



COMMUNITY WELLNESS PARTNERS

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CORPORATE COMPLIANCE MANUAL

This plan has been updated in conformity with Title 18 New York Codes of Rules and Regulations, Part 521, New York State Social Services Law 363-9, NYS OMIG Guidance issues on October 26, 2019, the U.S. Department of Justice Criminal Division Evaluation of Corporate Compliance Programs Guidance Document April 2019 and formal risk analyses conducted by the Corporate Compliance Department during 2H 2022, and following NYS changes presented in the NYS FY2020-2021 budget enacted April 2, 2020 which affects SSL §363d and the NYS PHL mandates.

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2023 Community Wellness Partners Corporate Compliance

Introduction

Community Wellness Partners and all affiliates of Community Wellness Partners (referred to below collectively as CWP) strive to operate in accordance with the highest level of moral, ethical and professional behavior. To maintain compliance with all applicable federal and state governing laws, Community Wellness Partners also continuously upholds and updates its own policies, procedures and code of conduct, as adopted annually by the Board of Directors, and holds all board members, employees, contractors, vendors and volunteers accountable for compliance with them.

The Corporate Compliance Program for Community Wellness Partners (Compliance Program) was developed in accordance with Chapter 442 of the Laws of 2006 and regulations promulgated by the New York State Office of the Medicaid Inspector General (OMIG), found in Part 521 of Title 18 of the New York Codes, Rules and Regulations (NYCRR).

In addition, the Compliance Program reflects compliance recommendations issued by OMIG and the United States Department of Health and Human Services (HHS), Office of the Inspector General (OIG) as well as the Office of Civil Rights (OCR) Federal Sentencing Guidelines. With this program, including any exhibits or amendments added as may be required by law, Community Wellness Partners will promote full compliance with all legal duties applicable to it, foster and assure ethical conduct, demonstrate compliance with all state and federal laws and regulations and provide guidance to each employee, provider and contractor of Community Wellness Partners defining required conduct. This will include compliance with all elements of the 2005 Deficit Reduction Act (DRA)¹ as required by the FY2021 New York State Budget. In its written policies and procedures specifically, Community Wellness Partners will:

1. Include detailed information about the Federal False Claims Act, remedies for false claims and statements, and state laws pertaining to civil or criminal penalties for false claims and statements;
2. Address Whistleblower protections under the Federal False Claims Act and state laws;
3. Include detailed provisions for detecting and preventing fraud, waste and abuse;
4. Include in its Employee Handbook a specific discussion of
 - a. state and federal laws referenced above;
 - b. rights of employees to be protected as whistleblowers; and
 - c. Community Wellness Partner's policies and procedures for detecting fraud, waste and abuse.

This program is designed to prevent accidental and intentional noncompliance with applicable laws, to detect such noncompliance if it occurs, to discipline those involved in non-compliant behavior, and to prevent future noncompliance.

The Community Wellness Partners Corporate Compliance Program will assure that the following elements of an effective compliance program as elucidated by both the NYSOMIG and OIG are upheld:²

¹ NYS Office of the Medicaid Inspector General, DRA Certification, pp.1-2. <https://omig.ny.gov/>, Accessed 12/28/2022,

² 18 NYCRR 521.3 (c) and NYS Office of the Medicaid Inspector General, **Compliance Program Review Guidance**.

1. Maintain a written code of conduct and compliance and HIPAA policies. Review and update these at least annually for board review and compliance training sessions. Protect all who report in good faith and participate in the program from retaliation or intimidation.
2. Maintain and support the necessary structures and personnel to assure active and effective management of the Compliance Program, including designated Corporate Compliance Officers vested with responsibility for day-to-day operation of the program, a Compliance Committee that meets at least quarterly and a Board of Directors that meets regularly, all supporting robust communications and interchange.
3. Conduct regular, effective compliance training and education sessions and promote multiple open lines of communication to assure comprehensive familiarity with, participation in, and commitment to the Corporate Compliance Program and its purpose.
4. Monitor all scheduled audits to measure program effectiveness and adherence to all applicable laws and regulations, to protect privacy and security for all residents, and to detect misconduct throughout the communities. Provide for organized and timely interventions, investigations, and appropriate sanctions and resolution.
5. Encourage all board members, employees, business associates, providers, contractors and volunteers to report concerns utilizing the communication channels that are promoted through the program.
6. Respond to all reported or observed infractions promptly and design prevention initiatives to deter or prevent recurrence.

The 7 areas to which the above elements are applicable are these:

1. Billing
2. Payments
3. Medical necessity & quality of care
4. Governance
5. Mandatory reporting
6. Credentialing
7. Other risk areas identified during due diligence process³

³ Source: NYS Office of the Medicaid Inspector General (NYS OMIG), Compliance Program Review Guidance

“Affected Individuals’ includes [sic]

- All Affected Employees
- Affected Appointees
- Executives and Governing Body Members
- Any person or anyone affiliated in any way with the required provider (i.e., covered entity) . . . and who is not an employee, executive or governing body members of the required provider (e.g., independent contractors, interns, students, volunteers and vendors).

The Community Wellness Partners Code of Conduct

The Code of Conduct sets out the principles that Community Wellness Partners employees and all affected individuals⁴ are expected to follow as they perform their duties at Community Wellness Partners. The Code of Conduct is reviewed, modified as needed, and formally accepted at least annually by the Executive Compliance Committee, the Board Professional Standards Committee and the full Board of Directors.

Community Wellness Partners is committed to providing the highest quality care to its residents and patients and to promote maximum functioning and independence in all aspects of their lives.

Community Wellness Partners, its board, and its employees are bound to the following commitments:

To the community, Community Wellness Partners is committed to the promotion of the health and well-being of its residents. Its best effort will be taken to meet these needs while operating the facility in a fiscally responsible manner.

To its employees, Community Wellness Partners will implement and maintain employment standards that comply with all applicable federal and state laws.

To the residents of Community Wellness Partners, the facility is committed to providing an appropriate quality of care that is responsible to resident needs and complies with all applicable laws and regulations.

To third party payers, both private and public, the facility is committed to submitting bills for services in a timely and accurate fashion and reporting all reimbursable costs to the Medicare and Medicaid program and to any other third party in a legally appropriate manner.

To the Community Wellness Partners suppliers, the facility stresses a sense of responsibility to be a good customer. When the facility feels that its best interest would be to utilize competitive bidding, then this process will be completed.

To all who do business with Community Wellness Partners, it is our policy to conduct ourselves in an appropriate manner consistent with tax exempt status and all other applicable laws and regulations. We expect those who do business with Community Wellness Partners to be committed to compliance in relations to all work they perform for us.

Element 1 - Written policies and procedures

18 NYCRR 521.3 (c): ... (1) written policies and procedures that describe compliance expectations as embodied in a code of conduct or code of ethics, implement the operation of the compliance program, provide guidance to employees and others on dealing with potential compliance issues, identify how to communicate compliance issues to appropriate compliance personnel and describe how potential compliance problems are investigated and resolved;

Community Wellness Partners maintains, reviews and updates **written policies and procedures** that (1) describe compliance expectations expressed in the Community Wellness Partners Code of Conduct, (2) form the foundation for the operation and implementation of the Community Wellness Partners Corporate Compliance Program, (3) provide guidance to Community Wellness Partners employees and

all affected individuals on handling compliance issues, (4) clearly identify mechanisms available for reporting compliance issues to appropriate personnel, and (5) set forth the process and procedures for investigation and resolution of compliance problems.⁵

Evidence of the existence and efficacy of written policies and procedures will consist of the following as identified by the New York State Office of the Medicaid Inspector General:

- The required provider and all affected individuals act in a way that is in compliance with all pertinent compliance laws and regulations.
- Community Wellness Partners Compliance policies and procedures made available to all affected individuals campus wide.
- Community Wellness Partners Compliance will produce work product that proves that policies and procedures are in force and working, e.g., that work plans and investigations have taken place and been completed, and follow-up action has been documented as appropriate.⁶

Written policies and procedures will be applicable to all affected individuals. Corporate compliance reporting channels, i.e., the telephone helpline; interoffice, postal and email pathways; and the option to directly report will be accessible and communicated to all affected individuals and will connect directly with the Corporate Compliance Officer. All channels are monitored in a timely way to expedite response, investigation, intervention and remediation.

Written policies and procedures will clearly specify the primary and other investigators, the process for investigation, the requirement for documentation of results, and a process for resolution and remediation of confirmed issues.⁷

Element 2 – Designate an employee vested with responsibility

18 NYCRR 521.3 (c): ... (2) *designate an employee vested with responsibility for the day-to-day operation of the compliance program; such employee's duties may solely relate to compliance or may be combined with other duties so long as compliance responsibilities are satisfactorily carried out; such employee will report directly to the entity's chief executive or other senior administrator designated by the chief executive and shall periodically report directly to the governing body on the activities of the compliance program; . . .*

CORPORATE COMPLIANCE OFFICER

The Community Wellness Partners Corporate Compliance Officer (CCO) will be an employee of Community Wellness Partners, working in collaboration with members of the Executive Team. The Compliance Officer will assume the managerial and administrative tasks involved in implementing, monitoring, updating, and directing the program. The CCO's responsibilities include but are not limited to the following:

- (1) Supervise and monitor the implementation of the corporate compliance program which will assure compliance with all federal and state fraud, abuse and neglect laws and regulations (see Addendum A) as well as the federal HIPAA Privacy and IT Security rules in collaboration with IT and the Executive Team for all affected individuals;
- (2) Develop, complete and manage annual risk analyses in coordination with the Executive Staff addressing all requirements and risk areas;
- (3) Chair and report out the Compliance Committee quarterly meetings;

- (4) Report annually to the Board of Directors and prepare and present the annual full report to the Board including compliance efforts undertaken during the preceding year, and recommended changes necessary to improve the compliance program;
- (5) Annually review, coordinate and update existing compliance and HIPAA policies and procedures, and develop new policies and procedures according to the standards set by Community Wellness Partners;
- (6) Work with the Executive Staff, Staff Development, and Human Resources to oversee the training and education of all Community Wellness Partners new employees, providers, contractors and all affected individuals involved in the clinical areas about applicable compliance standards;
- (7) Manage, update and retain all Business Associate Agreements (BAAs) for those contractors with access to protected health information (PHI);
- (8) Monitor auditing procedures in coordination the Chief Finance Officer especially focusing on those risk areas identified as they arise;
- (9) Monitor and audit verification checks of all Community Wellness Partners employees involved in the delivery of health care services, items, or billing. In conjunction with the Employee Health Nurse and Human Resources audit health screening, professional license checks, and nurse aide credentials.
- (10) Ensure that the OIG and the NYS OMIG lists of excluded individuals and entities and the General Services Administration's list of parties debarred from federal programs, have been checked against all employees, providers, contractors and vendors monthly;
- (11) Assist with audit of resident records as requested by Administrators and prepare formal reports of findings;
- (12) Work with the CEO to complete all required institutional certifications including but not limited to the annual Social Services Law certifications on the OMIG website accurately and on time, and with the Director of Home Care to annually certify the Community Wellness Partners Adult Social Day Care program.
- (13) Manage and respond to reports to the Corporate Compliance Helpline and all other communications channels;
- (14) Investigate suspected intentional and accidental misconduct;
- (15) Establish and maintain open lines of communication with Community Wellness Partners departments and divisions, including the billing department, medical staff, employees and contractors to ensure effective and efficient compliance policies and procedures; and
- (16) Maintain written and or digital records of all program activities.

All questions and concerns regarding compliance with the standards set forth in the program should be directed to or brought to the attention of the CCO. All members of the Community Wellness Partners governing body as well as employees, providers, contractors, and other affected individuals are required to cooperate and assist the CCO in the exercise of his or her duties. If an affected individual is uncertain about whether specific conduct could be prohibited, individuals may contact the CCO or an administrator or supervisor for guidance and direction.

CORPORATE COMPLIANCE COMMITTEE AND BOARD OF DIRECTORS

The Community Wellness Partners Corporate Compliance Committee has the ultimate responsibility for oversight of the Compliance Program. The Committee considers compliance-related matters on a periodic basis and whenever warranted by circumstances. This program is implemented under the guidance and supervision of the Board of Directors, which oversees compliance efforts for Community Wellness Partners.

Membership

Members of the Corporate Compliance Committee are as follows:

Burt Ohmann, Board Member	ohmn47@gmail.com
Patricia Pitcher, Board Member	patriciavpitcher@icloud.com
Jeremy Rutter, CEO, CWP	jrutter@cwvinc.org
Janet Constabile, Executive Assistant CWP	jconstabile@cwvinc.org
Rhonda Chester, Senior Chaplain/Corporate Compliance Officer	rchester@cwvinc.org
Karen Dunne, CWP HIM Director/HIPAA Privacy Officer/Corporate Compliance Officer	kdunne@cwvinc.org
Corina Chrystie, CWP Vice President Human Resources	cchrystie@cwvinc.org
Anne Connor, CWP CFO	aconnor@cwvinc.org
Peter Bizzari, CWP, Chief Information Officer	pbizzari@cwvinc.org
Michelle Cole, RN, BSN, CWP VP of Senior Housing Services	mcole@cwvinc.org
Lisa Truax, CWP VP of Home & Community Based Services	ltruax@cwvinc.org
Mark Chrzanowski, RN, CWP Dir. Staff Education	mchrzanowski@cwvinc.org
Donna Kelley, KLH Administrator	dkelley@lutherancare.org
Jenee Kaweszja, PHCNY Administrator	jkawejza@presbyterianhome.com
Debbie Hemming, PRC Administrator	DHemming@presbyterianhome.com
Carrie Roth, Lutheran Home Administrator	croth@lutherancare.org
Jackie Elthorp, The Cottage Administrator	jelthorp@lutherancare.org
Marcia Malorzo, RN, PHCNY Director of Nursing	mmalorzo@presbyterianhome.com
Billie Jo Williams RN, KLH Director of Nursing	bwilliams@lutheranhome.org
Alyssa Rivera, PHCNY Director of Social Services	arivera@presbyterianhome.com

Functions of the Corporate Compliance Committee include, but are not limited to the following:

- Receipt of regular reports from the Corporate Compliance Officer and provision of guidance regarding the operation of the program;

- Approval and implementation and monitoring of the internal audit plans to be carried out under the program;
- Approval of the compliance training program provided to all staff, contractors, and members of the governing body;
- Review of the adequacy of all suspected non-compliance investigations and corrective action taken as a result of such investigations;

Meetings -The Corporate Compliance Committee meets quarterly, or more often as necessary.

Element 3 – Training and education

18 NYCRR 521.3 (c): ... **(3)** *training and education of all affected employees and persons associated with the provider, including executives and governing body members, on compliance issues, expectations and the compliance program operation; such training shall occur periodically and shall be made a part of the orientation for a new employee, appointee or associate, executive and governing body member; . . .*

The Community Wellness Partners Corporate Compliance Program includes regular training and education for all affected employees and persons associated with Community Wellness Partners, including Board members, physicians and physician extenders, employees and affected individuals consistent with New York state regulations.

TRAINING AND EDUCATION PROGRAMS

Policy

All Community Wellness Partners board members, employees and providers/contractors will participate in corporate compliance training and education programs at least annually to ensure compliance with the standards of the program. The CCO will update training materials at least annually to align them with requirements, trends and risk areas.

To document training completion, affected individuals at Community Wellness Partners will sign and return the applicable acknowledgment form, which affirms the individual has reviewed the plan, understands, and agrees to abide by its provisions. This documentation will be completed for all new employees during Employee Orientation. Records are retained in the Human Resources Department.

All Community Wellness Partners board members, employees, providers/contractors will review corporate compliance standards at least annually in formal training sessions or via distributed course materials. Participation will be tracked and documented by the CCO with the goal of 100% participation.

Promotion of adherence to the corporate compliance program should be an element of each Community Wellness Partners employee’s performance standards. Compliance with the program, laws and regulations applicable to entities participating in health care programs is a condition of employment or association with Community Wellness Partners. Community Wellness Partners will take fair, equitable and appropriate disciplinary action as required.

Continuing Education Training

In addition to participating in required professional corporate compliance education at least annually, the CCO will provide on-going, updated education and training to all Community Wellness Partners board members, employees, contractors and affected individuals regarding compliance issues specific to the residential and clinical settings, as well as other areas involving fraud and abuse issues, pertinent

to roles and responsibilities.

Training Compliance and Effectiveness Review and Quality Improvement

The CWP Staff Education department is responsible for ensuring that employees, providers/contractors and other affected individuals have attended the training sessions applicable to the individual's duties at Community Wellness Partners. Training compliance will be communicated to the CCO as needed.

Updates

The CCO will review training regularly to assure that content is updated at regular intervals to include new developments in law, enforcement and risks, especially in the areas of IT Security and breach trends.

Element 4 – Lines of communication to the responsible compliance position

18 NYCRR 521.3 (c): ... **(4)** communication lines to the responsible compliance positions, as described in paragraph (2) of this subdivision, that are accessible to all employees, persons associated with the provider, executives and governing body members, to allow compliance issues to be reported; such communication lines shall include a method for anonymous and confidential good faith reporting of potential compliance issues as they are identified; . . .

The Community Wellness Partners Corporate Compliance Program will include well-maintained, updated written policies and procedures that identify how to communicate compliance issues to the Director of Corporate Compliance/CCO, confidentially and effectively. Lines of communication will be designed to strengthen confidential reporting while also providing two-way channels for announcement and discussion of compliance issues and information.

TELEPHONE HELPLINE/HOTLINE

The Community Wellness Partners helpline telephone numbers are **(315)235-7395 or (315)235-7095**. In addition the CCO's direct phone number is (315)272-2214. These helplines provide an anonymous, confidential means of communicating information about suspected compliance issues or misconduct for all affected individuals.

Questions about compliance standards and legal duties will be answered by the CCO or via referral to one or more employed persons with experience in the matter at hand. The CCO will investigate all reports of suspected misconduct received through either the helpline or any of the other available communication channels. The CCO will refer all legal issues to the Community Wellness Partners General Counsel as indicated.

Any Community Wellness Partners employee, board member, contractor, or other affected individual with concerns about unethical practices, improper employee conduct, the integrity of Community Wellness Partners billing/coding practices or other improper practices described throughout this Work Plan, must report such concern through the helpline or directly to the Compliance Office via any alternative communications channel listed below.

Anyone who makes an intentionally false statement or otherwise misuses the hotline or any communication channel will be subject to discipline.

OTHER CORPORATE COMPLIANCE COMMUNICATION CHANNELS

In addition to the helpline numbers (which are totally confidential and anonymous) any affected individual may report suspected misconduct or fraud⁹ through alternative channels. It is imperative that reporting individuals provide as much detail and information as is possible when using these channels to assure that an adequate follow-up and investigation can occur.

Channels include all of the four that follow:

- Direct reporting to the immediate supervisor in writing which will then be forwarded to the Compliance Officer for review and follow-up, or,
- Directly via email to the CCO (rchester@cwipinc.org)

For absolute anonymity and confidentiality, two reporting channels are recommended.

- Via postal mail to the CCO
- Via interoffice mail to the CCO, in which case care should be taken to redact or otherwise obscure prior addressees

Element 5 – Disciplinary policies to encourage good faith participation

18 NYCRR 521.3 (c): ... **(5)** *discipline policies to encourage good faith participation in the compliance program by all affected individuals, including policies that articulate expectations for reporting compliance issues and assist in their resolution and outline sanctions for: (i) failing to report suspected problems; (ii) participating in non-compliant behavior; or (iii) encouraging, directing, facilitating or permitting either actively or passively non-compliance behavior; such disciplinary policies shall be fairly and firmly enforced; ...*

Records of suspected misconduct and any subsequent investigation will be retained and confidentially maintained by the CCO.

Element 6 – A system for routine identification of compliance risk areas

18 NYCRR 521.3 (c):

... **(6)** *a system for routine identification of compliance risk areas specific to the provider type, for self-evaluation of such risk areas, including but not limited to internal audits and as appropriate external audits, and for evaluation of potential or actual non-compliance as a result of such self-evaluations and audits, credentialing of providers and persons associated with providers, mandatory reporting, governance, and quality of care of medical assistance program beneficiaries; ...*

COMPLIANCE STANDARDS AND PROCEDURES

Numerous federal and state laws and regulations define and establish obligations for the health care industry with which Community Wellness Partners, board members, employees, business associates, contractors and all affected individuals must comply. Any affected individual who violates these laws and/or regulations not only risks individual indictment, criminal prosecution and penalties, as well as civil actions for damages and penalties and administrative exclusion, but also subjects Community Wellness Partners to the same risks and penalties. Any employee or contractor who violates these laws will be subjected to the disciplinary procedures including and up to discharge or contract termination. Our summary of the pertinent laws is listed as Appendix A.

RISK ASSESSMENT

As part of the annual update of the Community Wellness Partners Corporate Compliance Work Plan, the Corporate Compliance Committee and the CCO will evaluate and prioritize the organization's primary compliance risk areas. These will include completion of the OMIG's Self-Risk Assessment form and other ancillary evaluations with emphasis on resident privacy; physical and cyber security; fraud waste and abuse; and other key areas.

Criminal History Check. (42 USC §1320A-7)

Community Wellness Partners excludes individuals from employment who have a history of any of the following:

- Conviction of a health care-related crime,
- Conviction relating to patient abuse,
- Felony conviction relating to health care fraud, and/or
- Felony conviction relating to a controlled substance.

All employees are subjected to a rigorous criminal history check on hire. Thereafter, the CCO in conjunction with the Human Resource Department, monitors monthly audits and verifies the full current employee, volunteer, provider, contractor and vendor lists against at least the OMIG and OIG LEIE databases of excluded individuals and entities.

Health Reviews. (NYS Public Health Law §206(m)). (10 NYCRR §415.26(c)(1)(iv)(a)).

(1) Annual Health Reviews. (NYS Public Health Law §206(m)).

Community Wellness Partners will require pre-employment physical examinations and thereafter require an annual health review (depending on which building the employee works in) of all employees which will include screening for tuberculosis and other communicable diseases as is deemed necessary for the safety and well-being of Community Wellness Partners residents.

(2) Health Review Policies. (10 NYCRR §415.26(c)(1)(iv)(a)).

Community Wellness Partners maintains and implements policies and procedures that require a health screening or physical examination and recorded medical history for all employees and members of the medical, dental and other clinical professional staff. All employees are required to have a health screening at least annually, documentation is maintained in the Employee Health Offices.

Required examinations must be of sufficient scope to ensure that, consistent with federal and state statutes and prohibiting discrimination on the basis of disability or handicap, no person will assume their duties unless he/she is free from a health impairment that would present a risk to the resident which cannot be reasonably accommodated, or which might interfere with the performance of their duties, including the habituation or addiction to depressants, stimulants, narcotics, alcohol or other drugs or substances which may alter the individual's behavior. Community Wellness Partners will provide such examination without cost for all employees.

- (a) Community Wellness Partners requires and monitors the following documentation for all personnel as a condition of employment or affiliation:
- (i.) A PPD (Mantoux) skin test for tuberculosis prior to employment or affiliation and a TB Screening no less than every year thereafter for negative findings. Positive findings will require appropriate clinical follow-up but no repeat skin tests;
 - (ii.) a certificate of immunization against rubella;
 - (iii.) a certificate of immunization against measles for all persons born after January 1, 1957; and,
 - (iv.) a certificate of immunization against COVID-19 (at minimum the original series)

- (v.) a certificate of immunization against Influenza OR a signed declination
- (vi.) a certificate of immunization against Pneumonia OR a signed declination

- (b) Community Wellness Partners and Community Wellness Partners contractors reassess the health status of all personnel as frequently as necessary, but no less than annually, to ensure that personnel are free from health impairments which pose a risk to residents or personnel which cannot be reasonably accommodated or which may interfere with the performance of duties.
- (c) Community Wellness Partners employees, residents and contractors will report any signs or symptoms of personal illness immediately to an appropriate authority, e.g., immediately to their employee health nurse, nursing supervisor or supervisor. Everyone who makes a report of illness will be referred to an appropriate health care professional for assessment of the risk to residents to others. Based on this assessment, Community Wellness Partners will authorize appropriate measures to be taken, including, but not limited to, removal, reassignment or return to duty.

Licensing, Certification and Exclusion Checks.

- (1) Professional License Verification and Exclusion Auditing. (10 NYCRR §415.26(c)(3) and (18 NYCRR §§ 515.3, 515.5 and 18 NYCRR § 515.7)).**

For all Community Wellness Partners employees and Community Wellness Partners contractors providing services at Community Wellness Partners for whom licensure, registration or certification is required, Community Wellness Partners employees and contractors are required to obtain and retain verification of the license number or certification with expiration date of same. Community Wellness Partners and Community Wellness Partners contractors will verify that there are no professional findings and that the licenses are in good standing for all personnel for whom licensure is required. Status of all clinical provider and administrator licenses as required by NYCRR will be audited at least annually.

Community Wellness Partners will also conduct monthly audits of all employees, contractors and business associates to assure that none have been excluded from participation in Government-funded programs. This is done by comparing the monthly employee list with the federal Office of the Inspector General's **List of Excluded Individuals and Entities** and the NYS Office of the Medicaid Inspector General's **Exclusion List** to assure that there are no matches. Any findings from the monthly audit are reviewed with Human Resources and as indicated, reported to the employee's supervisor and the Executive Compliance and Professional Standards Committees.

The Community Wellness Partners Human Resources Department will review the list of license suspensions and revocations published by New York State and the federal government on initial hiring to verify the candidate does not appear on either list.

- (2) Nurse Aides.**

- (2.1) Training. (10 NYCRR §415.26(d)(3) and 42 USC §1396-(b)(5)).**

Community Wellness Partners and Community Wellness Partners Contractor's nurse aides' training program will be supervised and instructed by qualified individuals and will include at least 100 hours of classroom and clinical training, at least 30 of which will be supervised practical experience.

- (2.2) NYS Nurse Aide Registry. (10 NYCRR §415.31).**

Community Wellness Partners and Community Wellness Partners Contractors will register its nurse aides with the New York State Nurse Aide Registry, and perform an annual audit with follow-up.

(3) NYS Personal and Home Care Registry. (10 NYCRR §403).

On announcement of required registration of these aides and assistants from the NYS OMIG, Community Wellness Partners will comply with all guidance ordering registration of all home health aides, personal care aides and personal care assistants employed at Community Wellness Partners. At present, formal audits are done annually to validate required certification of all HHA providers working on the Community Wellness Partners campus in compliance with state regulation. Staff members at our Assisted and Senior living communities maintain compliance with required registration/certification on an ongoing basis.

Employee Confidentiality and Privacy Policy.

Community Wellness Partners employees and contractors will not disclose any protected health information (PHI) belonging to residents or employees to individuals outside the facility including family and friends of the resident without written approval of the resident/employee.

This prohibition includes verbal communications as well as releasing copies of, or allowing access to, any protected reports or documents prepared by Community Wellness Partners. Clinical staff will not disclose or discuss any individual PHI with anyone other than a direct caregiver.

Community Wellness Partners employees and contractors will not discuss any resident PHI in any publicly accessible areas of the Community Wellness Partners such as elevators, corridors, common rooms, cafeteria, time clocks, or other publicly accessible space. This prohibition includes privacy violations in the nursing units where discussions are not appropriate due to the presence of other residents, non- direct care staff, and visitors.

Discrimination in Staff Appointments and Privileges. (NYS Public Health Law §206-A).

The governing body of Community Wellness Partners will not deny, withhold from, exclude or expel a physician, dentist or podiatrist staff membership or professional privileges because of his or her participation in any medical group practice, non-profit health insurance plan, or comprehensive health services plan offered by a health maintenance organization authorized by New York law.

Infection Control. (10 NYCRR §415.19).

Community Wellness Partners and Community Wellness Partners contractors will establish and maintain an infection control program, and employ an Infection Preventionist, designed to provide a safe sanitary and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection.

Pursuant to Education Law §6505-b, every physician, Nurse Practitioner, Physician Assistant, dentist, registered nurse, licensed practical nurse, podiatrist, optometrist, and dental hygienist employed or under contract with Community Wellness Partners will complete, and provide proof of, course work or training regarding infection control and barrier precautions.

No physician/provider, dentist or podiatrist will be granted professional privileges or association who has not completed such course work or training. (Public Health Law §28505-j).

Physicians, physician's assistants, nurse practitioners and specialist's assistants employed by or under contract with Community Wellness Partners will conduct course work or training in infection control and barrier precaution and the basic concepts of disease transmission, scientifically accepted principles

and practices for infection control and engineering and workplace controls. Such course work will be completed by Community Wellness Partners physicians, physician's assistants every four years. (10 NYCRR §92-1.1).

¹⁰ New York State Department of Health, Division of Home and Community Based Services, *Guide to Operation of a Home Health Aides Training Program*, July 1, 2013. P. 4, and 10 NYCRR § 700.2.

Conflicts of Interest.

Community Wellness Partners Officers, Community Wellness Partners Employees, Community Wellness Partners Contractors and officers, employees or contractors of Community Wellness Partners Affiliated Organizations will not . . .

- (1) accept other employment or engage in any business transaction directly or indirectly which might tend to affect his or her judgment in any official act or create a conflict with his official duties, or,
- (2) knowingly invest or hold any investment or interest, legal or beneficial, directly or indirectly, in any property, real or personal, in conflict with their official duties, and WILL annually submit a signed, dated attestation form as part of their annual compliance training.

Gifts and Gratuities.

No Community Wellness Partners Employee or Community Wellness Partners Contractor whether paid or unpaid, will directly or indirectly solicit any gift or accept or receive any gift whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him/her or reasonably be expected to influence him/her in the performance of their official duties or was intended as a reward for any official action or was intended as a reward for any official action on his or her part.

Employees Working for Vendors or Subcontractors.

No Community Wellness Partners contractor or employee is permitted to accept other employment or engage in any business transaction directly or indirectly which might tend to affect their judgment in any official act or create a conflict with his official duties.

Lobbying/Political Activity. (45 CFR §93.100).

Community Wellness Partners, Community Wellness Partners contractors and employees of Community Wellness Partners Affiliated Organizations may not expend funds received through a federal contract, grant, loan, or cooperative agreement for the purposes of paying any person for influencing or attempting to influence an officer or employee of a Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Element 7 – A system for responding to compliance issues

18 NYCRR 521.3 (c): ... **(7)** *a system for responding to compliance issues as they are raised; for investigating potential compliance problems; responding to compliance problems as identified in the course of self-evaluations and audits; correcting such problems promptly and thoroughly and implementing procedures, policies and systems as necessary to reduce the potential for recurrence;*

identifying and reporting compliance issues to the department or the office of Medicaid inspector general; and refunding overpayments; ..

Identification of Risk Areas

As necessary, Community Wellness Partners will develop written policies and procedures that address identified risk areas. These written policies and procedures will be communicated to all Community Wellness Partners employees, board members and contractors as necessary and pertinent. Risk areas that are identified in the course of compliance, quality improvement and credentialing processes, and as follow-up to annual or other formal risk assessments will be addressed appropriately and in timely fashion and will guide the annual compliance work plan.

Risk areas identified from time to time by OIG, OMIG or other authorities will be addressed in Community Wellness partner's compliance activities as appropriate.

Procedures Following the Detection of Misconduct

Violation of Community Wellness Partner's compliance policies include, but are not limited to, the following infractions:

- Failing to report known and potential non-compliant conduct,
- Participating in non-compliant conduct, and
- Actively or passively, encouraging, directing, facilitating or permitting non-compliant conduct.

After investigation, if the CCO and administrator/supervisor determine that a compliance violation occurred, the matter will be referred to the Corporate Compliance Committee. Community Wellness Partners requires the Committee to recommend imposition of appropriate disciplinary action, in light of all available information. Such response and disciplinary action may include, but not be limited to, written warning, suspension, or discharge of the individual(s) involved, or a progression in severity in the case of repeated offenses.

Community Wellness Partners will assure that all disciplinary actions are equitable and consistent with the severity of the infraction regardless of the rank or relationship of the non-compliant individual with/within the organization.

In the event that accidental or willful non-compliant conduct caused Community Wellness Partners or any Community Wellness Partners contractor or business associate to benefit as a result of improper or incorrect reimbursement or payments all such amounts received improperly or incorrectly will be promptly returned to the originating source. As is possible, any and all claims, vouchers or other instruments submitted in error will be corrected and resubmitted promptly.

In addition, as appropriate for the given situation, the following responses and measures may be undertaken:

- Re-training,
- Modification of the charges, coding and billing system as necessary,
- Adjustment to policies and procedures, including revisions to the corporate compliance program,
- Remediation of the problem including taking necessary steps to reduce the error rate and risk of future error, and
- Handling information obtained appropriately including reporting the problem to authorities, dealing with restitution by the employee or contractor, evaluation of effort needed by

Community Wellness Partners to determine the magnitude of improper claims and appropriate follow-up, and consideration of the clarity and veracity of the evidence.

Government Investigations

Community Wellness Partners is committed to full compliance with all state and federal laws and will cooperate with all reasonable demands made in any government investigation of Community Wellness Partners, or its employees or contractors. Community Wellness Partners deems it essential that the legal rights of Community Wellness Partners and its employees and contractors are protected.

If any Community Wellness Partners employee or board member receives a subpoena, inquiry or other legal document concerning Community Wellness Partners business, whether at home or in the workplace, from any governmental agency, the Community Wellness Partners employee or board member must notify the Community Wellness Partners CCO as soon as possible. A decision will then be made by senior leadership as to whether to alert the Community Wellness Partners General Counsel.

2023 Community Wellness Partners Compliance Work Plan Addenda

RESIDENT CARE AND RESIDENT RIGHTS

a. **Admissions.** (10 NYCRR §415.26); also see 42 USC §1396r(c)(5)).

Community Wellness Partners will admit a resident only on an authorized practitioner's order and in accordance with the resident assessment criteria and standards as promulgated and published by the Department of Health, and will accept and retain only those nursing home residents for whom it can provide adequate care. Community Wellness Partners will provide each resident with services and supports as required by law.

Community Wellness Partners will advise each potential resident or designated representative prior to or at the time of admission that all medical and dental services which are provided by the facility will be provided by practitioners who have an affiliation with the facility. Potential residents whose personal attending physician or dentist is not approved to provide services to the resident after admission will be duly notified prior to or at the time of admission. Community Wellness Partners will promptly receive an evaluation request by such personal attending physician or dentist, to be approved to attend to such prospective resident consistent with resident care policies and procedures of the facility.

Community Wellness Partners will advise each potential resident or designated representative that he or she may seek a second opinion if he or she disagrees with the diagnosis or treatment being provided and may call in a specialist selected by the resident or designated representative for the medical consultation.

Community Wellness Partners will advise each potential resident or designated representative that Community Wellness Partners does not require third-party guarantee of payment as a condition of admission; will not solicit or accept any gift or donation as a condition of admission; will not require the relinquishment of rights to Medicare or Medicaid benefits. Community Wellness Partners may require an individual who has legal access to a resident's income or resources available to pay for facility care, to sign a contract, without incurring personal financial liability, to provide the facility payment from the resident's income or resources.

b. **Residents' Rights.**

In accordance with 42 USC § 1396r(c), 42 CFR 483.1010 NYCRR § 415.3, Community Wellness Partners,

Community Wellness Partners employees and contractors will ensure that all residents are afforded their right to a dignified existence, self-determination, respect, full recognition of their individuality, consideration and privacy in treatment and care for personal needs and communication with and access to persons and services inside and outside the facility.

Community Wellness Partners will publicize a statement of the rights and responsibilities of the residents who are receiving care at Community Wellness Partners.

c. Reporting Abuses. NYS Public Health Law §2803(d).)

Any Community Wellness Partners Employee or Community Wellness Partners Contractor providing resident care is required to report any suspected physical abuse, mistreatment or neglect, immediately by telephone, and in writing within forty-eight hours to the NYS Department of Health. In the interest of promoting and protecting patient health, safety and welfare, Community Wellness Partners encourages all individuals to immediately report to the Administrator and/or CEO any and all instances of suspected resident abuse or neglect.

d. Non-discrimination in Admission.

Community Wellness Partners, Community Wellness Partners Employees and Community Wellness Partners Contractors will not discriminate because of race, color, blindness, sexual preference or sponsorship in admission, retention and care of residents. (10 NYCRR §415.26(i)(1)(ix)).

Community Wellness Partners, Community Wellness Partners Employees and Community Wellness Partners Contractors will obey all pertinent state and local laws which prohibit discrimination against individuals entitled to Medicaid benefits. (10 NYCRR §415.3(5)).

e. Compliance with Advance Directives.

(1) Health Care Proxies. (NYS Public Health Law §2984).

Community Wellness Partners will comply with the health care decisions made by a health care agent in good faith under a health care proxy to the same extent as if such decisions had been made by the resident.

Community Wellness Partners will establish procedures . . .

- (a) to provide information to adult residents about their right to create a health care proxy under New York State law;
 - (b) to educate adult residents about the authority delegated under the health care proxy, what a proxy may include or omit, and how a proxy is created and revoked;
 - (c) to ensure that each resident who creates a proxy while residing at Community Wellness Partners does so voluntarily.
- (2) Orders Not to Resuscitate. (10 NYCRR §405.43)

Each resident who consents to an order not to resuscitate is informed of the range of available resuscitation measures, consistent with the facility's equipment and facilities. All staff involved in the care of any person for whom an order not to resuscitate has been issued are promptly informed of the order, including any limitations or instructions.

For each resident for whom an order not to resuscitate has been issued, the attending physician at will review the resident's chart to determine if the order is still appropriate in light of the resident's condition

and will indicate on the resident's chart that the order has been reviewed. The resident is required to be seen by a physician at least every 60 days and the order not to resuscitate must be reviewed at that time.

A resident's consent to the issuance of an order not to resuscitate will not constitute consent to withhold or withdraw medical treatment other than cardiopulmonary resuscitation.

Any physician treating a resident who is informed or provided with a revocation of consent to an order not to resuscitate will immediately include the revocation in the resident's chart, cancel the order, and notify the Nursing Home Employees and Contractors responsible for the resident's care of the revocation and cancellation.

Any Employee or Contractor who is informed of or provided with the revocation of consent will immediately notify a physician of such revocation. An attending physician who is provided with a decision of a surrogate consenting to an order not to resuscitate will include the decision in the resident's medical chart and will:

- (1) Promptly issue an order not to resuscitate the resident and inform the hospital staff responsible for the resident's care of the order; or
- (2) Promptly make the attending physician's objection to the issuance of such an order known to the surrogate and either make all reasonable efforts to arrange for the transfer of the resident to another physician, if necessary, or promptly refer the matter to a dispute mediation system.

f. **Pastoral Care.** (10 NYCRR §793.4).

Community Wellness Partners will employ the services of a pastoral care coordinator. A pastoral care coordinator will mean a person who has had a minimum of five years of training and experience in pastoral/spiritual counseling and has a master's degree from a regionally accredited college or university or one recognized by the New York State Education Department. The pastoral care provider will provide for the spiritual, religious and emotional support of the resident and family.

ENVIRONMENTAL

a. **Medical Waste.** (10 NYCRR §415.29) (10 NYCRR §70).

Community Wellness Partners and Community Wellness Partners Contractors will regulate medical waste in a manner and location which affords protection from the environment and limits exposure to the public, and complies with applicable law and regulations.

b. **Emergency Preparedness**

As per the March 2023 HHS - OIG Work List – Community Wellness Partners maintains a robust Emergency Preparedness program for each community to assure safety of our residents/clients as well as our team members.

ADMINISTRATION

a. **Staff Qualifications and Personnel Management.** (10 NYCRR §415.26(c)).

Community Wellness Partners will employ on a full-time, part-time or consultants basis, a sufficient number of professional staff members who are educated, oriented and qualified to assure the health, safety, proper care and treatment of residents.

Community Wellness Partners will assure that the skilled nursing facilities operate under the supervision of an administrator who holds a currently valid nursing home administrator's

license and registration issued under Article 28-D of the NYS Public Health Law.

Community Wellness Partners will develop and implement medical services to meet the needs of its residents. A physician will serve as medical director. The medical director will be responsible for:

- (a) Implementation of resident medical care policies;
- (b) Coordination of physician services and medical care in the facility;
- (c) Coordinating the review of any physician, dentist, optometrist or podiatrist prior to granting or renewing professional privileges;
- (d) Assuring that each resident's responsible physician attends to the resident's medical needs.

The skilled facilities will employ a full-time Director of Nursing and will have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental and psychosocial wellbeing of each resident.

The skilled nursing facilities will provide nursing care on a 24-hour basis to all residents based on location, by employing the services of sufficient registered professional nurses, licensed practical nurses, certified nurses' aides, and other nursing personnel.

b. Governing Body Oversight. (10 NYCRR §415.26(b)).

Community Wellness Partners will have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operations of the facility.

Among other duties, the governing body will:

- (1) Appoint an eligible administrator;
- (2) Establish the policies of the facility;
- (3) Be responsible for the operation of the facility;
- (4) Be responsible for providing legally required services for residents;
- (5) Employ personnel as legally required;
- (6) Develop a method of promptly addressing resident complaints;
- (7) Assure the complaint process is made known to the residents and staff;
- (8) Establish a resident council;

(9) Comply with the laws of NYS in operating Community Wellness Partners, and managing Community Wellness Partners Employees and Community Wellness Partners Contractors.

REVIEWS

The Compliance Officer and/or Chief Financial Officer will periodically review practices and procedures. Reviews will be conducted to determine the accuracy and validity of coding and billing submitted to Medicare/Medicaid, other federal health programs and other payors, and otherwise to detect other instances in which State or federal standards may not have been met. Attention will be given to reviewing the reasons given for claim denials, and to analyze other facts, which may suggest inappropriate conduct.

The review procedure should include: (1) Sampling; (2) Review of backup records on a random basis to assess reliability of billings to programs; (3) Periodic review of the entire claims development and

submission process beginning with a resident's admission and ending with the submission of the claim to the government payer or third-party payor.

Community Wellness Partners and Community Wellness Partners contractors will retain all billing records for ten (10) years.

CONTRACTS

All contracts and other arrangements with physicians, laboratories, providers, referral sources, vendors and other persons will be reviewed to be sure that compliance standards are met.

2023 Federal & New York State Statutes Governing False Claims

I. Federal Laws

- 1) Federal False Claims Act (31 USC §§3729-3733)

II. New York State Laws

A. CIVIL AND ADMINISTRATIVE LAWS

- 1) New York False Claims Act (State Finance Law §§187-194)
- 2) Social Services Law, Section 145-b - False Statements
- 3) Social Services Law, Section 145-c - Sanctions

B. CRIMINAL LAWS

- 1) Social Services Law, Section 145 - Penalties
- 2) Social Services Law, Section 366-b - Penalties for Fraudulent Practices.
- 3) Social Services Law, Section 145-c - Sanctions
- 4) Penal Law Article 175 - False Written Statements
- 5) Penal Law Article 176 - Insurance Fraud
- 6) Penal Law Article 177 - Health Care Fraud

III. Whistleblower Protection – New York State and Federal Laws

- 1) Federal False Claims Act (31 U.S.C. §3730(h))
- 2) New York State False Claim Act (State Finance Law §191)
- 3) New York State Labor Law, Section 740
- 4) New York State Labor Law, Section 741

IV. Federal, New York State and Whistleblower Protection Law Detail

Federal Laws

- 1) Federal False Claims Act (31 USC §§3729-3733)

The False Claims Act ("FCA") provides, as follows: § 3729. False claims

(a) Liability for certain acts.--

- 1) In general. -- Subject to paragraph (2), any person who--

- (A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- (C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);
- (D) has possession, custody, or control of property or money used, or to be

used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;

(E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461) note; Public Law 104-410, plus 3 times the amount of damages which the Government sustains because of the act of that person.

(2) Reduced damages.--If the court finds that--

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

(3) Costs of civil actions.--A person violating this subsection will also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Definitions.--For purposes of this section--

(1) the terms "knowing" and "knowingly" --

(A) means that a person, with respect to information--

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information; and

(B) requires no proof of specific intent to defraud;

(2) the term "claim" --

(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that--

(i) is presented to an officer, employee, or agent of the United States; or

(ii) is made to a contractor, grantee, or other recipient, if the money or

property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government-

- (I) provides or has provided any portion of the money or property requested or demanded; or
 - (II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and
- (B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;
- (3) the term "obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and
 - (4) the term "material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(C) Exemption from disclosure.--Any information furnished pursuant to subsection (a)(2) will be exempt from disclosure under section 552 of title 5.

(D) Exclusion.--This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

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

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

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

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

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

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

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

New York State Laws

New York State False Claims Laws fall under the jurisdiction of both New York's civil and administrative laws as well as its criminal laws. Some apply to recipient false claims and some apply to provider false claims. The majority of these statutes are specific to healthcare or Medicaid. Yet some of the "common law" crimes apply to areas of interaction with the government and so are applicable to health care fraud and will be listed in this section.

A. Civil and Administrative Laws

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

The New York False Claims Act is similar to the Federal False Claims Act. It imposes penalties and fines upon individuals and entities who knowingly file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. It also has a provision regarding reverse false claims similar to the federal FCA such that a person or entity will be liable in those instances in which the person obtains money from a state or local government to which he may not be entitled, and then uses false statements or records in order to retain the money.

The penalty for filing a false claim is six to twelve thousand dollars per claim plus three times the amount of the damages which the state or local government sustains because of the act of that person. In addition, a person who violates this act is liable for costs, including attorneys' fees, of a civil action brought to recover any such penalty.

The Act allows private individuals to file lawsuits in state court, just as if they were state or local government parties, subject to various possible limitations imposed by the NYS Attorney General or a local government. If the suit eventually concludes with payments back to the government, the person who started the case can recover twenty-five to thirty percent of the proceeds if the government did not participate in the suit, or fifteen to twenty-five percent if the government did participate in the suit.

2) Social Services Law, Section 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 three times the amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of up to

ten thousand dollars per violation. If repeat violations occur within five years, a penalty of up to thirty thousand dollars per violation may be imposed if the repeat violations involve more serious violations of Medicaid rules, billing for services not rendered, or providing excessive services.

3) Social Services Law, Section 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 needs of the individual or that of his family will not be taken into account for the purpose of determining his or her needs or that of his family for six months if a first offense, for twelve months if a second offense (or if benefits wrongfully received are at least one thousand dollars but not more than three thousand nine hundred dollars), for eighteen months if a third offense (or if benefits wrongfully received are in excess of three thousand nine hundred dollars), and five years for any subsequent occasion of any such offense.

B. Criminal Laws

1) Social Services Law, Section 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.

2) Social Services Law, Section 366-b - Penalties for Fraudulent Practices.

- a. 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.
- b. Any person who, with intent to defraud, presents for payment a false or fraudulent claim for furnishing services, knowingly submits false information to obtain greater Medicaid compensation, or knowingly submits false information in order to obtain authorization to provide items or services is guilty of a class A misdemeanor.

3) Penal Law Article 155 - Larceny

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

- a. Fourth degree grand larceny involves property valued >\$1,000. It is a class E felony.
- b. Third degree grand larceny involves property valued >\$3,000. It is a class D felony.
- c. Second degree grand larceny involves property valued >\$50,000. It is a class C felony.
- d. First degree grand larceny involves property > \$1 million. It is a class B felony.

4) Penal Law Article 175 - False Written Statements

Four crimes in this Article relate to filing false information or claims and have been applied in Medicaid fraud prosecutions:

- a. § 175.05 - Falsifying business records involves entering false information, omitting material information or altering an enterprise's business records with the intent to defraud. It is a class A misdemeanor.
- b. § 175.10 - Falsifying business records in the first degree includes the elements of the § 175.05 offense and includes the intent to commit another crime or conceal its commission. It is a class E felony.
- c. § 175.30 - Offering a false instrument for filing in the second degree involves

presenting a written instrument, including a claim for payment, to a public office knowing that it contains false information. It is a class A misdemeanor.

- d. §175.35 - Offering a false instrument for filing in the first degree includes the elements of the second-degree offense and must include an intent to defraud the state or a political subdivision. It is a class E felony.

5) Penal Law Article 176 - Insurance Fraud

- a. This law applies to claims for insurance payments, including Medicaid or other health insurance, and contains six crimes.
- b. Insurance Fraud in the 5th degree involves intentionally filing a health insurance claim knowing that it is false. It is a class A misdemeanor.
- c. Insurance fraud in the 4th degree is filing a false insurance claim for over \$1,000. It is a class E felony.
- d. Insurance fraud in the 3rd degree is filing a false insurance claim for over \$3,000. It is a class D felony. Insurance fraud in the 2nd degree is filing a false insurance claim for over \$50,000. It is a class C felony.
- e. Insurance fraud in the 1st degree is filing a false insurance claim for over \$1 million. It is a class B felony.
- f. Aggravated insurance fraud is committing insurance fraud more than once. It is a class D felony.

6) Penal Law Article 177 - Health Care Fraud

This statute, enacted in 2006, applies to health care fraud crimes. It was designed to address the specific conduct by health care providers who defraud the system including any publicly or privately funded health insurance or managed care plan or contract, under which any health care item or service is provided. Medicaid is considered to be a single health plan under this statute. This law primarily applies to claims by providers for insurance payment, including Medicaid payment, and it includes six crimes.

- a. Health care fraud in the 5th degree — a person is guilty of this crime when, with intent to defraud a health plan, he or she knowingly and willfully provides materially false information or omits material information for the purpose of requesting payment from a health plan. This is a class A misdemeanor.
- b. Health care fraud in the 4th degree — a person is guilty of this crime upon filing such false claims on more than one occasion and annually receives more than three thousand dollars. This is a class E felony.
- c. Health care fraud in the 3rd degree — a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over ten thousand dollars. This is a class D felony.
- d. Health care fraud in the 2nd degree — a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over fifty thousand dollars. This is a class C felony. Health care fraud in the 1st degree — a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over one million dollars. This is a class B felony.

C. Whistleblower Protection

1) Federal False Claims Act (31 U.S.C. 3730(h))

The Federal False Claims Act provides protection to qui tam relators (individuals who commence a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner

discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. 31 U.S.C. 3730(h). Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

2) New York State False Claims Act (State Finance Law §191)

The New York State False Claims Act also provides protection to qui tam relators who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the Act. Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

3) New York State Labor Law, Section 740

An employer may not take any retaliatory 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. Protected disclosures are those that assert that the employer is in violation of a law that creates a substantial and specific danger to the public health and safety or which constitutes health care fraud under Penal Law § 177 (knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions). The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation. If an 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 health 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.

4) New York State Labor Law, Section 741

A health care 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. The employee's disclosure is protected 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. If an 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 health 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.

⁸ New York State Public Health Law §238 – Full text located at <https://codes.findlaw.com/ny/public-health-law/pbh-sect-238-a.html>.