

CORPORATE COMPLIANCE PROGRAM

For

BETHANY VILLAGE

Approved by Board Resolution on March 28, 2013

INTRODUCTION

Bethany Nursing Home & Health Related Facility, Inc. and Bethany Retirement Home, Inc. (referred to hereinafter as “Bethany Village”) strives to conduct itself in accordance with the highest level of business and community ethics and in compliance with applicable federal and state governing laws. Bethany Village recognizes the problems that both deliberate and accidental misconduct in the health care industry can pose to society. Bethany Village is committed to ensuring that it operates under the highest ethical and moral standards and that its activities comply with applicable laws.

The Corporate Compliance Program for Bethany Village (the “Compliance Program” or “Program”) has been developed in accordance with Chapter 442 of the Laws of 2006 and regulations promulgated by the New York State Office of the Medicaid Inspector General (“OMIG”), found in Part 521 of Title 18 of the New York Code of Rules and Regulations (“NYCRR”). In addition, the Program reflects compliance program recommendations issued by OMIG and the United States Department of Health and Human Services, Office of the Inspector General (“OIG”) in its Compliance Program Guidance for Nursing Facilities, as published in 2000 and as supplemented in 2008, as well as the Federal Sentencing Guidelines. With this Program, including any Exhibits or amendments added to it from time to time as may be required by law, Bethany Village will promote full compliance with all legal duties applicable to it, foster and assure ethical conduct, and provide guidance to each employee and contractor of Bethany Village for their conduct. The procedures and standards of conduct contained in this Program are intended to generally define the scope of conduct which the Program is intended to cover and are not to be considered as all inclusive.

This Program is designed to prevent accidental and intentional noncompliance with applicable laws, to detect such noncompliance if it occurs, to discipline those involved in non-compliant behavior, and to prevent future noncompliance. This Compliance Program is a “living” document and will be updated periodically to keep Bethany Village employees and contractors informed of the most current information available pertaining to compliance requirements in the health care industry.

II. DEFINITIONS

These terms shall have the following meaning throughout this Program:

“Administrator” refers to the Administrator of Bethany Nursing Home.

“CEO” refers to the Chief Executive Officer of Bethany Village.

“Federal health care programs”, as defined at 18 U.S.C. §1320a-7b(f), include any plan or program that provides health benefits to any individual, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government or state health care program, including, but not limited to, Medicare, Medicaid, CHAMPUS, VA, Federal Bureau of Prisons, and Indian Health Services, but excluding the Federal Employees Health Benefit Program.

“Federal health care offense”, means a violation of, or a criminal conspiracy to violate any of the provisions set forth in Section III.B herein, if the violation or conspiracy relates to a health care benefit program.

“Health care benefit program”, as defined at 18 U.S.C. §24 (a), includes any public or private plan or contract for the provision of any medical benefit, item, or service to any individual.

“Resident” means an individual who is cared for or receives services at Bethany Village on an inpatient basis, and all patients and participants in the outpatient services provided by Bethany Village, as appropriate to the context.

“Should know”, as defined under 42 U.S.C. §1320a-7a(i)(7), in relation to prohibited activity, means that a person, with respect to information acts with reckless disregard or deliberate ignorance of the truth or falsity of the information.

“Bethany Nursing Home Affiliated Organizations” refers to Orchard Homes and Knoll Apartments.

“Bethany Nursing Home” refers to the resident care services, and the out-patient services, provided by Bethany Nursing Home & Health Related Facility, Inc.

“Bethany Village Employees” include those persons employed to work within the resident care services, and the out-patient services, provided by Bethany Nursing Home & Health Related Facility, Inc. and Bethany Retirement Home, Inc., including but not limited to direct care staff, supervisors and executives, as the context requires, and includes any and all shared services employees.

“Bethany Village Contractors” include all persons and entities that have contracted to provide health care related services, equipment or other items to the resident care services, and the out-patient services, provided by Bethany Nursing Home & Health Related Facility, Inc. and Bethany Retirement Home, Inc.

“Upcoding” refers to utilizing a code to bill for a higher level of service or procedure, causing an increase in the reimbursement rate, when the medical record reflects that a lower level of service or procedure was actually provided to the resident.

“Unbundling” refers to billing separately for each component of a group of procedures that are commonly used together for which Medicare and/or Medicaid provides a special reimbursement rate. Examples of bundled services are certain blood test panels, as well as other common procedure groupings.

III. COMPLIANCE STANDARDS AND PROCEDURES

Numerous federal and state laws and regulations define and establish obligations for the health care industry with which Bethany Village, Bethany Village Employees and Bethany Village Contractors must comply. Any employee or contractor who violates these laws and/or regulations not only risks individual indictment, criminal prosecution and penalties, civil actions for damages and penalties and administrative exclusion, but also subjects Bethany Village to the same risks and penalties. Any employee or contractor who violates these laws will be subjected to the disciplinary procedures including and up to discharge or contract termination. A summary of the pertinent laws are attached as Appendix A.

PERSONNEL

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

Bethany Village, Bethany Village Employees and Bethany Village Contractors shall exclude individuals from employment with, or work within, the facility who hold a:

- (1) Conviction of a health care-related crime.
- (2) Conviction relating to patient abuse.
- (3) Felony conviction relating to health care fraud.
- (4) Felony conviction relating to a controlled substance.

b. Health Reviews.

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

Bethany Village shall require pre-employment physical examinations and thereafter require an annual examination of all employees which will include screening for tuberculosis and other communicable diseases as is deemed necessary for the safety and well-being of Bethany Village residents.

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

Bethany Village and Bethany Village Contractors shall develop and implement policies and procedures which require the provision for a physical examination and recorded medical history for personnel including all employees and members of the medical and dental staff.

The examination shall be of sufficient scope to ensure that, consistent with federal and state statutes and prohibiting discrimination on the basis of disability or handicap, no person shall assume their duties unless he/she is free from a health impairment that would present a risk to the resident which cannot be reasonably accommodated, or which might

interfere with the performance of their duties, including the habituation or addiction to depressants, stimulants, narcotics, alcohol or other drugs or substances which may alter the individual's behavior.

Bethany Village will provide such examination without cost for all employees.

Bethany Village will also conduct a health status assessment of all volunteers whose activities are such that health impairment would pose a risk to residents or personnel, in order to determine that the health and wellbeing of residents and personnel are not jeopardized by the condition of such volunteers.

Bethany Village shall require the following of all personnel as a condition of employment or affiliation:

- (a) A PPD (Mantoux) skin test for tuberculosis prior to employment or affiliation and no less than every year thereafter for negative findings. Positive findings shall require appropriate clinical follow-up but no repeat skin tests;
- (a) a certificate of immunization against rubella
- (b) a certificate of immunization against measles for all persons born after January 1, 1957; and
- (c) If any licensed physician, physician's assistant or nurse practitioner certifies that immunizations with measles and/or rubella vaccine may be detrimental to the employee's health, the above requirements shall be inapplicable until such immunization is found no longer to be detrimental to such employee's health.

Bethany Village and Bethany Village Contractors shall undertake the reassessment of the health status of all personnel as frequently as necessary, but no less than annually, to ensure that personnel are free from health impairments which pose a risk to residents or personnel which cannot be reasonably accommodated or which may interfere with the performance of duties.

Bethany Village Employees shall report immediately to their supervisor, Employee Health Nurse, or Nursing Supervisor any signs or symptoms of personal illness. Bethany Village Contractors that have direct contact with the residents shall report immediately to the Employee Health Nurse or the Nursing Supervisor any signs or symptoms of personal illness. All personnel making such a report shall be referred to an appropriate health care professional for assessment of the risk to residents and personnel. Based on this assessment, Bethany Village shall authorize appropriate measures to be taken, including, but not limited to, removal, reassignment or return to duty.

(3) Employee Confidentiality and Privacy Policy.

Bethany Village Employees and Bethany Village Contractors shall not disclose any information regarding residents or employees to individuals outside the facility including family and friends of the resident. This prohibition includes verbal communications as well as releasing copies of, or allowing access to, any reports or documents prepared by the Bethany Village.

Bethany Village Employees and Bethany Village Contractors shall not discuss any resident information in the public areas of the Bethany Village such as elevators, cafeteria, time clocks, etc. This prohibition also includes many instances in the nursing units where such discussions are not appropriate due to the presence of other residents, staff, and visitors.

c. Medical Staff Credentialing. (Public Health Law §2805-j).

Prior to hiring, granting, or renewing privileges or an association with a physician or dentist, Bethany Village and Bethany Village Contractors will obtain information regarding the name of any hospital or facility at which the professional was employed; the reasons for any discontinuance of privileges; any professional misconduct proceeding; the findings or outcome of any such proceeding; and documentation that the professional completed infection control training.

In addition, Bethany Village and Bethany Village Contractors shall request from any hospital with which the professional was associated or employed information regarding pending medical conduct or medical malpractice proceedings, and judgments or settlements of malpractice proceedings.

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

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

e. Medical Staff By-Laws. (10 NYCRR §405.4(c)).

The medical staff of Bethany Village shall adopt and enforce by-laws to carry out its responsibilities in conformity with all applicable laws and regulatory requirements.

f. Infection Control. (10 NYCRR §415.19).

Bethany Village and Bethany Village Contractors shall establish and maintain an infection control program designed to provide a safe sanitary and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection.

Pursuant to Education Law §6505-b, every dentist, registered nurse, licensed practical nurse, podiatrist, optometrist, and dental hygienist employed or under contract with Bethany Village shall complete course work or training regarding infection control and barrier precautions.

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

Physicians, physician's assistants, and specialist's assistants employed by or under contract with Bethany Village shall conduct course work or training in infection control and barrier precaution and the basic concepts of disease transmission, scientifically accepted principles and practices for infection control and engineering and workplace controls. Such course work shall be completed by Bethany Village physicians and physician's assistants every four years. (10 NYCRR §92-1.1).

g. Nurse Aides.

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

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

(2) NYS Nurse Aide Registry. (10 NYCRR §415.31).

Bethany Village and Bethany Village Contractors shall register its nurse aides with the New York State Residential Health Care Facility Nurse Aide Registry.

h. Conflicts of Interest.

Bethany Village Officers, Bethany Village Employees, Bethany Village Contractors and officers, employees or contractors of Bethany Village Affiliated Organizations shall:

(1) not accept other employment or engage in any business transaction directly or indirectly which might tend to affect his or her judgment in any official act or create a conflict with his official duties.

(2) not knowingly invest or hold any investment or interest, legal or beneficial, directly or indirectly, in any property, real or personal, in conflict with their official duties.

i. Gifts and Gratuities.

No Bethany Village Employee or Bethany Village Contractor whether paid or unpaid, shall directly or indirectly solicit any gift or accept or receive any gift whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any

other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him/her or reasonably be expected to influence him/her in the performance of their official duties or was intended as a reward for any official action or was intended as a reward for any official action on his or her part.

j. Employees Working For Vendors or Subcontractors.

No Bethany Village Contractor or Bethany Village Employee shall accept other employment or engage in any business transaction directly or indirectly which might tend to affect their judgment in any official act or create a conflict with his official duties.

k. Professional License Verification. (10 NYCRR §415.26(c)(3)).

For all Bethany Village Employees and Bethany Village Contractors providing services at Bethany Village for whom licensure, registration or certification is required, Bethany Nursing Home, Bethany Village Employees and Bethany Village Contractors shall obtain and retain verification of the license number or certification with expiration date of same. Bethany Village and Bethany Village Contractor shall verify that there are no professional findings and that the licenses are in good standing for all personnel for whom licensure is required. The Bethany Village Human Resources Department shall at the time of initial hiring and on at least a quarterly basis review the list of license suspensions and revocations published by New York State and identify any Bethany Village licensed employees who may be identified on such list.

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

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

RESIDENT CARE AND RESIDENT RIGHTS

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

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

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

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

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

b. Residents' Rights.

In accordance with 42 USC § 1396r(c), 42 CFR 483.1010 NYCRR § 415.3, Bethany Village, Bethany Village Employees and Bethany Village Contractors shall ensure that all residents are afforded their right to a dignified existence, self-determination, respect, full recognition of their individuality, consideration and privacy in treatment and care for personal needs and communication with and access to persons and services inside and outside the facility.

Bethany Village shall adopt and publicize a statement of the rights and responsibilities of the residents who are receiving care at Bethany Village.

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

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

d. Non-discrimination in Admission.

BethanyVillage, Bethany Village Employees and Bethany Village Contractors shall not discriminate because of race, color, blindness, sexual preference or sponsorship in admission, retention and care of residents. (10 NYCRR §415.26(i)(1)(ix)).

BethanyVillage, Bethany Village Employees and Bethany Village Contractors shall obey all pertinent state and local laws which prohibit discrimination against individuals entitled to Medicaid benefits. (10 NYCRR §415.3(5)).

e. Compliance with Advance Directives.

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

Bethany Village shall comply with the health care decisions made by a health care agent in good faith under a health care proxy to the same extent as if such decisions had been made by the resident.

Bethany Village shall establish procedures;

(a) to provide information to adult residents about their right to create a health care proxy under New York State law;

(b)to educate adult residents about the authority delegated under the health care proxy, what a proxy may include or omit, and how a proxy is created and revoked;

(c)to ensure that each resident who creates a proxy while residing at Bethany Village does so voluntarily.

(2) Orders Not to Resuscitate. (10 NYCRR §405.43).

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

For each resident for whom an order not to resuscitate has been issued, the attending physician at Bethany Village shall review the resident's chart to determine if the order is still appropriate in light of the resident's condition and shall indicate on the resident's chart that the order has been reviewed. The resident is required to be seen by a physician at least every 60 days and the order not to resuscitate must be reviewed at that time.

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

Any physician treating a resident of Bethany Village who is informed or provided with a revocation of consent to an order not to resuscitate shall immediately include the

revocation in the resident's chart, cancel the order, and notify the Bethany Village Employees and Bethany Village Contractors responsible for the resident's care of the revocation and cancellation.

Any Bethany Village Employee or Bethany Village Contractor who is informed of or provided with the revocation of consent shall immediately notify a physician of such revocation.

An attending physician employed by Bethany Village who is provided with a decision of a surrogate consenting to an order not to resuscitate shall include the decision in the resident's medical chart and shall:

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

f. Pastoral Care. (10 NYCRR §793.4).

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

HOSPICE

a. Hospice Service. (NYS Public Health Law §4000 and §4002).

In recognition of the value of hospice and consistent with State policy to encourage the expansion of health care service options available to New York State residents, Bethany Nursing Home shall establish and maintain a hospice care service available to all residents who seek such care.

Bethany Nursing Home shall provide and coordinate a program of in-patient care which treats the terminally ill resident and family as a unit, as part of an interdisciplinary team operating under the direction of the hospice administrator. A Bethany Nursing Home hospice program shall provide palliative and supportive care to meet the special needs arising out of physical, psychological, spiritual, social and economic stresses which are experienced during the final stages of illness and during dying and bereavement.

b. State Law Compliance.

Bethany Nursing Home shall contract with hospice providers in a manner that complies with the provisions of NYS Public Health Law Article 40 and 10 NYCRR Part 790.

c. In-Patient Hospice Services. (10 NYCRR §794.4(b)).

Hospice providers shall render short-term in-patient services for pain control and management of symptoms related to the terminal illness in a free-standing hospice facility, a skilled nursing facility or a general hospital in a manner that complies with the provisions of NYS Public Health Law Article 40 and 10 NYCRR Part 790.

d. Resident/Family Plan of Care. (10 NYCRR §794.2).

In providing hospice care, Bethany Nursing Home Employees and Bethany Nursing Home Contractors shall ensure that a comprehensive plan of care, which includes assessment of the physical, psychological, spiritual, social and economic needs of the resident family, shall be developed by an interdisciplinary team and, if applicable the resident's attending physicians, prior to the provision of hospice services.

The resident/family shall be permitted and encouraged to actively participate in the care planning process and the provisions of care. Such participation shall be documented in the resident/family record.

A written plan of care shall indicate that for each resident/family member, how palliative and supportive care is to be achieved, the services to be provided and by whom, and the person responsible for coordinated care.

The comprehensive plan of care shall reflect the changing care needs of the resident/family, and be reviewed and revised if necessary by the interdisciplinary team. These reviews must be documented in the resident record.

f. Reporting Requirements. (10 NYCRR §86-6.4).

The cost and statistics related to the operation of hospice services provided by Bethany Nursing Home shall be separately maintained from Bethany Nursing Home other activities.

ENVIRONMENTAL

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

Bethany Village and Bethany Village Contractors shall regulate medical waste in a manner and location which affords protection from the environment and limits exposure to the public, and complies with applicable law and regulations.

E. ADMINISTRATION

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

Bethany Village shall employ on a full-time, part-time or consultant basis a sufficient number of professional staff members who are educated, oriented and qualified to assure the health, safety, proper care and treatment of residents.

Bethany Nursing Home shall not operate unless it is under the supervision of an administrator who holds a currently valid nursing home administrator's license and registration issued under Article 28-D of the NYS Public Health Law.

Bethany Nursing Home shall develop and implement medical services to meet the needs of its residents. Bethany Nursing Home shall designate a full-time or part-time physician to serve as medical director. The medical director shall be responsible for:

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

Bethany Nursing Home shall employ a full-time Director of Nursing and shall have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental and psychosocial well being of each resident.

Bethany Nursing Home shall provide nursing care on a 24-hour basis to all residents, by employing the services of sufficient registered professional nurses, licensed practical nurses, certified nurses' aides, and other nursing personnel.

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

Bethany Village shall have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operations of the facility.

Among other duties, the governing body shall:

- (1) Appoint an eligible administrator;
- (2) Establish the policies of the facility;
- (3) Be responsible for the operation of the facility;
- (4) Be responsible for providing legally required services for residents;
- (5) Employ personnel as legally required;

- (6) Develop a method of promptly addressing resident complaints;
- (7) Assure the complaint process is made known to the residents and staff;
- (8) Establish a resident council;
- (9) Comply with the laws of NYS in operating BethanyVillage, Bethany Village Employees and Bethany Village Contractors.

IV. COMPLIANCE COMMITTEE/COMPLIANCE OFFICER

A. COMPLIANCE COMMITTEE

The Governing Body has the ultimate responsibility for oversight of the Program. The Board considers compliance-related matters on a periodic basis and whenever warranted by circumstances. This Program shall be implemented under the guidance and supervision of the Professional Standards Committee of the Board, which shall coordinate compliance efforts for Bethany Village.

a. Members.

The members of the Professional Standards Committee of the Board are appointed in accordance with the Board's bylaws. In addition, the Committee shall be assisted by a staff Compliance Committee which shall include appropriate representation from various Bethany Village departments, as determined by the Board. The Board Compliance Committee's functions include, but are not limited to:

- Receiving regular reports from the Compliance Officer and providing guidance regarding the operation of the Program.
- Approving the internal auditing plan carried out under the Program.
- Approving the compliance training program provided to all staff, contractors, and Board members.
- Reviewing and confirming the adequacy of all investigations of suspected non-compliance and any corrective action taken as a result of such investigations.
- Reviewing policies and procedures related to compliance.
- Recommending and approving any changes to the Program.

b. Meetings

The Professional Standards Committee of the Board shall meet quarterly, and more often as necessary. The Staff Compliance Committee shall meet monthly and more often as necessary.

B. COMPLIANCE OFFICER

The Compliance Officer shall be a full-time employee of Bethany Village reporting to the CEO. The Compliance Officer will assume the managerial and administrative tasks involved in implementing, monitoring, and updating this Program. The Compliance Officer shall:

- (a) Supervise and monitor the implementation of this Program;
- (b) Notify Bethany Village Employees and Bethany Village Contractors, and oversee the training and education of all Bethany Village Employees and Bethany Village Contractors involved in the clinical and billing/coding areas about applicable compliance standards;
- (c) Supervise, evaluate and monitor auditing procedures;
- (d) Implement and oversee a Helpline/Hotline;
- (e) Investigate suspected intentional and accidental misconduct;
- (f) Establish and maintain open lines of communication with Bethany Nursing Home departments and divisions, including the billing department, Bethany Nursing Home Medical Staff, and Bethany Nursing Home Employees and Bethany Nursing Home Contractors to ensure effective and efficient compliance policies and procedures;
- (g) Compile existing policies and procedures, coordinating these policies and procedures, and develop new policies and procedures (which shall be standardized, except to the extent that specific department needs require customized policies and procedures);
- (h) Work with the Bethany Village Auditor and/or external auditors;
- (i) Maintain adequate records of all Program activities;
- (j) Ensure that the OIG's and the OMIG's lists of excluded individuals and entities and the General Services Administration's list of parties debarred from federal programs, have been checked with respect to all employees and contractors;
- (k) Ensure the conduct of background checks of all Bethany Village Employees involved in the delivery of health care services, items, or billing;
- (l) Periodically review and recommend updates to the Compliance Program; and
- (m) Prepare periodic compliance reports for Bethany Village governing body and prepare an annual report to the governing body describing the general compliance efforts undertaken during the preceding year, identifying any changes necessary to improve the compliance program.

All questions and concerns regarding compliance with the standards set forth in this Program shall be directed to or brought to the attention of the Compliance Officer. All Bethany Village Employees, Bethany Village Contractors, and Board members must fully cooperate and assist the Compliance Officer as required in the exercise of his or her duties. If anyone is uncertain whether specified conduct is prohibited, he or she shall

contact the Compliance Officer for guidance prior to engaging in such conduct, or call the Helpline/Hotline.

C. HELPLINE/HOTLINE

The Hotline number is (607) 378-6569, which provides a means of communicating information regarding compliance issues. The Hotline number serves as a reporting option for anyone with information about suspected misconduct. Questions about compliance standards and legal duties will be forwarded to the Compliance Officer, who will respond or direct a response from an appropriate person or persons within Bethany Village. The Compliance Officer shall investigate all reports of suspected misconduct received through either the Helpline or Hotline. The Compliance Officer shall refer all legal issues to the Bethany Village General Counsel.

Callers who wish to remain anonymous will be provided with an identification number. This number may be used by the caller to identify himself or herself if additional information becomes available or if further questioning is necessary.

Any Bethany Village Employee or Bethany Village Contractor with concerns over unethical practices, improper employee conduct, the integrity of Bethany Village billing/coding practices or other improper practices described throughout this Program, must report such concern through the Hotline or directly to the Compliance Officer.

Anyone who makes an intentionally false statement or otherwise misuses the Helpline/Hotline shall be subject to discipline.

D. ALTERNATIVE AVENUES OF COMMUNICATION

In addition to the Helpline and Hotline, anyone may report any suspected misconduct or fraud to their immediate supervisor in writing which shall then be forwarded to the Compliance Officer for review and follow-up.

V. TRAINING AND EDUCATION PROGRAMS

A. POLICY STATEMENT

All Bethany Village Employees and Bethany Village Contractors shall receive this Program and other information necessary to ensure compliance with the standards specified herein.

After receiving training on the Program, all Bethany Village Employees must sign and return the applicable acknowledgment form reprinted at the end of this Program, which states the Bethany Village Employee has had the plan reviewed with them, understands, and agrees to abide by these provisions.

Each Bethany Village Employee and Bethany Village Contractor will be required to annually review these compliance standards. The Compliance Officer will immediately advise and review all changes in this Program with each Bethany Village Department Manager who shall advise each Bethany Village Employee and Bethany Village Contractor of such changes. Bethany Village Employees must sign and return to the Compliance Officer an acknowledgment form after each Program revision.

Any Bethany Village Employee or Bethany Village Contractor who has questions regarding this Program or their obligations should contact the Compliance Officer.

Promotion of adherence to the Program shall be an element of each Bethany Village Employee's performance standards. Compliance with the Program and laws and regulations applicable to entities participating in health care programs is a condition of employment or association with Bethany Village and Bethany Village will take appropriate disciplinary action as set out in this Program.

B. ON-GOING TRAINING

Bethany Village Employees, Board members and Compliance Committee members shall be provided on-going training regarding compliance issues specific to the nursing home setting, as well as other areas involving fraud and abuse issues, pertinent to their roles and responsibilities.

All training sessions will be coordinated by the Compliance Officer. Training will be provided on an as-needed basis to respond to identified risk areas, but at least annually. All new Bethany Village Employees providing health care services, items, or billing will be required to complete a comprehensive training program within three (3) months following commencement of their services for or at BethanyVillage. Bethany Village Contractors are required to adopt and abide by this Program in relation to work performed for BethanyVillage, train their employees who are involved in performing work for Bethany Village to comply with applicable laws, and make this Program available to those employees.

Topics which may be included in compliance training include:

- The operation and importance of the Program.
- Adherence to the Program as a condition of continued employment.
- The consequences of violating compliance standards and procedures, including disciplinary measures.
- The role of each employee, contractor, executive, Board member, etc. in the operation of the Program.

Training may be intramural or extramural, as appropriate. Topics for training may be drawn from publications such as OMIG Compliance Alerts; DOH Medicaid Updates; the OIG's Special Fraud Alerts; OIG Advisory Opinions; and Medicare Part B News.

C. PHYSICIAN TRAINING

A physician issues-specific training program shall be developed and implemented by the Compliance Officer. The physician-specific program shall include training on the requirements of Public Health Law section 238, as well as the federal fraud and abuse provisions and the federal physician referral prohibitions.

Medicare, Medicaid and other federal health care program physician issues training shall be multi-disciplinary in nature and one or more physicians shall be involved in providing instruction.

D. BILLING AND CODING TRAINING

The Director of Finance, under the direction of the Compliance Officer, shall provide specific billing/coding training to Bethany Nursing Home Employees with billing and coding responsibilities. Examples of topics that may be pertinent include:

- Coding requirements and methodology, including proper use of Bethany Village's medical record documentation forms.
- General understanding of the claim development and submission processes.
- Proper billing standards and procedures and submission of accurate bills to payors and residents.
- Legal sanctions for submitting deliberately or recklessly false billings.

This training shall be on-going and shall focus on the complexities of the billing and coding process. Other persons involved in training will include those appointed by the Director of Finance.

E. TRAINING COMPLIANCE AND EFFECTIVENESS REVIEWS

The Compliance Officer is responsible for ensuring that employees and Board members have attended the training sessions applicable to that person's duties at Bethany Village. Surveys will be prepared by the Compliance Officer to gather information regarding the effectiveness of the training programs and will be utilized by the Compliance Officer to improve the programs.

F. UPDATING

The Compliance Officer shall be responsible for ensuring that training is updated on a regular interval to include new developments in law.

VI. MONITORING

A. REVIEWS

The Compliance Officer shall from time to time review Bethany's practices and procedures. Reviews will be conducted to determine the accuracy and validity of coding and billing submitted to Medicare/Medicaid, other federal health programs and other payors, and otherwise to detect other instances in which State or federal standards may not have been met. Attention will be given to reviewing the reasons given for claim denials, to reviewing frequent billings of certain procedure codes, and to analyze other facts, which may suggest inappropriate conduct.

The review procedure should include:

- (1) Sampling;
- (2) Review of backup records on a random basis to assess reliability of billings to programs;
- (3) and

Periodic review of the entire claims development and submission process beginning with a resident's registration and ending with the submission of the claim to the government payer or third party payor.

Bethany Village and Bethany Village Contractors shall retain all billing records for ten (10) years.

B. IDENTIFICATION OF RISK AREAS

As necessary, Bethany Village will develop written policies and procedures that address identified risk areas. These written policies and procedures will be communicated to all Bethany Village Employees and Bethany Village Contractors as necessary and pertinent. Risk areas, including risk areas that are identified in the course of quality improvement and credentialing processes, will be addressed as appropriate in periodic and special reviews.

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

C. CONTRACTS

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

D. INVESTIGATION OF SUSPECTED NON-COMPLIANCE

All suspected non-compliant conduct of any nature shall be promptly reported to the Compliance Officer in accordance with reporting mechanisms set forth in this section of the Program. The Compliance Officer shall cause an investigation of any conduct that may be inconsistent with this Program or departmental compliance policies. After review and investigation, the Compliance Officer will prepare a written report of findings that will be given to Board Compliance Committee for action, as appropriate. Bethany Village Employees, Bethany Village Contractors, and Board members shall cooperate fully with any investigations undertaken. Records of suspected misconduct and any subsequent investigation shall be retained and confidentially maintained by the Compliance Officer.

E. NON-INTIMIDATION AND NON-RETALIATION

No individual who participates in good faith in the Program, including, but not limited to the reporting of suspected misconduct, shall be intimidated, retaliated against or otherwise disciplined by Bethany Village as a result of such participation. Anyone who has a concern about potential intimidation or retaliation is encouraged to contact the Compliance Officer, who will conduct a prompt and thorough investigation. The Compliance Officer has the authority to withhold the names of those who report information, if necessary. The Compliance Officer does not, however, have the authority to unilaterally extend any protection or immunity from disciplinary action or prosecution to those who have engaged in misconduct.

VII. PROCEDURES FOLLOWING THE DETECTION OF MISCONDUCT

Violation of Bethany Village's compliance policies include:

- (1) Failing to report known and potential non-compliant conduct;
- (2) Participating in non-compliant conduct; and
- (3) Actively or passively, encouraging, directing, facilitating or permitting non-compliant conduct.

If the Compliance Officer determines, after investigation, that a compliance violation occurred, the matter shall be referred to the Professional Standards Committee of the Board. The Professional Standards Committee of the Board shall make recommendation to the Administrator for the imposition of disciplinary action, in light of all available information. Such response and disciplinary action may include, but not be limited to, oral warning, written reprimand, suspension, or discharge of the individual(s) involved. Any recommendation by the Professional Standards Committee of the Board shall be by majority vote of the entire membership.

In the event that non-compliant conduct resulted in the receipt by Bethany Nursing Home or any Bethany Nursing Home Contractor of improper or incorrect amounts of reimbursement or payments, any and all such amounts improperly or incorrectly received shall be promptly returned to the originating source. If possible, any and all claims, vouchers or other instruments submitted in error promptly shall be corrected and resubmitted.

In addition, as appropriate for the given situation, the following responses and measures may be undertaken by the Professional Standards Committee of the Board:

- (1) Re-training;
- (2) Modification of the charges, coding and billing system where necessary;
- (3) Adjustment to policies and procedures, including revisions to the Program;
- (4) Engaging in steps necessary to reduce the error rate; and
- (5) Handling information obtained appropriately through consideration of reporting the problem to authorities; consideration of restitution by the employee or contractor; determination of the effort needed by Bethany Village to determine the magnitude of improper claims; and consideration of how clear the evidence is.

VIII. GOVERNMENT INVESTIGATIONS

Bethany Village is committed to full compliance with all state and federal laws and shall cooperate with all reasonable demands made in any government investigation of Bethany Village, Bethany Village Employees or Bethany Village Contractors. However, Bethany Village deems it essential that the legal rights of Bethany Village, Bethany Village Employees and Bethany Village Contractors are protected.

If any Bethany Village Employee, or Board member receives a subpoena, inquiry or other legal document in regards to Bethany Village business, whether at home or in the workplace, from any governmental agency, the Bethany Village Employee shall notify the Bethany Village Compliance Officer as soon as possible who then will alert the Bethany Village General Counsel.

EMPLOYEE ACKNOWLEDGMENT FORM

I, _____ the undersigned employee of Bethany Village, do hereby acknowledge that I have received a copy of the Compliance Program and that I have been trained on its contents. I understand that I must comply with the standards set forth in the Program or face of the possibility of discipline in accordance with the Program.

I will cooperate fully with the Compliance Committee and the Compliance Officer to the extent necessary or helpful to implementation of the Program.

Department: _____

Position: _____

Date: _____

Signature: _____

FEDERAL & NEW YORK STATUTES RELATING TO FILING FALSE CLAIMS

I. FEDERAL LAWS

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

II. NEW YORK STATE LAWS

A. CIVIL AND ADMINISTRATIVE LAWS

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

B. CRIMINAL LAWS

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

III. WHISTLEBLOWER PROTECTION

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

I. FEDERAL LAWS

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

The False Claims Act (“FCA”) provides, in pertinent part, as follows:

§ 3729. False claims

(a) Liability for certain acts.--

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

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

Source: New York State Office of the Medicaid Inspector General

http://www.omig.ny.gov/data/images/stories//relevant_fca_statutes_122209.pdf, rev. 12/22/09, acc. 08/17/12

- (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- (C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);
- (D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;
- (E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- (F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or
- (G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461) note; Public Law 104-410, plus 3 times the amount of damages which the Government sustains because of the act of that person.

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

- (A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;
- (B) such person fully cooperated with any Government investigation of such violation; and
- (C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

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

Source: New York State Office of the Medicaid Inspector General

http://www.omig.ny.gov/data/images/stories//relevant_fca_statutes_122209.pdf, rev. 12/22/09, acc. 08/17/12

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

(1) the terms “knowing” and “knowingly” --

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

(i) has actual knowledge of the information;

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

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

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

(2) the term “claim”--

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

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

(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government’s behalf or to advance a Government program or interest, and if the United States Government-

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

(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual’s use of the money or property;

(3) the term “obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

(4) the term “material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

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

Source: New York State Office of the Medicaid Inspector General

http://www.omig.ny.gov/data/images/stories//relevant_fca_statutes_122209.pdf, rev. 12/22/09, acc. 08/17/12

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

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

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

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

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

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

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

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

Source: New York State Office of the Medicaid Inspector General

http://www.omig.ny.gov/data/images/stories/relevant_fca_statutes_122209.pdf, rev. 12/22/09, acc. 08/17/12

II. NEW YORK STATE LAWS

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

A. CIVIL AND ADMINISTRATIVE LAWS

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

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

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

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

2) Social Services Law, Section 145-b - False Statements

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

Source: New York State Office of the Medicaid Inspector General

http://www.omig.ny.gov/data/images/stories//relevant_fca_statutes_122209.pdf, rev. 12/22/09, acc. 08/17/12

3) Social Services Law, Section 145-c - Sanctions

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the needs of the individual or that of his family shall not be taken into account for the purpose of determining his or her needs or that of his family for six months if a first offense, for twelve months if a second offense (or if benefits wrongfully received are at least one thousand dollars but not more than three thousand nine hundred dollars), for eighteen months if a third offense (or if benefits wrongfully received are in excess of three thousand nine hundred dollars), and five years for any subsequent occasion of any such offense.

B. CRIMINAL LAWS

1) Social Services Law, Section 145 - Penalties

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

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

- a. Any person who obtains or attempts to obtain, for himself or others, medical assistance by means of a false statement, concealment of material facts, impersonation or other fraudulent means is guilty of a class A misdemeanor.
- b. Any person who, with intent to defraud, presents for payment a false or fraudulent claim for furnishing services, knowingly submits false information to obtain greater Medicaid compensation, or knowingly submits false information in order to obtain authorization to provide items or services is guilty of a class A misdemeanor.

3) Penal Law Article 155 - Larceny

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

- a. Fourth degree grand larceny involves property valued over \$1,000. It is a class E felony.

Source: New York State Office of the Medicaid Inspector General

http://www.omig.ny.gov/data/images/stories//relevant_fca_statutes_122209.pdf, rev. 12/22/09, acc. 08/17/12

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

4) Penal Law Article 175 - False Written Statements

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

- a. § 175.05 - Falsifying business records involves entering false information, omitting material information or altering an enterprise's business records with the intent to defraud. It is a class A misdemeanor.
- b. § 175.10 - Falsifying business records in the first degree includes the elements of the § 175.05 offense and includes the intent to commit another crime or conceal its commission. It is a class E felony.
- c. § 175.30 - Offering a false instrument for filing in the second degree involves presenting a written instrument, including a claim for payment, to a public office knowing that it contains false information. It is a class A misdemeanor.
- d. §175.35 - Offering a false instrument for filing in the first degree includes the elements of the second degree offense and must include an intent to defraud the state or a political subdivision. It is a class E felony.

5) Penal Law Article 176 - Insurance Fraud

This law applies to claims for insurance payments, 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.

Source: New York State Office of the Medicaid Inspector General

http://www.omig.ny.gov/data/images/stories//relevant_fca_statutes_122209.pdf, rev. 12/22/09, acc. 08/17/12

- 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.

6) Penal Law Article 177 - Health Care Fraud

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

This law primarily applies to claims by providers for insurance payment, including Medicaid payment, and it includes six crimes.

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

Source: New York State Office of the Medicaid Inspector General

http://www.omig.ny.gov/data/images/stories//relevant_fca_statutes_122209.pdf, rev. 12/22/09, acc. 08/17/12

III. WHISTLEBLOWER PROTECTION

1) Federal False Claims Act (31 U.S.C. 43730(h))

The Federal False Claims Act provides protection to qui tam relators (individuals who commence a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. 31 U.S.C. 3730(h). Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

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

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

3) New York State Labor Law, Section 740

An employer may not take any retaliatory action against an employee if the employee discloses information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that the employer is in violation of a law that creates a substantial and specific danger to the public health and safety or which constitutes health care fraud under Penal Law § 177 (knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions). The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.

Source: New York State Office of the Medicaid Inspector General

http://www.omig.ny.gov/data/images/stories//relevant_fca_statutes_122209.pdf, rev. 12/22/09, acc. 08/17/12

4) New York State Labor Law, Section 741

A health care employer may not take any retaliatory action against an employee if the employee discloses certain information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that, in good faith, the employee believes constitute improper quality of patient care. The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation, unless the danger is imminent to the public or patient and the employee believes in good faith that reporting to a supervisor would not result in corrective action. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.

Source: New York State Office of the Medicaid Inspector General

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