance Officer 24 hours a day 7 days a week by calling 315-457-1271 or by completing the online automated form at <https://forms.office.com/Pages/ResponsePage.aspx?id=0qmtWtUjMkquEa-FrT9eAwEBCblqixlApWMSa4ILx-BUMERSMUFFS0JPWTM5V08wVkiNNFVWVcwRS4u>.

Upon receipt of a question or concern, any supervisor, a member of the Compliance Team, member of the Leadership Team, the Executive Director, or member of the Compliance Committee shall document the issue at hand and report to the Compliance Officer. Any questions or concerns relating to potential non-compliance by the Compliance Officer should be reported immediately to the Executive Director.

The Compliance Officer or designee will record the report and gather the information necessary to conduct an appropriate investigation of the issue. If the Affected Individual was seeking information concerning the Compliance Program, Standards of Conduct, policies or procedures the Compliance Officer or designee will review the inquiry and respond as appropriate.

### III. Protections

Advocates shall, as much as is possible, protect the anonymity or identity of the Affected Individual who reports a compliance concern or raises a question about the Compliance Program and Standards of Conduct. Strict confidentiality regarding the reporting of compliance concerns will be maintained unless the matter is subject to a disciplinary proceeding, referred to, or under investigation by Federal, State, or local law enforcement, or disclosure is required during a legal proceeding.

### IV. Policy of Non-Retaliation and Non-Intimidation

**ADVOCATES** will not take any retaliatory action against an Affected Individual who, in good faith, reports a compliance concern, as defined by this Plan or for good faith participation in the Compliance Program, including but not limited to:

- Reporting potential issues;
- Investigating issues;
- Self-evaluations;
- Audits;
- Remedial actions; and
- Reporting to appropriate officials as provided in sections 740 and 741 of the New York State Labor Law (see Appendix A).

Any threat of retribution, retaliation, or intimidation against a person who acts in good faith pursuant to their responsibilities under the Compliance Plan is acting against the organization's Compliance Policy. Discipline, up to and including termination of employment, contract, appointment, or relationship, will result if such retribution, retaliation, or intimidation is proven.

Affected Individuals who believe they have been subject to retribution, retaliation and/or intimidation for reporting a compliance concern or for good faith participation in the Compliance Program shall report the actions to the Compliance Officer who shall conduct an investigation into the allegation in accordance with Element 7 of this Compliance Plan (Response to Compliance Issues).

## V. Guidance

Any Affected Individual may seek guidance about the Compliance Plan or Standards of Conduct at any time by following the reporting mechanisms outlined above.

### **Element 5: Discipline and Enforcement of Compliance Standards**

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#### I. Disciplinary Action

Affected Individuals who fail to comply with Advocates' Compliance Program and Standards of Conduct, or who, upon investigation, are found to have committed illegal or unethical acts or violations of applicable Federal and State laws and regulations, the Compliance Program, the Standards of Conduct, or the organization's policies and procedures, will be subject to appropriate disciplinary action, up to and including termination of employment, contract, appointment or relationship with Advocates.

When the determination is made that a compliance violation occurred involving a contractor or vendor, the Compliance Officer will notify the Executive Director and work collaboratively to determine and execute the appropriate corrective action.

The organization will apply progressive discipline consistent with the violation throughout all levels of the organization regardless of the person's position. In accordance with the nature and scope of the infraction Affected Individuals may face disciplinary action including but not limited to: (a) verbal warning; (b) written warning; (c) retraining; (d) suspension without pay; and (f) termination of employment, contract, appointment, or relationship with Advocates. A more significant level of discipline will be taken for intentional or reckless behavior.

The following actions will result in more significant disciplinary action:

- Authorization of or participation in actions that violate Federal or State laws, regulations, the Compliance Program, Standards of Conduct, or any related policies and procedures;
- Failure to comply with the organization's policies governing the prevention, detection, or reporting of fraud and abuse;
- Falsification of records;
- Submitting or causing to submit a false claim;
- Failure to report a violation;
- Failure to cooperate in an investigation; and

- Retaliation/intimidation against an individual for reporting a possible violation or participating in an investigation.

Any discipline will be documented in the Affected Individual's file. Such documentation will be considered during an employee's regular performance review and when being considered for promotion.

The Compliance Officer in collaboration with the Director of Human Resources will maintain records of all disciplinary actions taken against Affected Individuals related to non-compliance and violations, including verbal warnings, and will reference these records when necessary to ensure consistency in application of disciplinary measures. The Compliance Officer will report on disciplinary actions taken to the Compliance Committee and the Board of Directors.

## **Element 6: Auditing and Monitoring**

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### **I. Internal Audits**

Ongoing evaluation is critical in detecting non-compliance and will help ensure the success of Advocates' Compliance Program. An ongoing auditing and monitoring system, implemented by the Compliance Officer and in consultation with the Compliance Committee, is an integral component of the organization's auditing and monitoring systems.

The Compliance Officer, in conjunction with the Executive Director, Leadership Team, and Compliance Committee, will develop an annual audit plan based on the organization's identified risk areas. Audits and reviews will examine the organization's compliance with Federal and State laws and oversight agency rules and regulations.

Results of all auditing and monitoring activities will be reported to the Compliance Committee and Board of Directors.

This ongoing auditing and monitoring will evaluate at minimum, the following risk areas:

- Billings;
- Payments;
- Ordered services;
- Medical necessity;
- Quality of care;
- Governance;
- Mandatory reporting;
- Credentialing;
- Contractor, subcontractor, agent, or independent contract oversight;
- Review of contracts and relationships with contractors, specifically those with substantive exposure to government enforcement actions;

- Review of documentation and billing relating to claims made to Federal, State, and third-party payers for reimbursement;
- Compliance training and education;
- Effectiveness of the Compliance Program: and
- Other risk areas that are or should reasonably be identified by the Advocates through its organizational experience

## II. Compliance Plan Integrity

Additional steps to ensure the integrity of the Compliance Plan will include:

- The Compliance Officer will be notified immediately in the event of any visits, audits, investigations, or surveys by any Federal or State agency or authority, and will immediately receive a copy of any correspondence from any regulatory agency charged with authorizing/certifying the organization to provide services and/or administering a Federally, State or County-funded program with which Advocates participates.
- The Compliance Officer will provide ongoing notification to all appropriate personnel of any changes in laws, regulations, or policies, as well as appropriate training to assure continuous compliance.

### **Element 7: Response to Compliance Issues**

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#### I. Violation Detection

Advocates maintains a formal confidential and anonymous compliance reporting process to encourage the reporting of any compliance concerns. Affected Individuals must promptly report any compliance concerns to their immediate supervisor, a member of the Compliance Team, a member of the Leadership Team, the Executive Director, a member of the Compliance Committee, or the Compliance Officer. Service recipients, vendors, and any party conducting business with Advocates may report compliance concerns to the Compliance Officer through the confidential or anonymous reporting process.

As part of its Compliance Program, Advocates will ensure that all reports of compliance concerns are immediately and objectively investigated and resolved promptly. Such investigations may be conducted by the Compliance Officer, members of the Compliance Committee, other employees or external parties as indicated or recommended by the Compliance Officer, the Executive Director or legal counsel.

The Compliance Officer or their designee will take immediate measures to secure relevant evidence or documentation and will ensure the confidentiality of any information obtained from a report, interview or through an investigation, unless otherwise required by law.

Unless a potential conflict of interest exists, the Compliance Officer will inform the Executive Director of any pending investigations. The Compliance Officer or Executive Director will arrange to retain legal counsel, as deemed appropriate.

## **II. Reporting**

The results of the investigation and corrective actions will be communicated confidentially to the Executive Director, members of the Board of Directors, and other employees based on a need-to-know basis. The Compliance Officer shall report to the Compliance Committee regarding each investigation conducted unless conducted under attorney privilege.

At the conclusion of an investigation involving legal counsel, they will issue a report to the Compliance Officer, Executive Director, and Compliance Committee summarizing their findings, conclusions, and recommendations and will render an opinion as to whether a violation of the law has occurred. The report will be reviewed with legal counsel in attendance. Any additional action will be on the advice of counsel.

## **III. Rectification**

If the Compliance Officer, in consultation with legal counsel, identifies credible evidence or credibly believes that a State or Federal law, rule, or regulation has been violated, the Compliance Officer will promptly report such violation to the appropriate governmental entity, where such reporting is otherwise required by law, rule, or regulation.

If Advocates identifies that an overpayment was received from any third-party payer, the appropriate regulatory (funder) and/or prosecutorial (attorney general/police) authority will be appropriately notified with the advice and assistance of counsel.

It is Advocates policy not to retain any funds received from overpayments. Overpayments will be reported and refunded to Medicaid and other payers in accordance with the appropriate self-disclosure protocols and within required time frames.

In instances where it appears that an affirmative fraud may have occurred, appropriate amounts shall be returned after consultation and approval by involved regulatory and/or prosecutorial authorities. Systems shall also be put in place to prevent such overpayments in the future.

## **IV. Recordkeeping**

Regardless of whether a report is made to a governmental agency, the Compliance Officer will securely maintain a record of the investigation, including the investigation report with findings, conclusions and corrective actions noted and copies of all additional pertinent documentation including all interview and documentation notes and all evidence. This record will be considered confidential and not released without the approval of the Executive Director or legal counsel.

Approved by: Carol Gentry Director of Compliance, Quality & Incident  
Management (Compliance Officer)

Signature: Carol L. Gentry DATE: 01-22-2025

Approved by: Amy Dugliss Executive Director

Signature: Amy Dugliss DATE: 01-23-2025

Approved by: Beth Henderson Chairperson, Compliance Committee

Signature: Beth Henderson DATE: 01-22-2025

## Appendix A: False Claims-Overview of Relevant Laws

### The False Claims Act (31 USC Chapter 37, §§ 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 Federal Government is liable for damages up to three times the amount of the erroneous payment plus mandatory penalties of approximately \$14,308 to \$28,619 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.

Examples include, but are not limited to, the following:

- Knowingly making false statements;
- Falsifying records;
- Submitting claims for services never performed or items never furnished;
- Double-billing for items or services;
- Upcoding;
- 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” Protections

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

The United States Government, or an individual citizen acting on behalf of the United States 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 United States 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.

More information can be found at [31 USC 3730: Civil actions for false claims \(house.gov\)](https://www.house.gov/31USC3730)

## Employee Protections

The False Claims Act prohibits discrimination by an organization 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.

More information can be found at [31 USC 3729: False claims \(house.gov\)](#)

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

The Federal False Claims Act allows for administrative recoveries by Federal agencies including the Department of Health and Human 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 Federal 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.

More information can be found at [31 USC Chapter 38 - Administrative Remedies for False Claims and Statements](#).

## **New York State Laws**

### A. Civil and Administrative Laws

#### 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 healthcare programs such as Medicaid. The penalty for filing a false claim is \$6,000 to \$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 New York State 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 False Claims 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.

More information can be found at <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>: under FIS/Financial Services Law.

#### 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 \$2,000 per violation. If repeat violations occur within five years, a penalty up to \$7,500 may be imposed if they involve more serious violations of the Medicaid rules, billing for services not rendered, or providing excessive services.

More information can be found at <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>: under SOS/Social 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.

More information can be found at <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>: under SOS/Social Services.

### 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.

More information can be found at <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>: under SOS/Social Services.

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 they are 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.

More information can be found at <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:> under SOS/Social Services.

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.

More information can be found at <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:> under PEN/Penal.

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 organization'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 E felony.

More information can be found at <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:> under PEN/Penal.

Penal Law Article 176, Insurance Fraud

This Article applies to claims for insurance payments, including Medicaid or other health insurance. There are six crime in this Article. Actions include intentionally filing a health insurance claim knowing it is false. Intentionally filing a false claim for over \$1,000, over \$3,000, over \$50,000 or over \$1 million. Depending on amount a person may be guilty of a class A misdemeanor up to a class B felony. Committing insurance fraud more than once is aggravated insurance fraud, a class D felony.

Penal Law Article 177, Health Care Fraud

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), they knowingly provide false information or omit material information for the purpose of requesting payment for a healthcare item or service and, as a result of the false information or omission, receives such a payment in an amount to which they are not entitled. Prosecution under Health Care Fraud is determined by the amount of payment inappropriately received.

More information can be found at <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:> under PEN/Penal.

New York Labor Law §740

An employer may not take any retaliatory personnel action against an employee if the employee discloses information about the employer's policies, practices, or activities to a regulatory, law enforcement, or other similar agency or public official.

This law offers protection to an employee who:

- Discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy, or practice of the employer that is in violation of law, rule, or regulation that presents a substantial and specific danger to the public health or safety;
- Provides information to, or testifies before, any public body conducting an investigation, hearing, or inquiry into any such violation of a law, rule, or regulation by the employer; or
- Objects to, or refuses to participate in, any such activity, policy, or practice in violation of a law, rule, or regulation.

The employee's disclosure is protected under this law only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation, with certain exceptions. The law allows employees who are the subject of a retaliatory action to bring a suit in State court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees.

More information can be found at <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:> under LAB/Labor.

New York Labor Law §741

Under this law, a healthcare employer may not take any retaliatory action against an employee if the employee discloses certain information about the employer's policies, practices, or activities to a regulatory, law enforcement, or other similar agency or public official. Protected disclosures are those

that assert that, in good faith, the employee believes constitute improper quality of patient care or improper quality of workplace safety.

This law offers protection to an employee who:

- Discloses or threatens to disclose to a supervisor, to a public body, to a news media outlet, or to a social media forum available to the public at large, an activity, policy, or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety; or
- Objects to, or refuses to participate in any activity, policy, or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety.

The employee's disclosure is protected under this law only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation, unless the danger is imminent to the public or patient and the employee believes in good faith that reporting to a supervisor would not result in corrective action. Certain exceptions apply. If the employer takes a retaliatory action against the employee, the employee may sue in State court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a healthcare provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.

More information can be found at <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>: under LAB/Labor.