

MEETING LIFE'S CHALLENGES

CORPORATE COMPLIANCE PROGRAM
Standard Operating Procedures & Policies

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Living Resources Corporation/Family & Child Services
COMPLIANCE PROGRAM COMPLIANCE COMMITTEE CHARTER

The Compliance Committee shall assure that Living Resources and its applicable affiliate agencies have an effective compliance program in force and *effect* at all times. The Committee shall review and advise the compliance program to ensure applicable policies and procedures and related monitoring activities are in place and effective to assure compliance with applicable federal and state laws and regulations. The Compliance Committee will assist Living Resources Corporation to operate in an ethical and compliant manner.

The Committee shall review the activities of the Compliance Program to assure that the appropriate resources of Living Resource Corporation are being expended for the creation and execution of the Compliance Program, including the proper records maintenance to document material compliance matters undertaken by the Compliance Department. The Committee shall receive regular reports from a Compliance Officer regarding the discharge of their duties, including, but not limited to, the status of internal Compliance Programs and processes and reported violations of the Compliance Program and the response to any such alleged violations.

The Committee shall assure that periodic report is presented to the executive committee and/or the board of directors. The Compliance Officer shall have ultimate responsibility for operating the Compliance Program, with the support and assistance of the Compliance Committee.

The Compliance Committee coordinates with the Compliance Officer to ensure that all Affected Individuals complete compliance training and education during orientation and for employees annually.

The Committee shall at the minimum be comprised of the following positions; Chief Executive Officer (ex officio), Chief Financial Officer, Chief Program Officer, Chief People Officer, Compliance Officer, Director of Incident Management and Mitigation and Director of Information Technologies. Ad hoc members representing program services or other departments may be invited or assigned as needed to serve at the pleasure of the Committee, to assist and advise the Committee in carrying out this charter.

The Compliance Officer or his or her designee will Chair the Compliance Committee and the Committee will meet a minimum of four (4) times a year. This Charter shall be reviewed on an annual bases and updated as necessary.

The Compliance Officer and Committee shall retain a direct line of communication with and have direct reporting responsibility to the board of directors, executive committee, and CEO.

Exclusion Screening Procedure

Procedure Number:	**Comp 3 -** Exclusion Screening	**Original Date:**	5/28/2026
Revised Date(s):	8/11/2026	**Reviewed Date(s):**	5/28/2026
Procedure:	Monthly NYS and Federal Exclusion Screening		
Policies:	N/A		
Originator:	Michael McGuire		
Approved By:			

Purpose

The purpose of this procedure is to ensure the agency does not employ, contract with, pay, or bill Medicaid for services involving any individual or entity that is excluded, restricted, terminated, debarred, or otherwise prohibited from participating in:

- New York State Medicaid
- Medicare
- Medicaid
- Other federal health care programs

Scope

This procedure applies to all individuals and entities connected to Medicaid-funded or federally funded services, including:

Category	Examples
Employees	Direct support staff, clinical staff, administrative staff involved in Medicaid-funded services
Prospective employees	Applicants before hire or start date
Contractors	Independent contractors, temporary staff, consultants
Vendors	Billing vendors, clinical vendors, service vendors, transportation vendors
Providers	Licensed professionals, ordering/referring providers, service providers
Entities	Agencies, corporations, LLCs, partnerships, vendor organizations

Screening Frequency

Exclusion screening must be completed:

Timing	Requirement
Before hire	Screen prospective employees before they begin work

Timing	Requirement
Before contracting	Screen vendors, contractors, and entities before services begin
Before Medicaid-funded or federally funded work	Do not allow the person/entity to participate until screening is cleared
Monthly	Re-screen all active covered individuals and entities

Required Lists to Check

Each monthly screening must include the applicable NYS and federal lists below:

List	Level	Purpose
NYS OMIG Medicaid Exclusions List / List of Restricted and Excluded Providers	New York State	Identifies individuals/entities excluded or restricted from NYS Medicaid participation
HHS-OIG List of Excluded Individuals/Entities, LEIE	Federal	Identifies individuals/entities excluded from Medicare, Medicaid, and other federal health care programs
SAM.gov Exclusions	Federal	Identifies individuals/entities debarred, suspended, or otherwise excluded from federal programs or contracts

At minimum, for NYS Medicaid compliance, the monthly screening should include:

1. NYS OMIG Medicaid Exclusions List
2. HHS-OIG LEIE
3. SAM.gov Exclusions, if required by contract, grant, funding source.

Responsible Party

Initial screening for new employees and contractors will be conducted prior to hire and will be conducted by the assigned HR staff members.
Initial screening for new contractors and vendors will be conducted prior to execution of agreement or any work being started and will be conducted by the assigned HR staff member.

The monthly screening will be completed by the assigned Compliance Staff member

The completed monthly screening log will be reviewed by the Director of Compliance.

Procedure

Monthly Screening Procedure

1. Prepare the Monthly Screening Roster
At the beginning of each month, generate a current list of all individuals and entities that must be screened. Put them into an excel sheet

The roster should include, when available:

Field	Purpose
Full legal name	Main search identifier
Former names / aliases	Help identify possible matches
Date of birth	Used to verify possible individual matches
NPI	Provider verification
Entity / vendor name	Business search
FEIN / EIN	Entity verification, if permitted by policy
Role / relationship	Employee, contractor, vendor, provider, owner, managing employee

2. Download the NYS OMIG Medicaid Exclusions List From https://omig.ny.gov/medicaid-fraud/medicaid-exclusions

Document:

Item	What to Record
Date searched	Date the NYS OMIG check was run
Name/entity searched	Search term used
Identifiers used	DOB, NPI, license number, EIN, if applicable
Result	No match, possible match, confirmed match
Action taken	Cleared, pending review, escalated
Staff initials	Person completing the search

3. The Federal HHS-OIG LEIE
Search the **HHS-OIG List of Excluded Individuals/Entities, LEIE**, for each covered individual and entity.
Document:

4. Search SAM.gov Exclusions, if Applicable
Search **SAM.gov Exclusions** when required by:

- Federal grant requirements
- Federal contract requirements
- Agency compliance policy
- Managed care organization requirements
- Vendor approval policy
- Other funding source requirements

5. Using Excel using matching formula check to see if there are any names that are a match
    - Each of the lists is compared to the Roster for a possible match

6. Handling Possible Matches
If a possible match is found on any NYS or federal list:

1. Do not ignore or automatically clear the result.

2. Compare available identifiers, such as:
    - Date of birth
    - Address
    - NPI
    - License number
    - Provider type
    - EIN / FEIN
    - UEI, if applicable
    - State
    - Last 4 of SSN, only if permitted by policy and necessary
3. Document the review.
4. If the possible match is not the same person/entity, document why it was cleared.
5. If the match appears valid, notify the Compliance Officer immediately.
6. Do not allow the person/entity to provide, order, prescribe, supervise, bill for, or support Medicaid-billable or federally funded services until the issue is resolved.

7. High-Level Monthly Summary Log

This log shows that the monthly check was completed.

Screening Month	Date Check Run	Lists Checked	Population Screened	Number Screened	Overall Result	Exceptions / Matches	Follow-Up Completed	Completed By	Reviewed By
June 2026	06/01/2026	NYS OMIG; HHS-OIG LEIE; SAM.gov	Employees, contractors, vendors, providers, owners/managing staff	145	Completed	0 matches	N/A	M. McGuire	Compliance Director
July 2026	07/01/2026	NYS OMIG; HHS-OIG LEIE; SAM.gov	Employees, contractors, vendors, providers, owners/managing staff	148	Completed	1 possible match	Cleared 07/02/2026	M. McGuire	Compliance Director

Detailed Screening Log

This log shows each individual/entity and each list checked.

8. Confirmed NYS or Federal Exclusion

If an individual or entity is confirmed as excluded, restricted, terminated, suspended, or debarred:

1. Immediately remove the person/entity from Medicaid-funded or federally funded work.
2. Notify Compliance, HR, Finance/Billing, program leadership, and executive leadership as appropriate.
3. Place related Medicaid or federal claims/payments on hold.
4. Review whether any services were furnished, ordered, prescribed, supervised, billed, or paid involving the excluded person/entity.
5. Determine whether repayment, voiding claims, self-disclosure, termination, contract action, or legal review is required.
6. Document all findings and corrective actions.
7. Retain documentation with the monthly screening file.

CORPORATE COMPLIANCE
CODE OF ETHICS & PROFESSIONAL CONDUCT

I Policy:

Commitment to ethical professional conduct is expected of all Affected Individuals; employees, board members, volunteers, vendors and any other associate directly affiliated with the Living Resources Corporation and its affiliate agencies. Because of this, the agency has established a Code of Conduct that applies to all Affected Individuals. Living Resources is committed to preventing the occurrence of unethical and/or unlawful behavior, stopping behavior as soon as possible after discovery and to appropriately discipline those persons who violate the Code, including persons who fail to report a violation.

All Affected Individuals must comply with the agency's Code of Conduct, immediately report any alleged violations of wrongdoing and assist management and compliance personnel in the investigation of untoward incidents resulting from reports of non-compliance.

It is the policy of Living Resources to observe all laws and regulations applicable to its business and to conduct business with the highest degree of integrity. To accomplish this, Affected Individuals must obey the laws and regulations that govern their work and always act in the best interest of the people we serve, their families and Living Resources.

II Guidelines:

1. *Ethics:*
   a) You are expected to keep management staff informed of what you are doing; to document or record all services or transactions accurately; and to be honest and forthcoming with Living Resources, regulatory agencies and internal/external auditors.

   b) You are expected to comply with Living Resources policies and procedures, accounting rules and internal controls as applicable and provided to you in writing.

   c) You are expected to function with honesty in your work for Living Resources and with the people we serve, providers, suppliers and others with whom the agency does business.

2. *Use of Agency Funds and Resources:*

   a) Living Resources assets are to be only used for the benefit of the people we support and the agency at large. Assets include funds, equipment, vehicles, inventory and office supplies, as well as concepts, business plans and strategies, information about people served, financial information, computer property rights, and other business information about the agency.

   b) You may not use agency assets for personal gain or give them to any other persons or entities, except in the ordinary course of business as part of an approved transaction or communication.

   c) Use of Living Resource's funds or assets (ex; food, gas, materials, etc.) for any

improper purpose is strictly prohibited. If you are aware of or have reason to believe that funds are being improperly used, you must report this immediately to the Compliance Officer.

3. Confidentiality:

During your work with Living Resources, you may acquire confidential information about Living Resources, its staff and people we serve. This information must be handled in strict confidence and not discussed with any individual or entity that does not have explicit rights to that information. The protection of confidential business, staff and personal information is very important.

4. Maintenance of Records:

You must record and report all agency, service recipient and financial information fully, accurately and honestly. Records include, but are not limited to records of the people we serve, documentation of services, accounting books or records, financial statements, timesheets or records, expense reports, vouchers, bills, payroll, claims payment records, correspondence and any other method of communication. Employees must not omit or conceal any relevant information.

a) Falsification of Records:
   - You must not make any false entries in any of the agency's records or in any public record for any reason.
   - You may not alter any permanent entries in agency records.
   - You may not create or participate in the creation of any records that are intended to mislead or to conceal anything that is improper.

b) Expense Records:
   - You must always charge expenses accurately and to the appropriate cost center or account, regardless of the financial status of the program, project or contract, or the budget status of a particular account or line item.

c) Retention of Records:
   - The retention, disposal or destruction of records of or pertaining to Living Resources must always comply with legal and regulatory requirements and agency policy.
   - You may not alter records. You may not destroy records pertaining to litigation or government investigations or audit without express written approval of the Compliance Officer.

5. Business Dealings between Living Resources & Vendors and/or Contractors:

Living Resources will not be inappropriately influenced with goods or services from any business in which you or your immediate family members have a substantial interest. All staff have a duty to disclose relationships that are actual or potential conflicts of interest.

6. Protection of Confidential Information:

Living Resources has developed policies and procedures to assure that the confidentiality of agency information and information about the people we serve is protected and released only with the appropriate authorization.

a) You must treat all agency records and information in a confidential manner.

b) You may not release confidential information without the proper authorization.

Confidential information includes not only information about the people we serve and their families, but also non-public information about the agency that may be of use to competitors or harmful to the agency or its customers if released.

c) You must protect agency information and avoid discussing or disclosing agency information purposefully or inadvertently (through casual conversation), to any unauthorized person inside or outside of Living Resources.

7. Fair Dealing:

The Code of Conduct and the following guidelines are intended to help you make appropriate, responsible and correct decisions in these and all matters.

a) Kickbacks & Rebate:
   - Kickbacks and rebates in the form of cash, credit, or other are prohibited. They are not only unethical, but in many cases, illegal.

b) Gifts and Gratuities & Entertainment:
   - You may not solicit money, gifts, gratuities or other personal benefits or favors of any kind from Affected Individuals, people we serve and/or their families.
   - You must not offer or accept entertainment that is not a reasonable addition to a business relationship but is primarily intended to gain favor or to influence a business decision.
   - This is not meant to include charitable contributions/gifts monetary or non-monetary to the agency as long as there is not individual personal benefit or any expectation of business preference from the individual or the agency.

8. Termination of Employment or Contracted Services:

a) Upon discontinuation of services, you must return all agency property including, but not limited to, copies of documents, notes, and other records containing confidential information, computer disks, agency ID, keys, etc.

9. Information Security:

a) You are responsible for properly using information stored and produced by all Living Resource's computer systems.

b) Computers, internet access, email, or other office communications systems are intended for business related purposes only.

10. Government & Agency Investigations:

a) There may be times that Living Resources is asked to cooperate with an investigation by a federal or state or local governmental agency, or to respond to a request for information. Employees must report any requests for information or cooperation with an investigation to the Compliance Officer immediately.

b) Affected Individuals must cooperate fully and honestly in any investigation into a reported violation of this Code of Conduct, any applicable law or

regulation, agency policy, procedure or practice.

c) Affected Individuals will be required to assist in the resolution of a reported compliance issue. Such assistance may be in the form of a documented/signed interview as requested.

11. *Seeking Guidance & Reporting Violations:*

a) Affected Individuals must report any actual or suspected violations of this Code of Conduct, any applicable law or regulation, or any agency policy & procedure to the Compliance Officer or Director of Human Resources.

Also refer to the following information from Living Resources Human Resources department:

- LRC Human Resources Policy – Section VII A; Code of Conduct
- National Alliance of Direct Support Professionals (NADSP)
- Justice Center – Code of Conduct for Persons with Special Needs

EMPLOYEE CONFLICT OF INTEREST
POLICY & PROCEDURE

The purpose of the conflict of interest policy is to protect the Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an employee of the Corporation. This policy is intended to supplement but not replace any applicable state laws governing conflicts of interest applicable to nonprofit and charitable corporations.

A conflict of interest arises if an Affected Individual's judgment and/or discretion might be influenced by personal considerations. To this end, Living Resources has established some basic guiding principles that will lead the agency to avoid situations that may have the possibility of causing a conflict of interest.

I Guidelines:

1. Immediate family/staff members will not supervise or report to each other.

2. Immediate family/staff members will not work in the same program location as the other. (Exception: crisis or an emergency situation requiring presence of qualified staffing).

3. If the agency is in a contract or service affiliated with an employee's immediate family member or friend, the employee must disclose this information to the Corporate Compliance Officer or Director of Human Resources upon discovery.

4. An Affected Individual should not utilize his/her position within the agency in order to achieve personal gain.

5. Other outside employment is prohibited to the extent that it interferes with an employee's performance while working at Living Resources.

6. Equipment, materials or proprietary information owned by Living Resources Corporation will not be used for any outside employment purpose or personal need.

7. Also refer to the agency's Employee Handbook, section VII-A Code of Conduct Policy for further related information.

II Duty to Disclose

In connection with any actual or possible conflicts of interest, the Affected Individual must disclose the existence of his or her interest in a transaction or arrangement. The Affected Individual will be provided with the opportunity to disclose all material facts to the Director of Human Resources and the Corporate Compliance Officer.

It will be through the determination & judgment of the Compliance Officer to consider the following factors:

- whether the transaction or arrangement is in the Corporation's best interest, and;
- whether the transaction or arrangement is of benefit to the Corporation, and;
- whether the transaction is fair and reasonable to the Corporation.

III Violation of Policy

Any Affected Individual who shall knowingly and intentionally violate any of the provisions stated within this policy will be subjected to disciplinary and corrective action, which may include suspension or termination from employment, separation from the corporation and/or termination of any contractual responsibilities.

IV Records of Proceedings

It is the responsibility of the Corporate Compliance Officer to maintain all records of any proceedings regarding a conflict of interest. Such records will contain:

- The names of the person(s) who disclosed or otherwise were found to have an interest in connection with an actual or possible conflict of interest.
- The nature of the employee's interest.
- Any action taken to determine whether a conflict of interest was present.
- The Compliance Officer's decision as to whether a conflict of interest in fact existed.
- The names of any persons who were present for discussion related to the transaction or arrangement.

REPORTING NON-COMPLIANCE CONCERNS
POLICY & PROCEDURE

The purpose of this reporting policy is to provide Affected Individuals with a means to communicate compliance concerns and/or any other problematic issue to the Compliance Officer as deemed necessary.

It is expected that Affected Individuals will display "good faith" and be an avid participant of the agency's compliance plan. When we state the term "good faith," we are basically expecting all employees to possess an honesty of purpose, freedom from intent to defraud and being faithful to one's duty or obligation.

I Definition of Noncompliance:

Noncompliance to the Corporate Compliance Plan has the potential to take many forms. The following list provides several examples of noncompliance (it is not to be considered an all-inclusive list):

- Falsifying information on verbal or written reports
- Signing for a service that was not provided
- Falsifying a signature on any documentation.
- Removal of official documents from its' home file without authorization.
- Clocking In or Out for another employee.
- Missing and/or potential loss of personal funds of someone we support.
- Providing confidential information to unauthorized persons.
- Destroying documents without permission.
- Encouraging, directing, facilitating or permitting non-compliant conduct.
- Failure to report witnessed noncompliance.

II Access to the Compliance Officer:

Living Resources has established a very successful "open-door" policy whereby any Affected Individual may attain easy, direct access to the Compliance Officer.

Notification to the Compliance Officer can be provided in a variety of ways, dependent upon the Reporter's wishes. This includes: Email, Voice mail, posted mailing or In-person meeting. To this end, Living Resources continues to encourage Affected Individuals to report any needs or concerns related to the agency's operations directly to the Compliance Officer who is available to receive and investigate any reports:

Compliance Officer/Chief Risk & Performance Officer: Vacant
Phone: 518-218-0000 ext.

In the event of extended absence of the designated Compliance Officer, the CEO will act in the capacity of the Compliance Officer and will include all aspects of the Compliance Officer's job description.

Backup Compliance Officer/CEO: Elizabeth Martin
Phone: 518-218-0000 ext. 5530

Direct: 518-867-8707

III Anonymous Reporting:

For those employees who feel it necessary to remain anonymous when reporting problematic situations, they are welcome to contact the Compliance Officer by telephone voice mail or by mail. They may also call (518) 250-4495.

Anonymous reports may also be made via the Compliance page of the Living Resources website: https://www.livingresources.org/corporate-compliance-2/

It is important to understand that unless detailed information is provided, anonymous reporting may result with the Compliance Officer's inability to follow-up in a thorough manner. The content of all reports made through an anonymous manner will still be reported to the CEO or BOD President, who will assure that it remains confidential and anonymous. However, the identity of the reporter will not be disclosed to anyone without the direct consent of the caller.

IV Reporting of Misconduct:

When the Compliance Officer, Compliance Committee or an administrative staff member discovers credible evidence of misconduct from any source and, after a reasonable inquiry, has reason to believe that the misconduct may violate criminal, civil or administrative law, Living Resources will promptly report the existence of misconduct to the appropriate Federal, State, or local authorities. Such a report, as validated, will be made within a reasonable time period, but not more than 60 days from the day the violation is identified.

Some of the Federal & State authorities include:

- NYS Office of Medicaid Inspector General (OMIG)
- U.S. Office of Inspector General (OIG)
- U.S. Criminal & Civil Divisions of the Department of Justice
- U.S. Attorney General
- Office for People with Developmental Disabilities
- New York State Medicaid Fraud Control
- New York State Department of Health
- County District Attorney
- NYS Labor Department (sections 740/741)

INVESTIGATION & CORRECTION OF REPORTS OF NON-COMPLIANCE POLICY & PROCEDURE

I Overview:

The purpose of this policy is to provide prompt follow-up and resolution to all reports of non-compliance in a consistent and thorough manner. To ascertain factual information related to reports of non-compliance and provide valid recommendations for improvement, revision, discipline, and/or other directives as pertinent to each case report.

II Investigation Procedures:

The Compliance Officer or designee will begin an investigation into any alleged report of noncompliance. Investigations are conducted thoroughly and in an entirely confidential manner. (If the reporter requests confidentiality, the reporter's name will not be identified).

All employees are required to assist the Compliance Officer in resolving compliance issues. Failure to cooperate and assist in such a resolution will include disciplinary action up to and including termination. Such assistance may include, participating in the investigation of noncompliance, participation with follow-up communications, implementation of recommendations, etc.

Once an investigation has been completed, the Compliance Officer will present findings and recommendations to the CEO and/or any other applicable department leader. Legal counsel may be consulted during investigations to help clarify statutes, regulations and requirements. The Compliance Officer will also work with the applicable departments to develop any corrective action plans and ensure they are implemented. The Compliance Officer will also ensure identified overpayments are repaid and self-disclosed to the appropriate government entities, as required.

Reports of noncompliance are presented to the Corporate Compliance Committee for review and further recommendation as applicable. The Compliance Officer will also report on findings of violations to the Board of Directors' Quality & Compliance Committee during quarterly meetings.

III Procedures to Correct Noncompliance:

Upon receipt of reports or reasonable indications of suspected noncompliance, the Compliance Officer or designee will immediately investigate the allegations to determine whether a material violation of applicable law or the requirements of the Compliance Plan has occurred and, if so, take decisive steps to correct the problem. As appropriate, such steps may include a corrective action plan, the return of any overpayments, a report to the government and/or a referral to criminal or civil law enforcement authorities.

Instances of noncompliance will be determined on a case-by-case basis. The existence or amount of a monetary loss to the agency is not solely determinative of whether the conduct should be investigated and reported to governmental agencies. In fact, there may be instances where there is no monetary loss, but corrective actions are still necessary to protect the integrity of the applicable program and its beneficiaries.

A system is in effect for implementing procedures, policies and systems as necessary to reduce the potential for recurrence. As directed by the CEO, Living Resources may seek advice from

its legal counsel to determine the extent of the agency's liability and to assist in planning an appropriate course of action. When there are indications of potential fraud or criminal activity, law enforcement and/or other outside investigative entities will be contacted to assist.

NONCOMPLIANCE & CORRECTIVE MEASURES
VIOLATION OF STANDARDS OF CONDUCT, POLICIES AND PROCEDURES

The purpose of this policy is to deter improper conduct relating to the breach of HIPPA and/or the Living Resources Corporate Compliance Plan.

I Guidelines:

An effective compliance program needs to include disciplinary procedures that set out the consequences of violating the agency's standards of HIPPA & corporate compliance conduct, policy and procedures.

Intentional noncompliance will be viewed as requiring significant sanctions to the transgressor; yet the following procedures will be made on a fair and equitable basis. It is important that all Affected Individuals be familiar with the Corporate Compliance Plan so that we are all able to recognize noncompliance as it may occur.

II Good Faith Participation:

It is expected that all Affected Individuals will display "good faith" and be an avid participant of the agency's compliance plan. When we state the term "good faith," we are basically expecting all associates to possess an honesty of purpose, freedom from intent to defraud and being faithful to one's duty or obligation.

1. Reporting Noncompliance Issues:

Notification to the Compliance Officer can be provided in a variety of ways, dependent upon the Reporter's wishes. This includes: Email, Voice mail, posted mailing or In-person meeting. To this end, Living Resources continues to encourage Affected Individuals to report any needs or concerns related to the agency's operations directly to the Compliance Officer who is available to receive and investigate any reports:

Compliance Officer/Chief Risk & Performance Officer: Vacant
Phone: 518-218-0000 ext.

In the event of extended absence of the designated Compliance Officer, the CEO will act in the capacity of the Compliance Officer and will include all aspects of the Compliance Officer's job description.

Backup Compliance Officer/CEO: Elizabeth Martin
Phone: 518-218-0000 ext. 5530
Direct: 518-867-8707

Anonymous reports of suspected non-compliance is also accepted by calling (518) 250-4495 or by submitting an anonymous report via the Compliance page of the Living Resources website: https://www.livingresources.org/corporate-compliance-2/

2. Non-Retaliation and Non-Intimidation:

Affected Individuals of Living Resources can be assured that when conducted under good faith, there will be no intimidation or retaliation of any kind when presenting problematic situations to the Compliance Officer or any other member of the administrative or management team. It is the

philosophy of the agency and its leadership to encourage reports of concerns so that they may be investigated and addressed; thus, creating opportunity to make improvements that will lead to better quality care and supports. Any person who deliberately makes a false accusation with the purpose of harming or retaliating against another person, or who willfully abuses the mandated reporting system may be subject to corrective action, up to and including discharge of services.

3. Assisting in Resolution:
All Affected Individuals are required to assist the Compliance Officer in resolving compliance issues. Failure to assist in such a resolution may result in discharge of services. Such assistance may include, participating in the investigation of noncompliance, participation with follow-up communications, implementation of recommendations, etc.

III Definition of Noncompliance:

Noncompliance to HIPPA or the Corporate Compliance Plan has the potential to take many forms. In general terms, "noncompliance" can be defined as *Fraud, Waste* and/or *Abuse*. The following list provided here are just a few examples of noncompliance.

- Falsifying information on verbal or written reports
- Signing for a service that was not provided
- Falsifying a signature on any documentation.
- Removal of official documents from its' home file without authorization.
- Falsifying time records/invoice.
- Missing and/or potential loss of Individual funds.
- Providing confidential information to unauthorized persons.
- Destroying documents without permission.
- Encouraging, directing, facilitating or permitting non-compliant conduct.
- Failure to report witnessed noncompliance.

IV Disciplinary Procedures:

Dependent upon the preliminary results of an investigation and/or the severity of the situation and the status of the affected service, disciplinary action may range from a formal notice to suspension or discharge of services, depending on the nature of the incident and the relevant surrounding circumstances.

The agency's commitment to compliance applies to all Affected Individuals who will be potentially subject to the same types of disciplinary action for the commission of similar offenses. In addition, it will be the responsibility of the affected associate to ensure that any sub-contractors or employees of an affected associate follow these same guidelines set forth within this policy

NONCOMPLIANCE & DISCIPLINARY MEASURES
VIOLATION OF STANDARDS OF CONDUCT, POLICIES AND PROCEDURES

The purpose of this policy is to deter employees and other Affected Individuals from improper conduct relating to the breach of HIPPA and/or the Corporate Compliance Plan.

I Guidelines:

An effective compliance program needs to include disciplinary procedures that outline the consequences of violating the agency's standards of HIPPA, corporate compliance conduct, policy and procedures. Intentional noncompliance will be viewed as requiring significant sanctions to the transgressor; yet the following procedures will be made on a fair and equitable basis. It is important that all Affected Individuals be familiar with the Corporate Compliance Plan to recognize noncompliance when it may occur. The Corporate Compliance Plan is maintained/updated as needed on the LRC website.

II Definition of Noncompliance:

Noncompliance to HIPPA or the Corporate Compliance Plan has the potential to take many forms. In general terms, "noncompliance" can be defined as *Fraud, Waste* and/or *Abuse*.
The following list provided here are just a few examples of noncompliance.

- Falsifying information on verbal or written reports
- Signing for a service that was not provided
- Falsifying a signature on any documentation.
- Removal of official documents from its' home file without authorization.
- Clocking In or Out for another employee.
- Submitting false time keeping record.
- Missing and/or potential loss of Individual funds.
- Providing confidential information to unauthorized persons.
- Destroying documents without permission.
- Encouraging, directing, facilitating or permitting non-compliant conduct.
- Failure to report witnessed noncompliance.

III Disciplinary Procedures:

Dependent upon the preliminary results of an investigation and/or the severity of the situation, targeted employees may be suspended from duty or transferred to a different temporary position until final deliberation has been completed.

Only a member of the agency's administrative personnel maintains the authority to initiate work suspension under this policy.

Upon any suspension of work duty, the Director for Human Resources and the appropriate Department Director will be contacted in order to ensure any further actions needed toward the continuity of service delivery.

Any Affected Individual who participates in, violates or knowingly obstructs the reporting of any noncompliance, HIPAA policy and/or any applicable law or regulation, agency policy, procedure or practice is subject to appropriate disciplinary action, up to and

including termination of employment, contract or association with the Living Resources Corporation and its affiliates.

Obstruction in this case will include the following:

- Failure to report a suspected or witnessed incident of non-compliance;
- Leading, directing or encouraging the act of non-compliance with others;
- Destruction or removal of vital documents that may assist in the investigation of non-compliance reports.

For employees, disciplinary action may range from a warning notice to suspension or termination of employment, depending on the nature of the incident and the relevant surrounding circumstances. For other Affected Individuals or entities, sanctions including breach of contract or separation from association with the agency may be utilized.

The agency's commitment to compliance applied to all Affected Individuals will be potentially subject to the same types of disciplinary action for the commission of similar offenses. This means that administrators, managers and supervisors, and senior leadership will also be held accountable for failing to comply with, or for the foreseeable failure of their subordinates to adhere to, the applicable standards of the Corporate Compliance Plan.

IV Further Related Information:

See Living Resources' Personnel Policy & Procedures for the following:

- Code of Conduct (Section VII, A, Page 55)
- Disciplinary Process (Section VII, C Page 58)
- Employment Agreement Handout upon Hire
- Corporate compliance Plan

For other Affected individuals or Entities.

- Vendor Contracts or agreements
- Business Associate Agreements
- Corporate Bylaws
- Corporate Compliance Plan

LIVING RESOURCES

Meeting Life's Challenges

POLICY: FALSE CLAIMS ACT & WHISTLEBLOWER PROTECTION POLICY
RESPONSIBILITY: Compliance Officer
Date of Last Revision: August 2026

INTRODUCTION

Living Resources is committed to upholding the highest standards of ethical, moral and legal business conduct, and transparency through open communication. Furthermore, the Corporation and all Affected Individuals; board members, employees, volunteers, vendors, contractors and all other associated individuals or entities are required to comply with applicable federal, state and local statutes, including New York Not-For-Profit Corporation Law Section 715-b, New York State Labor Law Section 740, ordinances, executive orders, rules, regulations, judicial or administrative decisions, rulings or orders, and must faithfully implement and adhere to the agency's own policies and procedures in conducting their duties and responsibilities.

General Scope:

This policy provides an avenue for all Affected Individuals, meaning not only current, but also former employees, to report any suspected or actual conduct contrary to these requirements and standards without the fear of intimidation, harassment, discrimination, or retaliation.

Living Resources is committed to the highest standards of ethical conduct and stewardship of public resources. We prohibit the submission of false or fraudulent claims to any government agency and are equally committed to protecting individuals who report suspected violations from retaliation. As a recipient of public funds (including Medicaid, state grants, or other government reimbursements), the organization must comply with the New York False Claims Act and applicable federal laws, including whistleblower protection statutes.

In most cases, Affected Individuals concerns can be addressed by the Corporation's management in accordance with the applicable corporate policies and procedures. As such, this Policy is not intended and may not be used for general complaints, employment grievances, etc. Such concerns should be pursued in accordance with the applicable policies and procedures articulated in employee handbooks and manuals or as otherwise promulgated by Living Resources from time to time.

Furthermore, Living Resources has established a Corporate Compliance Plan pursuant to federal and New York State laws for matters related to fraud, waste or abuse in healthcare programs. Reports of conduct related to false claims as described in the Corporate Compliance Plan shall be made in accordance therewith. The protections provided under this policy are in addition to those provided under the Corporate Compliance Plan.

Key Definitions:

- **False Claim:** Knowingly submitting a request for payment from a government program that is false or misleading.
- **Knowingly**: Includes actual knowledge, deliberate ignorance, or reckless disregard of the truth or falsity of the information.
- **Whistleblower**: Anyone who discloses information about potential fraud, abuse, or legal violations in good faith.
- **Retaliation:** Any adverse action taken against an individual for reporting a concern or cooperating in an investigation.
- **Intimidation**: The Act of making someone feel afraid, threatened, or overpowered-with the intent to influence their behaviors or decisions.

Legal Framework

The Federal False Claims Act (31 USC §§ 3729-3733) and the New York False Claims Act (State Finance Law §§ 187-194) provide penalties for engaging in specific prohibited Covered Conduct. These statutes also allow individuals to report fraud involving public funds and to file lawsuits on the United States and/or New York State's behalf. If successful, whistleblowers (also called "relators") may receive a portion of any financial recovery.

In addition, New York Labor Law § 740 and federal laws protect employees of nonprofits from retaliation when they report suspected violations of law or policy. (see Appendix "A")

Whistleblower Protection

Living Resources strictly prohibits retaliation and/or intimidation against any individual who reports a concern in good faith or participates in an investigation. Retaliation includes:

- Firing, demoting, or disciplining
- Reducing hours, pay, or responsibilities
- Threats, intimidation, or harassment

Anyone found to have committed retaliation or intimidation will be subject to disciplinary action, up to and including termination.

The areas these protections are applicable to include:

- Reporting potential compliance issues to appropriate personnel
- Participating in investigation of potential compliance issues
- Self-evaluations
- Audits
- Remedial actions
- Reporting instances of intimidation and retaliation
- Reporting potential fraud, waste or abuse to the appropriate state or federal entity

***POLICY*:**

Section 1 Whistleblower Protection. No Affected Individual, including current and former employees and independent contractors, employees of independent contractors, directors, officers, and volunteers, shall suffer intimidation, harassment, discrimination, retaliation, or adverse employment consequences for making a good-faith or reasonable report of Covered Conduct (whether pursuant to this policy or otherwise in a manner which is protected under Federal Law or Section 740 of the New York State Labor Law) or for their participation in any internal or governmental investigation of a report of Covered Conduct. Retaliation against any person on one or both of these bases is a violation of this policy, and anyone who so retaliates is subject to disciplinary action, up to and including termination of employment.

Section 2 Duty to Report. Each Covered Person who has engaged in, or who reasonably suspects any other Covered Person of engaging in Covered Conduct has an obligation to report such activity in accordance with the procedures set forth in Article III as soon as possible.

Section 3 Distribution of Policy. This policy shall be posted on the Corporation's website and/or at the Corporation's offices in a conspicuous location accessible to directors, officers, employees, independent contractors, and volunteers. Notification regarding the rights provided under Section 740 of the New York State Labor Law (effective January 26, 2022), which is annexed hereto as Appendix "B" ("Labor Law §740"), shall be included with such posting, and shall also be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment at the Corporation. In the event Section 740 of the New York State Labor Law is amended, supplemented, or replaced at any time or from time to time, this policy shall automatically be deemed amended to refer to such amendments, supplements, or replacements without any need for an amendment to this policy, and such amendments, supplements, or replacements shall be annexed hereto as Appendix "A" in place of the statutory provisions which are so amended, supplemented, or replaced.

Section 4 Discipline for Retaliatory Conduct. Intimidation or Retaliation should be reported immediately to the Compliance Officer. Depending on the nature and seriousness of the offense, the Corporation will impose appropriate discipline against any Covered Person found to have engaged in any form of retaliatory conduct against an individual reporting actual or suspected Covered Conduct in accordance with this policy, up to and including dismissal or termination. Volunteers that engage in any such conduct will not be permitted to volunteer in Corporation activities.

Section 5 Good Faith Reporting. Any individual who files a report concerning actual or suspected Covered Conduct must do so in good faith and have reasonable grounds for believing the information in the report indicates a violation under this policy. The Corporation will impose appropriate discipline against any person found to have knowingly made a report in bad faith, up to and including dismissal or termination. This includes, but is not limited to, giving false information. Volunteers that engage in any such conduct will not be permitted to volunteer in the Corporation's activities.

PROCEDURE:

Section 1 Oversight. The Corporation's Executive Committee shall serve as the "Compliance Committee" to oversee the adoption of, implementation of, and compliance with this policy in accordance with the procedures contained herein. If at any time such Executive Committee shall not exist, then the Board shall either assign this oversight responsibility to another Committee of the Board or to the Board itself. Unless otherwise indicated, any reference in this policy to the "Compliance Committee" shall be interpreted as a reference to the Executive Committee, such other committee or the Board, as the case may be.

Section 2 Compliance Officer. The Compliance Officer shall be the Chair of the Compliance Committee. Should the Compliance Officer be the subject of the report, then the Compliance Committee shall appoint another member thereof to perform the Compliance Officer's role regarding the allegations. The Compliance Officer shall be responsible for administering this policy and reporting to the Compliance Committee. The Compliance Officer shall report to the Board at least annually on compliance activity.

Section 3 Corporation Employees Excluded from Oversight. Directors who are employees of the Corporation may not participate in any Compliance Committee or Board deliberations or voting relating to the administration of this Whistleblower Policy.

Section 4 Reporting Violations or Suspected Violations.

A. Manner of Reporting. A report of actual or suspected Covered Conduct shall, except as otherwise provided in Labor Law §740, be reported using one of the following methods, as applicable:

i. With respect to any employee, by speaking or writing to the employee's supervisor.

ii. By speaking or writing to the Corporation's Chief People Officer.

iii. Any report related to conduct of the Corporation's Chief People Officer, or which might for any other reason not appropriately be made to the Chief People Officer, should be directed to the CEO.

iv. Any report related to the conduct of the Chief Executive Officer should be directed to the President of the Board of Directors.

v. Any report related to conduct of the President of the Board of Directors should be directed to the Compliance Officer.

The person receiving a report under this Policy shall be referred to as the "Recipient." Contact information for the persons listed in ii. through iv. above is set forth in Section 3.6 below.

B. Form of Report. A report may be provided in person, in writing, or by electronic mail. Written reports by mail or electronic mail shall be made on the *Whistleblower Disclosure Statement* . For reports made in person, the Recipient shall record the

information reported on a Whistleblower Disclosure Statement provided by Human Resources or Corporate Compliance Officer. With the exception of a person's report of his or her own violation, the reporter shall not be required to provide his or her name on said form. However, anonymous reports must include sufficient information, including but not limited to, the name of the person against whom the report is being made, the date of the incident, the names of any potential witnesses, and a description of the incident, in order that an investigation can be conducted, or other appropriate action can be taken.

Section 5 Handling Reports. If the identity of the person making the report is known, the Recipient shall provide the reporter timely acknowledgement of receipt of the report, whether submitted in person, electronically, or otherwise. The report shall be reviewed by the Recipient with appropriate members of the Corporation's management, the Compliance Officer, and/or the Compliance Committee (the "Reviewing Authorities") and legal counsel, as appropriate. Generally, the composition of the Reviewing Authorities shall be determined in light of the nature of the reported Covered Conduct and the individuals involved. The Reviewing Authorities shall undertake or cause to be undertaken such investigation as they deem appropriate, taking into consideration all relevant facts and circumstances.

The subject(s) of the report may be notified of the investigation, if the Reviewing Authorities deem it appropriate, unless prohibited by law.

The Corporation expects full cooperation by all individuals in the investigation of a report. An employee's failure to participate or otherwise cooperate in an investigation may result in disciplinary action, up to and including termination of employment.

Section 6 Results of Investigation. When the investigation is concluded, the Reviewing Authorities will determine if any disciplinary actions, up to and including termination of employment, and/or other corrective measures are required or otherwise warranted, which may include reporting the findings of the investigation to appropriate law enforcement or governmental authorities. Any person who is the subject of a report under this policy shall not be present at or participate in any deliberation, voting or other decision-making on any matter relating to such report, provided that nothing shall prohibit the Reviewing Authorities from requesting that the person who is the subject of the report present information as background or answer questions prior to such decision-making.

If, when the investigation is concluded, it is not established that Covered Conduct has occurred, the investigation will be closed.

If the identity of the person making the report is known, the Reviewing Authorities may inform him or her of the resolution, if the Reviewing Authorities determine that it is appropriate. If the Reviewing Authorities deem it appropriate and/or the circumstances so require, the subject(s) of the report may be notified of the resolution.

Section 7 Documentation. The Reviewing Authorities shall document any investigation or other action carried out under this policy, including the rationale for any

recommended resolution and/or corrective action. All documentation relating to the investigation, including the *Whistleblower Disclosure Statement*, and the resolution and/or corrective action taken shall be kept in the Corporation's records in the [Human Resources Department] and/or Compliance Committee records for at least five years.

Section 8 Confidentiality. All violations or suspected violations may be submitted on a confidential or anonymous basis. Reports will be kept confidential to the extent possible, consistent with applicable laws and the need to conduct an adequate investigation and prevent or correct actual or suspected Covered Conduct. Information relating to a report shall be provided only to those with a need to know so that effective investigation or other action can be taken. In appropriate cases, and without limitation, the investigation documents will be shared with law enforcement personnel. Disclosure of reports to individuals not involved in the investigation shall be viewed as a serious disciplinary offense and may result in discipline, up to and including dismissal, termination or civil lawsuits.

Section 9 False Allegations. While good-faith reports are protected, individuals who knowingly make false accusations or act in bad faith may be subject to disciplinary action.

Section 10 Training and Awareness.

All employees and board members will receive training on:

- False Claims Act requirements
- How to report concerns
- Whistleblower protections

Training is provided during onboarding and refreshed annually.

Section 11 Participation Expectations. Living Resources expects full cooperation by all individuals during the investigation of a report. An employee's failure to participate or otherwise cooperate in an investigation may result in disciplinary action, up to and including termination of employment.

Contact for Questions or Reports:

Elizabeth Martin —Interim Compliance Officer
emartin@livingresource.org
518-218-0000 Ext. 5530

Anonymous Hotline Info: 518-250-4495

APPENDIX A

FEDERAL AND STATE FALSE CLAIM AND WHISTLEBLOWER PROTECTION AFFECTED INDIVIDUAL EDUCATION AND FRAUD PREVENTION

I. PURPOSE

The purpose of this section of the employee handbook/manual is to fully comply with certain requirements set forth in the federal Deficit Reduction Act of 2005 (the "DRA"), and sections 6031 and 6032 of the DRA in particular, with regard to educating employees about federal false claims laws, whistleblower protections and the Facility's policies and procedures for detecting and preventing fraud, waste, and abuse ("fraud prevention"). Under the DRA, the Facility must provide a discussion of applicable State and Federal law relating to civil and criminal false claims/penalties along with a whistleblower protections and the corporation's own policies relating to fraud prevention. Sections II through VI of this Part of the handbook provides the discussion mandated by DRA in this regard.

II. POLICY

The policy set forth in the Provider's compliance program concerning fraud prevention is fully incorporated in this employee handbook/manual. The Provider has adopted a Compliance Manual which is distributed to all employees providing a summary of the corporate compliance program, including specific provisions which provide notice of how employees may report and cooperate in the identification and prevention of fraud, waste and abuse. Employees are expected to adhere to the requirements included in the Compliance Manual with regard to the Provider's obligations under Medicaid, Medicare and other publicly funded health care programs.

III. SCOPE

This section applies to all Provider's programs, operations and employees. This section of the employee handbook/manual will provide the detail required under the DRA and related compliance mandates of State and Federal law. The Provider's policies for detecting and preventing fraud, waste and abuse also apply to contractors, subcontractors and agents and their employees, particularly those which or who, on behalf of the Provider, furnish, or otherwise authorize the furnishing of Medicaid or Medicare health care items or services, perform billing or coding functions, or are involved in monitoring the health care provided by the Provider.

IV. FALSE CLAIMS

False claims laws seek to prevent fraud, waste, and abuse in government programs. They permit the government to bring civil lawsuits to recover damages and penalties against providers that submit false claims. These laws often permit private persons, including current or former employees of such providers, to bring so-called "whistleblower" actions against the providers on the government's behalf.

A. Federal False Claims Act

1. 31 USC §§ 3729-3733:

The Federal False Claims Act (the "Act"; 31 USC §§ 3729-3733) 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:

(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,

The civil penalty that can be imposed for a false claim under the Act is not less than $10,781 and not more than $21,563, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461) , **PLUS** three times the amount of damages which the Government sustained because of the false claim, **PLUS** the costs of a civil action to recover the penalties.[1]

The Act defines the terms "Claim", "Knowing" and "Knowingly", "obligation", and "material" as follows:

"Claim":

(A) any request or demand, whether under a contract or otherwise, for money or property

[1] 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.

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;

"Knowing" and "Knowingly":

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.

"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. (see discussion below regarding potential liability under 42 USC §1320a-7k(d)(2))

"Material" means:

having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

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 penalties upon persons 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.

In addition, pursuant to 42 U.S.C. §1320a-7k(d), if a person fails to report and return an identified overpayment within 60 days of identification, the overpayment is considered an "obligation" under § 3729 and subject to the penalties provided for under the False Claims Act.

2. 31 U.S.C. §3730 (Civil Actions Under the Act – Qui Tam):

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 §3729 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.

3. 31 U.S.C. §§ 3732 and 3733:

These sections provide detailed jurisdictional and investigatory process rules regarding the False Claim process.

B. <u>Federal Administrative Remedies For False Claims And Statements</u> *1. 31*

U.S.C. §3801 et. seq.

Section 3801 imposes additional civil penalties for the filing of false claims or statements with the federal government which are conducted through an administrative process. 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 (31 U.S.C. §3802). 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 (31 U.S.C §§ 3803-3812).

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.

C. Additional Federal Civil and Criminal Penalties and Sanctions For False Claims

1. 42 U.S.C. §1320a-7a (Civil):

In addition to the False Claim Act and 31 U.S.C. §3801 et. seq., the federal government may, pursuant to, impose civil monetary penalties (CMP) for improperly filed claims. Such claims include those knowingly presented that were:

1) for item or service that person knew or should have known were not provided as claimed, including up coding.
2) false or fraudulent
3) for service that person knew or should have known were by unqualified physician
4) provided by provider excluded from federal health care program reimbursement
5) for service or item that person knew or should have known were unnecessary
6) in violation of assignment, agreement on limited charge, or provider agreement

§1320a-7a also provides for penalties for the following additional acts:

1) knowingly providing false or misleading information leading to a hospital discharge
2) being excluded and owning or being an officer of an entity submitting claims
3) providing remuneration to influence beneficiaries
4) contracting with excluded individual or entity for which reimbursement is made
5) participating in kickback or improper or rebate referral remuneration
6) knowingly making or using a material false record or statement for a claim
7) failing to timely permit access to OIG for audit
8) ordering or prescribing by provider when he/she knew or should have known she was excluded from federal health care program reimbursement
9) knowingly makes or causes to be made any false statement, omission, or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider of services or a supplier under a Federal health care program.
10) knows of and fails to report and return overpayment.

The CMP for the above violations may be assessed in addition to any other penalty prescribed by law. The penalties may be up to $10,000 for each item or service with some exceptions[2]. In addition, a violator shall be subject to an assessment of not more than 3 times the amount claimed for each such item or service in lieu of damages sustained by the United States or a State agency because of such claim.[3]

The Secretary may also make a determination in the same proceeding to exclude the person from participation in the Federal health care programs (as defined in section 1320a–7b (f)(1)) and to direct the appropriate State agency to exclude the person from participation in any State health care program. Additional CMPs for hospitals and physicians is also provided under the statute.[4]

2. 42 U.S.C. §1320a-7:

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.

3. 42 U.S.C. §1320a-7k(d)(2):

Pursuant to 42 U.S.C. §1320a-7k(d)(2) (enacted as §6402 of the Patient Protection and Affordable Care Act), providers are obligated to **report, explain and repay** overpayments within

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[2] $15,000 for each person provided false or misleading hospital discharge information is give; $10,000 per day for excluded individual ownership or officer/manager participation in billing entity; $50,000 for participating in kickback or improper or rebate referral remuneration; $50,000 for each material false record or statement relating to claim; $15,000 per day for denial of audit access; and $50,000 for each false statement, omission, or misrepresentation of a material fact in any application, etc.

[3] Where violation is bride, kickback or other improper remuneration, it is 3 times the remuneration. Where violation is for false statement, omission, or misrepresentation of a material fact in any application, it is 3 times the amounts claimed under the application contract.

[4] Additional CMPs of up to $2,000 per patient may be assessed against any hospital which improperly induces by payment a physician for limiting services to a Medicare or Medicaid beneficiary/recipient and $2,000 per patient against the physician. A CMP of up to the greater of $5,000 or 3 times the amount of home care payments paid may be assessed to a physician that falsifies a certification of need for home care

calendar 60 days of identification. Those that fail to properly disclose, explain and repay the overpayment in a timely manner may be subject to liability under the New York and Federal False Claims Act.

***4. 42 U.S.C. §1320a-7b* (Criminal):**

Pursuant to, 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. knowingly and willfully, for a fee, 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 facility, 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).

D. New York State Laws:

1. NY False Claims Act - State Finance Law §§ 187-194 (Civil):

The NY False Claims Act closely tracts 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 plus 3 times the amount of all damages, including consequential damages, which the state or local government sustains because of the violation.[5] Prohibited acts under State Finance Law § 189 include:

1) knowingly presents, or causes to be presented a false or fraudulent claim for payment or approval;
2) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
3) conspires to commit a violation of the Act;
4) has possession, custody, or control of property or money used, or to be used, by the state or a local government and knowingly delivers, or causes to be delivered, less than all of that money or property;
5) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state or a local government and, intending to defraud the state or a local government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state or a local government knowing that the officer or employee violates a provision of law when selling or pledging such property;
7) 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 state or a local government; or
8) knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state or a local government, or conspires to do the same.

In addition, the false claim filer may have to pay the government's costs and legal fees expended to recover the damages.

Furthermore, the New York False Claim Act also allows private individuals to file civil lawsuits (Qui Tam) in state court, just as if they were state or local government parties (State Finance Law § 190). 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.

[5] The amount may be dropped to 2 times the damages if the court finds that the violator self-disclosed fully within 30 days of having knowledge, fully cooperated with officials and if the self-disclosure was before criminal, civil or administrative prosecution and the violator had no knowledge of investigation

2. Social Services Law, Section 366-b (Criminal):

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:

a. presents for allowance or payment any false or fraudulent claim for furnishing services or merchandise;

b. 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

c. knowingly submits false information for the purpose of obtaining authorization for furnishing services or merchandise under the Medicaid program.

3. Article 177 of the Penal Law (Criminal):

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.

4. Social Services Law § 145-b – Sanctions (Criminal):

It is unlawful 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 $10,000 per violation. If repeat violations occur within 5 years, a penalty up to $30,000 per violation may be imposed.

5. Social Services Law § 145-c – Sanctions (Criminal):

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the person's, the person's family's needs are not taken into account for 6 months if a first offense, 12 months if a second (or once if benefits received are over $3,900) and five years for 4 or more offenses.

6. Social Services Law § 145 - Penalties (Criminal):

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

7. Social Services Law § 146 - Penalties (Criminal):

Penalty for the sale or exchange of assistance supplies. 1. Any person who shall sell or exchange supplies or articles furnished him as assistance or care by any public welfare official or employee of the public welfare district, or dispose of them in any other way than as directed, shall be guilty of a misdemeanor.

2. Any person who purchases any article knowing it to have been furnished to any person as assistance or care shall also be guilty of a misdemeanor.

8. Penal Law Article 155 – Larceny (Criminal):

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. It has been applied to Medicaid fraud cases.

9. Penal Law Article 175 - False Written Statements (Criminal):

Four crimes are set forth relating to filing false information or claims and have been applied in Medicaid fraud cases:

a. §175.05, falsifying business records, involves entering false information, omitting material information or altering an entity'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.

10. Penal Law Article 176 - Insurance Fraud (Criminal):

Applies to claims for insurance payment, including Medicaid or other health insurance and contains six crimes:

a. Insurance fraud in the 5th degree involves intentionally filing a health insurance claim knowing that it is false. It is a Class A misdemeanor.

b. Insurance fraud in the 4th degree is filing a false insurance claim for over $1,000. It is a Class E felony.

c. Insurance fraud in the 3rd degree is filing a false insurance claim for over $3,000. It is a Class D felony.

d. 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.

11. 18 NYCRR Section 515.2 (Administrative):

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:

a. Submitting, or causing to be submitted, a claim or claims for:

(A) unfurnished medical care, services or supplies;

(B) an amount in excess of established rates or fees;

(C) medical care, services or supplies provided at a frequency or in amount not medically necessary; or

(D) amount substantially in excess of the customary charges or costs to the general public; or

b. Inducing, or seeking to induce, any person to submit a false claim. False statements are:

a. 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

b. 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:

a. Exclusion from the program for a reasonable time;

b. Censure;

c. 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.

E. WHISTLEBLOWER PROTECTIONS

A. Federal False Claims Act – 31 U.S.C. § 3730(h):

Any employee, contractor, or agent shall be entitled to all necessary "relief" if discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the person furtherance of efforts to stop a violation(s) of the False Claim Act including 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 maybe 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 to "relief" necessary to make the employee whole, including, reinstatement with the same seniority status such employee would have had but for the discrimination, two (2) 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

1. NY False Claim Act – State Finance Law § 191

Any current or former employee, contractor, or agent of any private or public employer who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment, or otherwise harmed or penalized by an employer, or a prospective employer, because of "lawful acts" done by the harmed individual or associated others in furtherance of an action brought under this article or other efforts to stop one or more violations of the State False Claims Act is entitled to all relief necessary to make the person whole, including (a) an injunction to restrain continued discrimination; (b) hiring, contracting or reinstatement to the position such person would have had but for the discrimination or to an equivalent position; (c) reinstatement of full fringe benefits and seniority rights; (d) payment of two times back pay, plus interest; and (e) compensation for any special damages sustained including litigation costs and reasonable attorneys' fees. "Lawful act" includes obtaining or transmitting to the state, a local government, a qui tam plaintiff, or private counsel solely employed to investigate, potentially file, or file a cause of action under the False Claim Act documents, data, correspondence, electronic mail, or any other information, even though the act may violate a contract, employment term, or duty owed to the employer or contractor, so long as the possession and transmission of such documents are for the sole purpose of furthering efforts to stop one or more violations.[6]

2. Labor Law Section 740

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

(a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that the employee reasonably believes is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety;
(b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such activity, policy or practice by such employer; or
(c) objects to, or refuses to participate in any such activity, policy or practice.

With respect to disclosures to a public body only, protection against retaliatory personnel actions is unavailable unless the employee has made a good faith effort to notify his or her employer by bringing the activity, policy or practice to the attention of a supervisor of the employer and has afforded such employer a reasonable opportunity to correct such activity, policy or practice. Such employer notification shall not be required where: (a) there is an imminent and serious danger to the public health or safety; (b) the employee reasonably believes that reporting to the supervisor would result in a

[6] Nothing in subdivision (h) is to be interpreted to prevent any law enforcement authority from bringing a civil or criminal action against any person for violating any provision of law.

destruction of evidence or other concealment of the activity, policy or practice; (c) such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor; (d) the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or (e) the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct such 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 two years after the alleged retaliatory personnel action was taken:

(a) an injunction to restrain continued violation of Section 740;
(b) the reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position, or front pay in lieu thereof;
(c) the reinstatement of full fringe benefits and seniority rights;
(d) the compensation for lost wages, benefits and other remuneration;
(e) the payment by the employer of reasonable costs, disbursements, and attorney's fees;
(f) a civil penalty of an amount not to exceed ten thousand dollars; and/or
(g) the payment by the employer of punitive damages, if the violation was willful, malicious or wanton.

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.

Every employer shall inform employees of their protections, rights and obligations under this section, by posting a notice thereof. Such notices shall be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment.

3. Labor Law Section 741

Under Section 741, specified health care employers may not take retaliatory action against any employee who performs health care services because the employee does any of the following:

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

The protections under Section 741 are not available to an employee unless the employee has brought the improper quality of patient care or improper quality of workplace safety 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 an action or failure to act described in paragraph (a) of subdivision two of this section where the improper quality of patient care or improper quality of workplace safety described therein presents an imminent threat to public health or safety or to the health of a specific patient or specific health care employee 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 under the same terms and conditions.

In any court action brought pursuant to Section 741, it is a defense that the personnel action was predicated upon grounds other than the employee's exercise of any rights protected by the Section 741.

Every employer must inform its employees of their protections, rights and obligations under Section 741 by posting a notice thereof. Such notices shall be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment.

4. Not-for Profit Law Section 715-b

Under Section 715-b, the board of a not-for-profit corporation that has twenty or more employees and in the prior fiscal year had annual revenue in excess of one million dollars shall adopt, and oversee the implementation of, and compliance with, a whistleblower policy to protect from retaliation persons who report suspected improper conduct. No director, officer, key person, employee or volunteer of a corporation who in good faith reports any action or suspected action taken by or within the corporation that is illegal, fraudulent or in violation of any adopted policy of the corporation shall suffer intimidation, harassment, discrimination or other retaliation or, in the case of employees, adverse employment consequence. A whistleblower implemented pursuant to other federal, state or local laws that is substantially consistent is deemed compliant.

The policy must include:

1) Procedures for the reporting of violations or suspected violations of laws or corporate policies, including or preserving confidentiality;
2) A requirement that an employee, officer or director of the corporation be designated to administer the whistleblower policy and to report to the board or an authorized committee thereof, except that directors who are employees may not participate in any board or committee deliberations or voting relating to administration of the whistleblower policy;
3) A requirement that the person who is the subject of a whistleblower complaint not be present at or participate in board or committee deliberations or vote on the matter relating to such complaint, but the board or committee may request that the subject of the complaint present information as background or answer questions at meeting prior to deliberations or voting; and
4) A requirement that a copy of the policy be distributed to all directors, officers, key persons, employees and to volunteers who provide substantial services to the corporation.

Posting the policy on the corporation's website or at the corporation's offices in a conspicuous location accessible to employees and volunteers are among the methods a corporation is sufficient.

VI. PROCEDURE

The Provider takes compliance with the FCA seriously. Any employee who becomes aware of a violation or potential violation of such laws, or any fraudulent or potentially fraudulent conduct for that matter, is expected to report the same immediately. Employees, including management, contractors, and agents, should review, understand, and follow the procedures detailed in the Compliance Manual.

The Agency encourages employees to initially report compliance concerns to their immediate supervisors, when appropriate, but they may, in the alternative, report directly to the Compliance Officer in person or by telephone set forth on the Compliance Contact Sheet.

Any information that employees provide in good faith to their supervisors or the Compliance Officer will be kept in confidence to the extent feasible and legal. In the event of a government investigation or lawsuit, or if the need otherwise arises for the Provider to disclose the information, such information may be disclosed at the direction of legal counsel.

The Provider will not take adverse action against an employee for reasonably requesting assistance from, or reporting potential violations of law or the Provider on policy in good faith to, a supervisor, and the Compliance Officer or government authorities. By reporting his or her own misconduct, however, an employee will not insulate himself or herself from potential disciplinary action for such a violation. Employees should report concerns about possible retaliation or harassment to the Compliance Officer.

The Provider does not condone and will not tolerate abuse of the reporting process. Any employee who makes an intentionally false statement, or makes a report of alleged misconduct in bad faith, shall be subject to appropriate disciplinary action.

Appendix B

(Effective: January 26, 2022)

New York State Labor Law

§ 740. Retaliatory action by employers; prohibition

1. Definitions. For purposes of this section, unless the context specifically indicates otherwise:

(a) "Employee" means an individual who performs services for and under the control and direction of an employer for wages or other remuneration, including former employees, or natural persons employed as independent contractors to carry out work in furtherance of an employer's business enterprise who are not themselves employers.

(b) "Employer" means any person, firm, partnership, institution, corporation, or association that employs one or more employees.

(c) "Law, rule or regulation" includes: (i) any duly enacted federal, state or local statute or ordinance or executive order; (ii) any rule or regulation promulgated pursuant to such statute or ordinance or executive order; or (iii) any judicial or administrative decision, ruling or order.

(d) "Public body" includes the following:

(i) the United States Congress, any state legislature, or any elected local governmental body, or any member or employee thereof;
(ii) any federal, state, or local court, or any member or employee thereof, or any grand or petit jury;
(iii) any federal, state, or local regulatory, administrative, or public agency or authority, or instrumentality thereof
(iv) any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer;
(v) any federal, state or local department of an executive branch of government; or
(vi) any division, board, bureau, office, committee, or commission of any of the public bodies described in subparagraphs (i) through (v) of this paragraph.

(e) "Retaliatory action" means an adverse action taken by an employer or his or her agent to discharge, threaten, penalize, or in any other manner discriminate against any employee or former employee exercising his or her rights under this section, including (i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms of conditions of employment including but not limited to discharge, suspension, or demotion; (ii) actions or threats to take such actions that would adversely impact a former employee's current or future employment; or (iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, to a federal, state, or local agency.

(f) "Supervisor" means any individual within an employer's organization who has the authority to direct and control the work performance of the affected employee; or who has managerial authority to take corrective action regarding the violation of the law, rule or regulation of which

the employee complains.

2. Prohibitions. An employer shall not take any retaliatory action against an employee, whether or not within the scope of the employee's job duties, because such employee does any of the following:

(a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that the employee reasonably believes is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety;

(b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such activity, policy or practice by such employer; or

(c) objects to, or refuses to participate in any such activity, policy or practice.

3. Application. The protection against retaliatory action provided by paragraph (a) of subdivision two of this section pertaining to disclosure to a public body shall not apply to an employee who makes such disclosure to a public body unless the employee has made a good faith effort to notify his or her employer by bringing the activity, policy or practice to the attention of a supervisor of the employer and has afforded such employer a reasonable opportunity to correct such activity, policy or practice. Such employer notification shall not be required where: (a) there is an imminent and serious danger to the public health or safety; (b) the employee reasonably believes that reporting to the supervisor would result in a destruction of evidence or other concealment of the activity, policy or practice; (c) such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor; (d) the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or (e) the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct such activity, policy or practice.

4. Violation; remedy.

(a) An employee who has been the subject of a retaliatory action in violation of this section may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within two years after the alleged retaliatory action was taken.

(b) Any action authorized by this section may be brought in the county in which the alleged retaliatory action occurred, in the county in which the complainant resides, or in the county in which the employer has its principal place of business. In any such action, the parties shall be entitled to a jury trial.

(c) It shall be a defense to any action brought pursuant to this section that the retaliatory action was predicated upon grounds other than the employee's exercise of any rights protected by this section.

5. Relief. In any action brought pursuant to subdivision four of this section, the court may order relief as follows:

(a) an injunction to restrain continued violation of this section;

(b) the reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position, or front pay in lieu thereof;

(c) the reinstatement of full fringe benefits and seniority rights;

(d) the compensation for lost wages, benefits and other remuneration;

(e) the payment by the employer of reasonable costs, disbursements, and attorney's fees;

(f) a civil penalty of an amount not to exceed ten thousand dollars; and/or

(g) the payment by the employer of punitive damages, if the violation was willful, malicious or wanton.

6. Employer relief. A court, in its discretion, may also order that reasonable attorneys' fees and court costs and disbursements be awarded to an employer if the court determines that an action brought by an employee under this section was without basis in law or in fact.

7. Existing rights. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective bargaining agreement or employment contract.

8. Publication. Every employer shall inform employees of their protections, rights and obligations under this section, by posting a notice thereof. Such notices shall be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment.

Credits

(Added L.1984, c. 660, § 2. Amended L.2002, c. 24, § 2, eff. April 2, 2002; L.2006, c. 442, §§ 12, 13, eff. Nov. 1, 2006; L.2019, c. 684, § 1, eff. Dec. 20, 2019; L.2021, c. 522, § 1, eff. Jan. 26, 2022.)