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###### **Procedure Name: False Claims Act**

**Purpose:**

It is the position of The Agency to monitor against and prevent fraud, waste and abuse in federal and state healthcare programs. This procedure explains the Federal False Claims Act and the New York State False Claims Act. There laws are designed to prevent such fraud, waste and abuse.

**Definitions**

Fraud - any type of intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him/herself, or to The Agency or another person.

Abuse - practices that are inconsistent with sound fiscal, business or medical practices and result in an unnecessary cost to the state or federal government or The Agency, or in reimbursement of services that are not medically necessary or fail to meet professionally recognized standards for health care.

**Summary – Federal False Claims Act:**

The False Claims Act is one of the laws the government uses to prevent and detect fraud, waste and abuse in federal health care programs. It provides that anyone who “knowingly” submits false claims or bills to a government payor becomes liable for damages up to three times the amount of the erroneous payment, plus mandatory penalties between $5,500 and $11,000 for each false claim submitted. In addition, someone who knowingly conceals or knowingly or improperly avoids or decreases an obligation to pay or transmit money or property to the government may be subject to these false claims provisions. The False Claims Act defines “knowingly” as (1) the person understands a false claim is submitted; (2) the person deliberately ignores whether the claim being submitted is true or false; or (3) the person acts in reckless disregard of the truth or falsity of the information. The Act may be violated by the following actions:

Knowingly presenting, or causing to be presented, a false or fraudulent claim for payment/approval by the federal government;

Knowingly making or using, or causing to be made or used, a false record or statement to get a claim paid or approved;

Conspiring to defraud the government by getting a false or fraudulent claim allowed or paid;

Knowingly making, using, or causing to be made or used, a false record or statement to hide, avoid, or decrease an obligation to pay money or transmit property to the government

Failure to report and return a Medicaid or Medicare overpayment to the government within 60 days fo discovery and to notify the government of the reason why.

Examples: A few examples of actions that can violate the False Claims Act include knowingly:

1. Billing for services or items that were not actually provided;
2. Charging more than one time for the same service;
3. Billing for services that are not necessary or appropriately prescribed in an individual’s respective service plan; and/or
4. Falsifying time records or other documentation in the individual’s records that are used to bill Medicaid.

The government or an individual individual acting on behalf of the government (a “Relator”) can bring actions under the False Claims Act. If a Relator brings an action under the Act, the government has a period of time to investigate the allegation made by the Relator and to decide whether to join the lawsuit. If the government elects to join the lawsuit, the Relator is entitled to 15-25% of any recovery. If the Government chooses not to join the lawsuit, the Relator may still proceed and will be entitled to 25-30% of any recovery.

The False Claims Act prevents The Agency from discriminating against a staff person for taking lawful actions as endorsed under the Act. Under the Act, any staff member who is terminated, demoted, harassed, or otherwise discriminated against because of lawful acts they undertake in respect to the False Claims Act is entitled to all relief necessary to make that employee whole. “Relief” may include reinstatement of the staff to employment, as much as twice the amount of back pay due to special damages, including litigation costs and reasonable attorney fees.

**Summary – Federal Program Fraud Civil Remedies Act:**

The Program Fraud Civil Remedies Act of 1986 is a federal law that provides for administrative recoveries by federal agencies including the Department of Health and Human Services, which operates the Medicaid and Medicare programs. The law prohibits the submission of a claim or written statement that the person knows or has reason to know is false, contains false information or omits material information. Violations of this law are investigated by the Department of Health and Human Services and monetary sanctions may be imposed in an administrative hearing setting. Monetary sanctions may include penalties of not more thatn $5,500 per claim and damages of twice the amount of the original claim. Unlike the false claims act, violation of this law occurs when a false claim is submitted, not when it is paid. Also unlike the False Claims Act, the determination of whether a claim is false, and the imposition of tines and penalties is made by administrative agency, not by prosecution in the federal court system.

**Summary – New York State False Claims Act:**

This is a section of the State Finance Law (§§ 187-194) and was modeled very closely after the Federal False Claims Act. This act provides that anyone who “knowingly” submits false claims to the government is liable for damages up to three times the amount of the erroneous payment plus mandatory penalities between $6,000 and $12,000 for each false claim submitted. NYS law defines “knowingly” the same way the Federal Law.

The government or an individual individual acting on behalf of the government (a “Relator”) can bring actions under the NYS False Claims Act. The False Claims Act prevents The Agency from discriminating against a staff person for taking lawful actions as endorsed under the Act. Under the Act, any staff member who is terminated, demoted, harassed, or otherwise discriminated against because of lawful acts they undertake in respect to the False Claims Act is entitled to all relief necessary to make that employee whole.

**Summary – Additional false claims-related laws:**

Social Service Law §145-b: It is unlawful to make a false statement or representation, or to deliberately conceal any material fact, or engage in any other fraudulent scheme or device to obtain payments under the State Medicaid Program. The State and local Social Services district has a right to recover civil damages three times the amount of an incorrectly paid claim and can impose monetary penalties. The State and local Social Services district may charge penalties for non-monetary false statements too.

Social Service Law § 366-b: This law provides that:

1. 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.
2. any person with intent to fraud, who presents for payment any false claim or submits false information in order to obtain compensation greater than that to which s/he is legally entitled can be charged with a Class A misdemeanor.

Penal Law Article 177: This Article establishes the crime of Health Care Fraud. If a person knowingly commits an act of fraud against Medicaid or any other health plan and as a result receives payment to which s/he is not entitled to, the person can be punished with fines and jail time.

Labor Law § 740: In addition to provisions contained in the Federal and New York State False Claims Acts, this section offers protections to employees who may notice and report inappropriate activities. Under this provision of law, employees are protected from retaliatory personnel action when they:

1. Disclose or threaten to disclose to a supervisor or to a public body an activity, policy or practice of an employer that is in violation of a law, a regulation that presents a specific danger to the public health or safety, or which constitutes health care fraud;
2. Provides information to or testifies before any public body conducting an investigation or inquiry into a violation of law, rule or regulation by their employer; or
3. Objects to or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

To bring an action under §740, the employee must first notify the employer of the alleged violation and give the employer a reasonable opportunity to correct the allegedly unlawful practice. The law permits employees subjected to retaliatory actions to bring civil action in court to seek relief. §740 provides that employees who bring action without basis in law or fact may be held liable to the employer for its attorney fees and costs.

# Detailed Procedure(s):

Scope: This protocol pertains to all staff, including management, and all contractors and agents.

Procedure:

The Agency provides training to all staff regarding this protocol.

The Agency supplies information to significant vendors/contractors regarding the False Claims Act.

Billing activities are to be performed in a manner consistent with Medicare, Medicaid and other payor regulations and requirements and in accordance to the agency policy on documentation and billing.

Reporting non-compliance: If staff, a contractor, or an agent of The Agency has any reason to believe that anyone is engaging in false billing practices, that staff must immediately report the practice using the resources provided in the agency Code of Conduct. Staff should report such concerns to this agency’s Corporate Compliance Officer, Tracy Crisafulli, via a secure line at 716.375.4747 ext. 533.

Non-retaliation/Intimidation: No individual who files a report under this policy in good faith may be subject to retaliation/intimidation in any form. Retaliation is also prohibited against an employee for refusing to carry out any activity that is the subject of a report made under this policy in good faith. No employee may threaten to retaliate against another employee for filing a report.

Prohibited retaliation includes, but is not limited to, terminating, suspending, demoting, failing to consider for promotion, harassing or reducing the compensation of an employee due to the employee’s intended or actual filing of a report under this policy. Retaliation is prohibited even if it is determined that the allegedly improper conduct was proper or did not occur, provided that the report was made in good faith. The Agency reserves the right to take disciplinary action against any employee who maliciously files a report he or she knows to be untrue.

Any actual or threatened retaliation should be reported by the affected employee or any other employee to the Compliance Officer. The Compliance Officer will investigate such allegations in the same manner as other investigations carried out under this policy.