

Visiting Nurse Association of Albany Home Care Corporation



Visiting Nurses Home Care

'The Very Best ... On Purpose'

VNHC Consumer Directed Personal Assistant Program

MedStaff

Corporate Compliance Policy

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INTRODUCTION

Visiting Nurse Association of Albany Home Care Corporation (VNHC) * is devoted to meeting and maintaining the highest ethical and professional standards and to do so through compliance with all applicable laws in all actions regarding the operation of itself and all affiliates. This commitment and dedication is essential to **VNHC** achieving its mission and is critical because a significant portion of services are reimbursed through governmental programs which require that **VNHC**'s business be conducted with complete integrity and veracity.

To ensure that **VNHC** operations are being conducted in compliance with applicable laws and the highest ethical standards, VNHC has developed a Compliance Program under the direction of a Compliance Officer, Kenneth J. Mooney, Director.

* **Visiting Nurse Association of Albany Home Care Corporation D/B/A Visiting Nurses Home Care / MedStaff** will be referred to as **VNHC** throughout this document and refers to all the affiliated entities including: **Visiting Nurses Home Care / MedStaff / CDPAP** of Albany, Amsterdam, Catskill, Cobleskill, Glens Falls, and Johnstown and any other offices which may be established .

The COMPLIANCE OFFICER:

The Compliance Officer in the course of exercising their his duties as an employee of VNHC also has a duty to develop, implement, review, maintain, promote, oversee, educate, monitor, audit, receive and give reports, investigate and to respond appropriately regarding the Compliance Program.

Corporate Compliance Officer ~ Kenneth J. Mooney, Director

Board of Directors:

The members of the Board in the course of exercising their duties as VNHC Board Members also have a Duty to comply, promote and oversee, be educated, cooperate and to respond appropriately regarding applicable aspects of the Compliance Program

Timothy Duffey - President
Jesse Vics, O.D. – Vice President
William Hasselbarth
Arthur Young
Joan Ferguson

Ex-Officio
Thomas Buckley
John Fraher

Please direct any questions, comments or concerns to the Corporate Compliance Officer at:

Visiting Nurses Home Care / MedStaff

Riverview Center
150 Broadway, Suite 310
Menands, NY 12204
Phone: (518) 694-9907
Fax: (518) 694-9913

GENERAL POLICY

The policy of VNHC is to provide services in compliance with all state and federal laws governing its operation and consistently do so with the highest standards of business and professional ethics. This policy is a sincere commitment to our clients, our field staff, our community, and the governmental agencies that regulate VNHC and also to ourselves.

All VNHC employees, field staff as well as office professionals, must carry out their duties for VNHC in accordance with this policy. To assist all employees with their obligation to comply with this policy, this manual includes statements of VNHC's policy for a number of applicable areas. Conduct that does not comply with these policy statements is not authorized by VNHC and is outside the scope of employment at VNHC.

Any violation of applicable law, the policy statements contained in this manual, or deviation from appropriate ethical standards, will subject an employee to disciplinary action, which may include oral or written warning, disciplinary probation, suspension, demotion, dismissal from employment or revocation of privileges. Any supervisor who directs or approves the employee's improper actions, or is aware of those actions but does not act appropriately to correct them, or who otherwise fails to exercise appropriate supervision may also be disciplined accordingly.

If at any time an employee becomes aware of any violation of VNHC policies, he or she must report it in accordance with the reporting requirements of this manual. All persons making such reports are assured that such reports will be treated as confidential to the extent permissible and that such reports will be shared only on a need to know basis. VNHC will take no adverse action against persons making such reports in good faith and without malicious intent whether or not the report ultimately proves to be well founded. If an employee does not report conduct violating VNHC's policies, the employee may be subject to disciplinary action up to and including termination of employment.

The laws affecting the operation of VNHC's activities are complex and many. This manual addresses in general terms only the more important legal and ethical principles affecting VNHC's activities. Their mention in this manual is not intended to minimize the importance of other applicable laws, professional standards, or ethical principles. It is not expected that each employee will be fully versed in all laws of permissible activities involved in their work. Therefore, if an employee has a question regarding the legality or propriety of a course of action, and this manual does not answer that question the employee should seek guidance from his or her supervisor or from the Compliance Officer before taking any action.

POLICY STATEMENTS

A. Visiting Nurses Home Care/ MedStaff/ VNHC Consumer Directed Personal Assitant Program . – Client Care, Rights and Responsibilities

It is VNHC's policy to provide high quality care and services to its clients. VNHC believes that state and federal regulations governing VNHC's operation provide a baseline of care standards which VNHC strives to exceed in the provision of care and services given to our clients by supplying them and their families with professional care and services . VNHC administers both programs which involve clinical oversight, i.e. NYSDOH licensed services, and a program in which VNHC's responsibility is non-clinical and limited to fiscal intermediary responsibilities, i.e. the Consumer Directed Personal Assistant Program.

Each client is entitled to a dignified existence, self determination and the provision of care and services in a manner and in an environment that promotes the maintenance or enhancement of a client's quality of life. It is VNHC's policy to protect, promote and foster for each client his/her rights as a client of VNHC.

VNHC has developed policies and procedures to ensure quality of care and the protection and promotion of a client's rights that are to be adhered to by all VNHC's staff. It is not the intent of this manual to set forth all such policies and procedures as they are available for review by all staff upon request.

It is the responsibility of all staff and self directed clients or their designated representatives to ensure that billing and payment for services reflects only those which have been approved and are provided accordingly. Signature on time sheets by clients and staff affirms the veracity of the document. VNHC has developed procedures to review documentation:

1. Service Coordinators monitor schedules and review time slips and aide activity reports for accuracy and legitimacy before approving for payroll.
2. In order to confirm services provided are valid , client signature verification, random phone calls and provisional visits are some of the methods used in order to detect and prevent fraud.

VNHC's policies and procedures with regard to a client's rights and their care are available from the Compliance Officer or the Director of Nursing.

B. Visiting Nurses Home Care / MedStaff / CDPAP (VNHC). – Referrals

Federal and State law prohibit VNHC and its employees from (1) soliciting or accepting or (2) offering or paying remuneration in exchange for referrals of patients eligible for Medicare, Medicaid or another federal health care program. Federal and State law also prohibit (1) the offering or payment or (2) the soliciting or receipt of remuneration in return for directly purchasing, leasing, ordering or recommending the purchase, lease or ordering of any goods, facilities, services or items covered under the benefits of Medicare, Medicaid or other federal health programs. The term “remuneration” broadly covers the transferring of anything of value in any form or manner whatsoever. Remuneration is not limited to bribes, kickbacks and rebates.

These federal and state laws are broadly written to prohibit VNHC and its employees from knowingly and willfully offering, paying, asking or receiving any money or other benefit, directly or indirectly, overtly or covertly, in cash or in kind. These laws are violated even if only one purpose of a payment arrangement is to influence referrals or the procuring of goods or services.

As a result all contracts and arrangements with actual or potential referral sources and all contracts and arrangements with vendors must comply with applicable state and federal laws and regulations. All personal service, management service and consulting service agreements must comply with applicable state and federal laws and regulations. Moreover, any other financial or other business arrangement between VNHC and other health care professionals or providers must be structured to comply with all applicable state and federal laws and regulations.

If questions arise regarding whether a proposed business arrangement, financial arrangement, or contract is in compliance with federal or state law, an employee is required to seek guidance from the Compliance Officer who in turn may seek appropriate guidance from legal counsel.

C. Visiting Nurses Home Care / MedStaff / CDPAP (VNHC). – Billing and Claims; Cost Reports

VNHC has an obligation to its clients, third party payers and the state and federal government to exercise diligence, care and integrity when submitting claims for payment. The right to bill the Medicaid program carries a responsibility that may not be abused. VNHC is committed to maintaining the accuracy of every claim it processes and submits. Each of the individuals responsible for entering charges and codes is expected to monitor compliance with applicable billing rules. Any false, inaccurate, or questionable claims should be reported immediately to the employee's supervisor or the Compliance Officer.

False billing is a serious offense. Medicaid rules prohibit knowingly and willfully making or causing to be made any false statement or representation of the material fact in an application for benefits or payment. It is also unlawful to conceal or fail to disclose the occurrence of an event affecting the right to payment with the intent to secure payment that is not due. Examples of false claims include knowingly:

1. Claiming reimbursement for services that have not been rendered
2. Filing duplicate claims
3. Including inappropriate or inaccurate costs on cost reports to be submitted under the Medicaid program.
4. Billing for services or items that are not medically necessary
5. Failing to provide medically necessary services or items
6. Billing excessive charges

With respect to the submission of claims to the Medicaid program, it is VNHC's policy that claims must: (1) be accurate and timely submitted, (2) be only for items or services that (a) are medically necessary, (b) fall within the coverage guidelines contained in applicable laws, rules and regulations, and (c) are documented in the clients medical record. In this regard:

1. Prior to submitting a claim for payment, it is necessary to verify that all documentation for services reflected on the claim, such as physician orders and prior approvals, are available in a proper and timely manner
2. Claims may only be submitted when appropriate documentation supports the claim and only when such documentation is maintained and available for audit and review.

3. Documentation which serves as the basis for a claim must be appropriately organized in legible form so that such documentation may be audited and reviewed
4. Diagnosis and procedures reported on reimbursement claims must be based on the medical record and other documentation
5. Documentation necessary for accurate code assignment must be made available to all employees with coding responsibility
6. Compensation for billing department coders and billing consultants shall not provide for any financial incentive to improperly code claims

With regard to the filing of cost reports, it is VNHC's policy that all Medicaid cost reports must be prepared utilizing generally accepted accounting principles based upon documents and reports that are maintained in VNHC's day to day business. Cost reports must document only those costs that VNHC's employees and/or agents believe in good faith are allowable. Employees and agents must provide accurate and complete documentation and reports in connection with the preparation of cost reports.

With regard to claim submissions and cost reporting, the following conduct is specifically prohibited:

1. Claims for payment or reimbursement of any kind that are false, fraudulent, inaccurate or fictitious
2. Falsified medical records, time cards or other records used as the basis for submitting claims
3. For services that must be coded, use of a code that does not accurately describe the documented service when there is a more accurate code that could have been used. This includes post-dating orders or signatures. Late entries should include an explanation of reason for delay in entry
4. Bills submitted to Medicaid or applicable insurance plan for items or services which are known are not covered by Medicaid or applicable insurance plan
5. Filing claims for the same item or service to more than one payer source whereby VNHC will receive duplicate or double payments
6. Submission of claims without the availability of adequate documentation
7. Falsification of any report or document used to document the cost of utilization of services by payer source

8. Failure to report a known error or inaccuracy in any cost report or underlying document used to prepare a cost report

9. Recording inappropriate, inaccurate, or non-allowable costs on a cost report

Any employee who discovers an error or inaccuracy in any claim for payment for health care services or in any cost report that has been submitted or will be submitted should alert his or her supervisor, the Director or the Compliance Officer..

D. Visiting Nurses Home Care / MedStaff / CDPAP (VNHC). - Confidentiality

All VNHC Employees possess sensitive, privileged information about clients and their care. Clients properly expect that this information will be kept confidential. VNHC takes very seriously any violation of their confidentiality. Discussing any client's medical condition or providing any information about them to anyone other than VNHC personnel who need the information or other authorized persons will result in disciplinary action. Employees are not to discuss clients outside of VNHC.

VNHC is required to maintain the confidentiality of each client's medical record. In this regard, medical records may not be released except with the consent of the client or in other limited circumstances as required by law. Special confidentiality requirements apply with regard to medical records relating to HIV infection and AIDS. Medical records should not be physically removed from VNHC, altered or destroyed. Employees who have access to medical records must exercise their best efforts to preserve their confidentiality and integrity and no employee is permitted access to the medical record of any client without a legitimate reason for doing so and proper authorization. If a question arises as to the permissibility of the release of a client's medical record or any information contained therein, the employee should seek guidance from the employee's supervisor, the Director of Nursing or the Compliance Officer. VNHC employees must comply with applicable regulations set forth in the Health Insurance Portability and Accountability Act (HIPAA).

Additionally, employees are to treat as confidential VNHC's proprietary business assets including: valuable ideas, business plans, and other information about VNHC's business. VNHC's employees should respect VNHC's assets as they would their own. No employee shall divulge to unauthorized persons, either during or after their employment, any information of a confidential nature connected with the business of VNHC. Examples of confidential business information include: personnel information, such as job title, level, duties, skill or salary; or any information disclosure of which could adversely affect the business interests of VNHC.

E. Visiting Nurses Home Care / MedStaff / CDPAP (VNHC). - Conflicts of Interest

No employee should place him or herself or allow him or herself to be placed in a situation where the employee's personal interests might conflict with the interests of VNHC. VNHC recognizes and respects an individual employee's right to invest or participate in activities outside of his/her employment provided that these in no way conflict with VNHC's interests or welfare and do not interfere with the employee's responsibilities to VNHC or the effectiveness of the employee's job performance.

Although it is difficult to set forth all possible situations that might be considered as conflicting with VNHC's interests, the following are examples of situations which employees must avoid:

1. No employee should perform any outside employment or engage in any outside activities which interfere with the effective performance of the employee's duties as a VNHC employee
2. No employee should use their position at VNHC for personal gain by soliciting or accepting for personal benefit business opportunities that might otherwise accrue to the benefit of VNHC.
3. No employee should use for his or her personal benefit, or disclose to unauthorized persons, any confidential or proprietary information about VNHC or its operation
4. No employee should borrow money from individuals or firms (other than banks and/or lending institutions) doing, or seeking to do, business with VNHC
5. No employee should compete with VNHC by selling or offering to sell services similar to those services offered by VNHC.
6. No employee should accept significant gifts, discounts or other preferred personal treatment from any person associated with a present or prospective customer, competitor or supplier of VNHC
7. No employee may use VNHC's assets for personal benefit or personal business purposes

EDUCATION AND TRAINING

To ensure that all employees are familiar with their responsibilities under VNHC's Compliance Program, VNHC has a written policy for the training of all employees, contractors or agents of the entity on the Federal False Claims Act (31 USC 3729-33). All affected employees and persons associated with VNHC including executives and governing body members will be required to participate in any initial or periodic training sessions as determined by the Compliance Officer. Additionally, any periodic training sessions will also be required as determined by the Compliance Officer, for employees of certain departments with responsibilities for billing and coding or any other responsibilities that the Compliance Officer determines appropriate for periodic training. Such training shall be made a part of the orientation for a new employee, appointee or associate, executive and governing body member.

The Compliance Officer will distribute in writing and/or post in conspicuous places, any modifications of or amendments to the Compliance Manual. The Compliance Officer will also provide employees with written explanations of any substantial changes in the Compliance Manual or, if the Compliance Officer determines that written materials are insufficient, interim training sessions will be conducted.

Employees will be provided periodic information about VNHC's Compliance Program, changes in applicable laws or ethical standards that may affect an employee's responsibilities through written memoranda, periodic training sessions or other appropriate forms of communication.

REPORTING REQUIREMENTS :

A. - Reporting

It is the responsibility of every employee to report any known instances of or reasonable suspicions of any violation of applicable state or federal law, ethical standards or VNHC's policies, including the policy statements contained in this manual. To report a suspected violation, an employee is required to notify, either verbally or in writing, the Compliance Officer or the employee's immediate supervisor. Any supervisory staff personnel receiving a report of a suspected violation is required to immediately notify the Compliance Officer. If the suspected violation involves the employee's immediate supervisor, the employee should make the report directly to the Compliance Officer. If the suspected violation involves the Compliance Officer, the report should be made directly to VNHC Board President Timothy Duffey at (518) 262-1461. An employee may make a report of a suspected violation anonymously. Failure to report a suspected violation may result in disciplinary action.

B. - Examples of Activities to be Reported

The following list of activities that should be reported is not an all-inclusive list but is designed to illustrate the types of conduct that should be reported:

1. The acquisition of any information that gives an employee reason to believe that another employee, or contractor is engaged in or plans to engage in any conduct prohibited by applicable law, ethical standards or the policies of VNHC, including the policy statements contained herein (hereinafter collectively "Standards")
2. The acquisition of any information indicating that any other person or entity associated with VNHC plans to violate any of the foregoing Standards
3. An employee is instructed, directed or requested to engage in conduct which violates any of the foregoing Standards

C. - Confidentiality

To the extent permissible, VNHC shall treat all reports of suspected violations of Standards as confidential. However, it must be recognized that under certain circumstances the name of the individual making the report will be communicated to the Compliance Officer, if the report is made originally to the employee's supervisor, to an individual responsible for conducting an investigation of the suspected violation or to a governmental agency investigating any such suspected violation. Any such disclosure will only be made Only on a need to know basis.

D. - Investigations

It is important to the integrity of VNHC's operation that all suspected violations of Standards be thoroughly reviewed and investigated so that appropriate action can be taken as necessary. VNHC will promptly and thoroughly investigate any suspected violation and take appropriate disciplinary action if warranted. Investigations may be conducted internally by the Compliance Officer or externally by either accountants or lawyers engaged by VNHC. Employees are required to cooperate with the individual or individuals conducting an investigation of a suspected violation. Such cooperation may involve being interviewed by the individual or individuals conducting the investigation or supplying such individual or individuals with requested documentation. Failure to cooperate in an investigation of a suspected violation may result in disciplinary action being taken.

E. - Non-Retaliation

To ensure employee cooperation, neither VNHC nor its respective employees shall take any retaliatory action or retribution against any employee who has submitted a report of a suspected violation or who has participated in an investigation of a suspected violation. Any employee who takes retaliatory action or retribution against another employee who has either reported a suspected violation or participated in an investigation of a suspected violation will be subject to disciplinary action.

DISCIPLINARY PROCEDURES:

All employees and professional staff members are required to comply with applicable state and federal law, ethical standards and VNHC's policies, including the policy statements contained in this manual (hereinafter collectively "Standards"). Any employee or professional staff member who violates any of the foregoing Standards will be subject to disciplinary action, up to and including termination of employment.

Disciplinary action will be taken against an employee or professional staff member who:

- A. Authorizes or participates directly in a violation of a Standard
- B. Deliberately fails to report a violation of a Standard
- C. Deliberately withholds relevant and material information concerning a violation of a Standard
- D. Deliberately fails to cooperate in an investigation of a suspected violation of a Standard
- E. Retaliates or seeks or causes retribution against any employee or professional staff member who has either reported a suspected violation of a Standard or participated in an investigation of a suspected violation of a Standard
- F. Fails to participate in required training programs

Disciplinary action may also be taken against any supervisory personnel who directs or approves an employee's actions which result in a violation of a Standard, is aware that an employee's actions which violate a Standard but fails to take appropriate corrective action or who otherwise fails to exercise appropriate supervision.

Disciplinary action may include oral or written warning, probation, suspension, demotion, termination from employment or suspension. Disciplinary action will be taken in accordance with VNHC's personnel policies and procedures. Disciplinary action will be taken on a fair, equitable and consistent basis. Disciplinary action will be appropriate to the level of the employee's culpable conduct, that is, the more serious the level of culpable conduct (intentional conduct or reckless non-compliance) will result in more significant disciplinary action. Notwithstanding the foregoing, this statement is not a guaranty of progressive discipline and VNHC reserves the right to terminate an employee at any time for any lawful reason.

APPENDIX A – False Claims and Related Laws

FEDERAL FALSE CLAIMS ACT (31 USC 3729-33)

A. False Claims and Penalties

The Federal False Claims Act (“Act”) imposes civil liability upon any person (individual or entity) for knowingly making a false claim to the United States government (“Government”). Specifically, the Act sets forth seven circumstances for which civil liability will be imposed for false claims. These seven circumstances are:

1. To knowingly present, or cause to be presented, to the Government a false or fraudulent claim for payment or approval;
2. To knowingly make, use, or cause to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
3. To conspire to defraud the Government by getting a false or fraudulent claim allowed or paid;
4. To have possession, custody or control of property or money used, or to be used, by the Government and, intending to defraud the Government or to willfully conceal the property, to deliver or cause to be delivered, less property than the amount for which the person receives a certificate or receipt.
5. To authorize the making or delivery of a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, to make or deliver the receipt without completely knowing that the information on the receipt is true;
6. To knowingly buy, or receive as a pledge of an obligation or debt, public property from an officer or employee of the Government who lawfully may not sell or pledge the property.
7. To knowingly make, use, or cause to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government.

The civil monetary penalty that can be imposed for a false claim under the Act is not less than \$5,000.00 and not more than \$10,000.00, PLUS three times the amount of damages which the Government sustained because of the false claim. A Court may impose a lesser penalty of not less than two times the amount of damages sustained by the Government where the Court finds the following:

1. The person committing the violation furnished governmental officials responsible for investigating false claims with all information known to the person about the violation within thirty (30) days after the date on which the person first obtained the information;
2. The person fully cooperated with any governmental investigation of the violation; and
3. At the time the person furnished the Government with the information about the violation, no criminal prosecution, civil action, or administrative action had been commenced with respect to the violation and the person did not have actual knowledge of the existence of an investigation into the violation.

The Act defines the term “Claim” and the terms “Knowing” and “Knowingly”. A Claim is defined for purposes of the Act as follows:

Claim includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States government provides any portion of the money or property which is requested or demanded or if the Government will reimburse such contractor, grantee or other recipient of any portion of the money or property which is requested or demanded.

The terms “Knowing” and “Knowingly” are defined as:

That a person, with respect to information:

1. has actual knowledge of the information;
2. acts in deliberate ignorance of the truth or falsity of the information; or,
3. acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

In essence, civil monetary penalties may be imposed upon a person for making a false claim to the Government where the individual knows the information in the claim is false, or acts in deliberate ignorance of the truth or falsity of the information in the claim or acts in reckless disregard of the truth or falsity of the information in the claim. Civil monetary penalties are imposed even where there is no specific intent to defraud the Government.

The Act applies to claims submitted under Medicare, Medicaid, other federal health care programs and other state health care programs funded, in whole or in part, by the federal government. Examples of false claims include, but are not limited to:

1. Filing a claim for payment knowing that the services were not provided or were medically unnecessary;
2. Submitting a claim for payment knowing that excessive charges are being billed;
3. Submitting a claim for payment knowing that a higher billing code which does not reflect the services provided is used;
4. Filing a claim knowing that the claim is for duplicate services.

The Act has been used as a basis to impose civil monetary penalties upon nursing homes in situations involving egregious substandard quality of care, that is, the resident's condition is so bad that the services billed for could not have been provided.

B. Civil Actions Under the Act

Enforcement of the Act is the responsibility of the United States Attorney General. However, private individuals have the ability to bring a civil action for a violation of the Act. These private actions are known as "Qui Tam" actions.

Qui Tam actions are brought by private individuals in the name of the Government. When the complaint in an action brought by a private individual is filed with the Court, it remains under seal for a period of sixty days and cannot to be served upon the defendants named therein until ordered by the Court. Under seal means that the action remains confidential and is not subject to disclosure. The private individual must serve a copy of the complaint and written disclosures of substantially all material evidence and information the individual possesses on the Government. Within sixty days of the Government's receipt of the complaint and written disclosures, the Government shall either intervene and proceed with the action, in which case, the action shall be conducted by the Government, or notify the Court that it declines to take over the action, in which case, the private individual bringing the action shall have the right to proceed with the action.

If the Government elects to proceed with the action brought by a private individual, the private individual shall receive at least 15% but not more than 25% of the proceeds of the action or settlement of the claim, depending upon the extent to which the private individual contributed to the prosecution of the action. If the Government does not proceed with the action, and the private individual is successful in the action or settles the action, the private individual is entitled to an amount not less than 25% and not more than 30% of the proceeds of the action or settlement which shall be paid out of the proceeds of the action or settlement. In addition, the private individual is entitled to receive an amount for reasonable expenses necessarily incurred in the action plus reasonable attorneys' fees and costs. On the other hand, if the private individual is unsuccessful in prosecuting the action, the Court, upon a finding that the action was clearly frivolous, clearly vexatious or brought primarily for purposes of harassment, may award the defendant in the action its reasonable attorneys' fees and expenses. If the private individual in the action is a person who planned or initiated the violation of the Act, the Court, where appropriate, may reduce the amount of the award to the private individual. Moreover, if such private individual is convicted of a crime arising from his or her role in the violation, the person will not receive any share of the proceeds of the action.

A civil action under the Act may not be brought:

1. More than six years after the date on which the violation of the Act is committed; or
2. More than three years after the date when facts material to the right of action are known or reasonably should have been known by an official of the Government charged with responsibility to act in the circumstances but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

31 U.S.C. §3801 Et. Seq.

31 U.S.C. §3801 imposes additional civil penalties for the filing of false claims or statements with the federal government. The term "Claim" is defined as:

Any request, demand or submission - -

- (A) made to [the Government] for property, services or money (including money representing grants, loans, insurance or benefits);
- (B) made to a recipient of property, services or money from [the Government] or to a party to a contract with [the Government] - -
 - (i) for property or services if the United States - -
 - (I) provided such property or services;
 - (II) provided any portion of the funds for the purchase of such property or services; or
 - (III) will reimburse such recipient or party for the purchase of such property or services; or

(ii) for the payment of money (including money representing grants, loans, insurance or benefits), if the United States - -

(I) provided any portion of the money requested or demanded; or

(II) will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(C) made to [the Government] which has the effect of decreasing an obligation to pay or account for property, services or money, except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1986.

The term "Statement" is defined as:

Any representation, certification, affirmation, document, record or accounting or bookkeeping entry made - -

(A) with respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(B) with respect to (including relating to eligibility for - -

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan or benefit from, an authority, or any State, political subdivision of a State, or other party, if the United

States Government provides any portion of the money or property under such contract or for such grant, loan or benefit, or if the Government will reimburse such State, political subdivision or party for any portion of the money or property under such contract or for such grant, loan or benefit, except that such term does not include any statement made in any return of tax imposed by the Internal Revenue Code of 1986.

Specifically, civil monetary penalties under 31 U.S.C. §3801 et. seq. will be imposed against:

1. Any person (individual or entity) who makes, presents, or submits, or causes to be made, presented or submitted, a claim that the person knows or has reason to know:

(A) is false, fictitious or fraudulent;

(B) includes or is supported by any written statement which asserts a material fact which is false, fictitious or fraudulent;

(C) includes or is supported by any written statement that:

(i) omits a material fact;

(ii) is false, fictitious or fraudulent as a result of such omission; and

(iii) is a statement in which the person making, presenting or submitting such statement has a duty to include such material facts; or

(D) Is for payment for the provision of property or services which the person has not provided as claimed; or

2. Any person who makes, presents or submits, or causes to be made, presented or submitted, a written statement that:

(A) The person knows or has reason to know:

(i) asserts a material fact which is false, fictitious or fraudulent; or

(ii) is false, fictitious or fraudulent as a result of such omission;

(B) in the case of a statement described in clause

(ii) of subparagraph (A) is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and

(C) contains or is accompanied by an express certification or affirmation of the truthfulness or accuracy of the contents of the statement.

The term “knows or has reason to know” means that:

A person, with respect to a claim or statement - -

(A) has actual knowledge that the claim or statement is false, fictitious or fraudulent; or

(B) acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(C) acts in reckless disregard of the truth or falsity of the claim or statement, and no proof of specific intent to defraud is required.

Civil monetary penalties under 31 U.S.C. §3801 et. seq. are not more than \$5,000 for each false claim or statement. Also, in lieu of damages sustained by the federal government, an assessment of not more than twice the amount of such claim(s) may be imposed. An individual or entity against whom civil monetary penalties are sought under 31 U.S.C. §3801 et. seq. is entitled to notice, an opportunity for a hearing and judicial review.

ADDITIONAL CIVIL AND CRIMINAL PENALTIES AND EXCLUSIONS FOR FALSE CLAIMS

In addition to the Act and 31 U.S.C. §3801 et. seq., the federal government may, pursuant to 42 U.S.C. §1320a-7a, impose civil monetary penalties for false claims. Such additional civil monetary penalties may be up to but not exceed \$10,000 for each item or service which is the subject of a false claim.

In addition to civil monetary penalties, the federal government may, pursuant to 42 U.S.C. §1320a-7, exclude an individual or entity from participation in federal and state health care programs (including Medicare and Medicaid) for certain false claims or actions. Generally, exclusion is mandatory in cases where the individual is convicted of a felony relating to health care fraud, otherwise, exclusion is permissive, that is, subject to the discretion of the Government.

Pursuant to 42 U.S.C. §1320a-7b, criminal sanctions may be imposed against an individual or entity for making or causing to be made false statements or representations. Specifically, criminal sanctions will be imposed against an individual or entity who:

1. Knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a federal health care program;
2. At any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefits or payments;
3. Having knowledge of the occurrence of any event affecting (1) his/her initial or continued right to any such benefit, or (2) the initial or continued right to any such benefit or payment of any other individual in whose behalf he/she has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized;
4. Having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person;
5. Presents or causes to be presented a claim for a physician's service for which payment may be made under a federal health care program and knows that the individual who furnishes the services was not licensed as a physician; or

6. For a fee knowingly and willfully counsels or assistants an individual to dispose of assets (including by any transfer in trust) in order for the individual to become eligible for medical assistance under [Medicaid] if disposing of the assets results in the imposition of a period of ineligibility for such assistance.

In addition, criminal sanctions will be imposed against any individual or entity who knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operations of any institution, facility or entity in order that such institution, facility or entity may qualify (either upon initial certification or upon recertification) as a hospital, critical access hospital, skilled nursing facility, nursing facility, intermediate care facility for the mentally retarded, home health agency, or other entity for which certification is required under Medicare or a state health care program or with respect to information required to be provided under 42 U.S.C. §1320a-3a (disclosure requirements for other providers under Medicare Part B).

NEW YORK STATE FALSE CLAIMS LAWS

A. NY False Claims Act (State Finance Law §§187-194)

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

The Act allows private individuals to file lawsuits in state court, just as if they were state or local government parties. If the suit eventually concludes with payments back to the government, the person who started the case can recover 25-30% of the proceeds if the government did not participate in the suit or 15-25% if the government did participate in the suit.

B. Social Services Law, Section 366-b

Section 366-b of the Social Services Law makes it a Class A misdemeanor for any person who, with intent to defraud, does any of the following:

1. presents for allowance or payment any false or fraudulent claim for furnishing services or merchandise;
2. knowingly submits false information for the purpose of obtaining greater compensation than that to which he/she is legally entitled for furnishing services or merchandise; or
3. knowingly submits false information for the purpose of obtaining authorization for furnishing services or merchandise under the Medicaid program.

C. Article 177 of the Penal Law

Article 177 of the Penal Law became effective November 1, 2006. Article 177 of the Penal Law establishes the crime of health care fraud. The crime of health care fraud in the fifth degree is a Class A misdemeanor and a person is guilty of this crime when:

With intent to defraud a health plan, [includes the State Medicaid program], he or she knowingly and willfully provides materially false information or omits material information for the purpose of requesting payment from a health plan for a health care item or service and, as a result of such information or omission, he or she or another person receives payment in an amount that he, she or such other person is not entitled to under the circumstances.

Health care fraud in the fourth degree is a Class E felony. A person is guilty of health care fraud in the fourth degree when the person commits the crime of health care fraud in the fifth degree on one or more occasions and the payment or portion of payment wrongfully received from a single health plan [including Medicaid] in a period of not more than one year, exceeds \$3,000 in the aggregate.

Health care fraud in the third degree is a Class D felony. Health care fraud in the third degree is committed where the wrongful payments exceed \$10,000 in the aggregate in a one-year period. Health care fraud in the second degree is a Class C felony and is committed where the wrongful payments exceed \$50,000 in the aggregate in a one-year period. Health care fraud in the first degree is a Class B felony and is committed where the wrongful payments exceed more than \$1,000,000 in the aggregate one year period.

Article 177 of the Penal Law provides for an affirmative defense for individuals serving as a clerk, bookkeeper, or other employee of a health care provider who, without personal benefit, was merely executing the orders of his or her employer or a superior employee generally authorized to direct his or her activities. The affirmative defense is not available to any employee charged with the active management and control, in an executive capacity, of the affairs of the corporation.

D. 18 NYCRR Section 515.2

It is an unacceptable practice under the Medicaid program for an individual or entity to submit false claims or false statements to Medicaid. False claims include:

1. Submitting, or causing to be submitted, a claim or claims for:
 - (i) unfurnished medical care, services or supplies;
 - (ii) an amount in excess of established rates or fees;
 - (iii) medical care, services or supplies provided at a frequency or in amount not medically necessary; or
 - (iv) amount substantially in excess of the customary charges or costs to the general public; or,
2. Inducing, or seeking to induce, any person to submit a false claim.

False statements are:

1. Making, or causing to be made, any false, fictitious or fraudulent statement or misrepresentation of material fact in claiming a medical assistance payment, or for use in determining the right to payment; or
2. Inducing or seeking to induce the making of any false, fictitious or fraudulent statement or misrepresentation of a material fact.

Individuals who have engaged in unacceptable practices under the Medicaid program are subject to one or more of the following sanctions:

1. Exclusion from the program for a reasonable time;
2. Censure;
3. Conditional or limited participation, such as requiring pre-audit or prior authorization of claims for all medical care, services or supplies, prior authorization of specific medical care, services or supplies, or other similar conditions or limitations.

In addition, the Department of Health may require the repayment of overpayments determined to have been made as a result of the unacceptable practice.

WHISTLEBLOWER PROTECTION

A. Federal False Claims Act

No employee because of lawful acts done by the employee in furtherance of a civil action under the Act, whether brought by the Government or a private individual, including investigation for, initiation of, testimony for, or assistance in any such action may be discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of such actions. Any employee who has been discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment because of such lawful acts shall be entitled relief necessary to make the employee whole, including, reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

B. State Laws

Article 20-C of the New York Labor Law prohibits retaliatory action by employers. Section 740 of Article 20-C applies to all employers. Section 741 of Article 20-C applies to health care employers, including, but not limited to, providers licensed under Article 28 (i.e., hospitals, nursing homes and diagnostic and treatment centers) and Article 36 (i.e., long term home health care programs, certified home health care agencies, and licensed home care service agencies) of the Public Health Law. In addition, the New York False Claims Act provides additional protection to employees.

I. Section 740

Under Section 740 an employer is prohibited from taking any retaliatory personnel action (discharge, suspension, demotion or other adverse employment action taken against an employee in terms and conditions of employment) against an employee because the employee does any of the following:

- (i) 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 which violation creates and presents a substantial and specific danger to the public health or safety or which constitutes health care fraud;
- (ii) 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
- (iii) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

With respect to disclosures to a public body only, protection against retaliatory personnel actions is unavailable unless the employee has first brought the activity, policy or practice in violation of law, rule or regulation, to the attention of a supervisor of the employer and afforded the employer a reasonable opportunity to correct the activity, policy or practice.

An employee who has been subject to a retaliatory personnel action may institute a civil action for the following relief within one year after the alleged retaliatory personnel action was taken:

- (i) An injunction to restrain continued violation of Section 740;
- (ii) Reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position;
- (iii) Reinstatement of full fringe benefits and seniority rights;
- (iv) Compensation for lost wages, benefits and other remuneration; and
- (v) Payment by the employer of reasonable costs, disbursements and attorneys' fees.

If the Court determines that a civil action under Section 740 was without basis in law or fact, the Court, in its discretion, may award reasonable attorneys' fees and court costs and disbursements to the employer.

II. Section 741

Under Section 741, an employer is prohibited from taking retaliatory action (discharge, suspension, demotion, penalization or discrimination against an employee, or other adverse employment action taken against an employee in terms and conditions of employment) against an employee because the employee does any of the following:

- (i) discloses or threatens to disclose to a supervisor, or to a public body an activity, policy or practice of the employer or agent that the employee, in good faith, reasonable believes constitutes improper quality of patient care (“improper quality of patient care” means any practice, procedure, action or failure to act of an employer which violates any law, rule, regulation or declaratory ruling adopted pursuant to law, where such violation relates to matters which may present a substantial and specific danger to public health or safety or a significant threat to the health of a specific patient); or
- (ii) 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.

The protections under Section 741 are not available to an employee unless the employee has brought the improper quality of patient care to the attention of a supervisor and has afforded the employer a reasonable opportunity to correct such activity, policy or practice. However, the inapplicability of Section 741 for failure to provide an employer an opportunity to correct does not apply to disclosures or threatened disclosures to a supervisor or public body where the improper quality of patient care presents an imminent threat to public health or safety or to the health of a specific patient and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

An employee may bring a civil action under Section 740 for the relief identified in Section 740. However, instead of the one-year period in which to bring such action, a health care employee may bring such action within two years after the alleged retaliatory personnel action was taken.

In addition to the specific relief identified in Section 740, if the Court determines that a health care employer acted in bad faith in a retaliatory action under Section 741, the Court may assess a civil penalty of an amount not to exceed \$10,000 against the health care employer which is to be paid to the Improving Quality of Patient Care Fund established under the State Finance Law.

III. State Finance Law §191

The False Claim 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 backpay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees.