Brunswick Hospital Center, Inc.

Corporate Compliance Handbook

TABLE OF CONTENTS

BRUNSWICK HOSPITAL CENTER, INC. COMPLIANCE PROGRAM

Overview

Brunswick Hospital Center, Inc. ("BHC") is a private, for profit, Article 31 psychiatric facility licensed by the New York State Office of Mental Health. BHC is committed to maintaining the highest level of professional and ethical standards in the conduct of its business. The Hospital places the highest importance upon its reputation for honesty, integrity, and high ethical standards. This Policy Statement is a reaffirmation of the importance of the highest level of ethical conduct and standards.

As a condition of payment for care, services, items or supplies and/or to be eligible to submit claims for such, BHC which is subject to provisions under New York State's Public Health Law and Mental Hygiene Law, must implement an effective Compliance Program. BHC, as a "required provider" maintains an effective Compliance Program, as required under New York State Social Services Law § 363-d with compliance program regulations codified at 18 NYCRR Part 521, as well as State guidance from the New York State Office of the Medicaid Inspector General ("OMIG") and Federal guidance from, among other entities, the U.S. Sentencing Commission Guidelines ("USSG") Manual, the U.S. Department of Health and Human Services Office of Inspector General ("OIG") and the Centers for Medicare and Medicaid Services ("CMS").

The BHC Compliance Program (or "Program") focuses on:

- Preventing, detecting and deterring health care fraud, waste, and abuse and illegal conduct;
- Promoting an environment that encourages ethical conduct as well as compliance with the law and regulations;
- Developing and maintaining practices to ensure the privacy of health and business information; and
- Creating and enforcing policies and procedures that describe the implementation of the compliance program and how potential compliance problems are resolved.

The scope of the Compliance Program includes all BHC staff, employees, volunteers, students, agency staff and trainees (collectively "Personnel") as well as members of the BHC Board of Directors, businesses, contractors, subcontractors, independent contractors, affiliates, entities, vendors, agents, governing body and corporate officers, and all other individuals associated with BHC who support BHC or work to provide services (collectively "Affected Individuals") on to, for, or on behalf of BHC.

The Compliance Program works in conjunction with other lines of business of the hospital such as human resources and quality assurance, as well as, with outside regulatory entities such as OMIG, OIG, the U.S. Department of Health and Human Services Office for Civil Rights ("OCR"), Federal Department of Justice ("DOJ"), New York State Attorney General's Office ("AG") and its Medicaid Fraud Control Unit ("MFCU"), CMS and Office of Mental Hygiene ("OMH"). All applicable law applies, including federal pre-emption.

New York State Social Services Law 363-d recognizes that Compliance Programs should reflect a provider's size, complexity, resources and culture. However, the statute requires that all compliance programs satisfy the mandatory elements set out in 363-d subdivision 2 and 18 NYCRR 521.3(c). The specific required elements of a corporate compliance program have been issued by the health care branches of the Federal government, the Office of Inspector General (OIG), the State government, and the Office of Medicaid Inspector General (OMIG), who are charged with detecting, monitoring and preventing health care fraud and abuse.

The seven required elements include: Written policies, procedures and standards of conduct; Designating a Compliance Officer and a Compliance Committee; Training and education; Effective lines of communication; System for promptly responding to compliance issues; System for routine monitoring and identification of compliance risks; Well-publicized disciplinary standards; and Non-intimidation and non-retaliation.

I. WRITTEN POLICIES, PROCEDURES, & STANDARDS OF CONDUCT

BHC maintains compliance and privacy policies and practice, which are designed to support the Compliance Program and its operations, as well as meeting any regulatory requirements. BHC policies are available to new personnel at orientation, in the employee handbook where applicable, supplied annually where required, and at all times by accessing the BHC intranet page. Personnel/Affected Individuals are urged to seek clarification of any compliance or privacy related policies by contacting the Compliance Officer. Questions and responses are evaluated and if appropriate, shared with other Personnel/Affected Individuals so that policies can be improved to reflect necessary regulatory or operational changes or clarifications. These policies include, but are not limited to:

Code of Conduct

BHC maintains a Code of Conduct which provides a summary of the standards and expectations of conduct for all Personnel/Affected Individuals. The Code of Conduct articulates BHC's commitment to compliance by Personnel/Affected Individuals and summarizes the broad ethical and legal principles under which BHC operates. The Code of Conduct is an essential and required building block of the Compliance Program. A Code of Ethics is also maintained.

Discipline

BHC supports the use of progressive discipline to address issues such as poor work performance or misconduct. Our progressive discipline policy is designed to provide a corrective action process to improve and prevent a recurrence of undesirable behavior and/or performance issues.

Progressive disciplinary procedures are as follows:

Verbal warning: A supervisor verbally counsels an employee about an issue of concern, and a written record of the discussion is placed in the employee's file for future reference.

Written warning I: Written warnings are used for behavior or violations that a supervisor considers serious or in situations when a verbal warning has not change unacceptable behavior. Written warnings are placed in an employee's personnel file.

Written warning II:
Written warning II is used to advise the employee there has been no change in the unacceptable behavior. The employee should recognize the grave nature of written warning II process.

Suspension:
Employee's continued non-compliance of poor work performance has moved the employee to suspension. Employees who are suspended without pay for a specific duration deemed by their supervisor. Any further work performance non-compliance will result in termination.

Termination:
Employees of BHC are employees on at-will basis, and the hospital retains the right to terminate an employee at any time. Any employee whose conduct, actions or performance violates or conflicts with BHC policies may be terminated, but it is the general policy of BHC that the disciplinary process include one verbal warning followed by two written warnings for inappropriate conduct at work preceding dismissal.

Please note that intentional and/or reckless behavior is subject to more severe and significant sanctions.

Union Members should refer to their collective bargaining agreement for additional disciplinary procedures.

Quality Assurance

The OIG may exclude a hospital from participating in Federal health care programs if a hospital provides items or services that fail to meet professionally recognized standards of health care. To achieve quality related goals BHC continually measures its performance against comprehensive standards.

BHC has developed its own quality of care protocols and has implemented mechanisms for evaluating compliance with those protocols. The Compliance Officer regularly assists BHC in establishing methods to improve the efficiency and quality of services provided to those it serves.

Additionally, BHC plays an active part in monitoring the quality of care and medical services provided at the facility by appropriately overseeing the credentialing and peer review processes of the medical staff and other credentialed providers.

Conflicts of Interest

BHC maintains policies and practices to prevent potential conflicts of interest. A conflict of interest is a situation in which a person is involved that may have multiple interests, one or more of which could possibly affect the person's motivation or actions. Personnel/Affected Individuals must refrain from situations creating a conflict of interest. Furthermore, Personnel/Affected Individuals are strictly prohibited from knowingly and willfully soliciting, receiving, offering, or paying remuneration (including a kickback, rebate or bribe) for referrals for services that are paid, in whole or in part, by a Federal health care program.

Privacy & Security

BHC is subject to detailed rules that govern the use and disclosure of individuals' protected health information ("PHI"), personal identifiable information ("PI") and standards for individuals' privacy rights. Information security is everyone's responsibility. Personnel/Affected Individuals are responsible for protecting patient, employee and confidential business information. BHC maintains and monitors security systems, data backup systems and storage capabilities to ensure that information is maintained safely, effectively and securely. The Compliance Department works in collaboration with the General Counsel and Information Security Officer to ensure that policies and practices are in place to protect the confidentiality of information.

Fraud, Waste, & Abuse and DRA False Claims Act

BHC maintains a policy on the relevant federal and state laws in regard to these issues that also lays out examples of prohibited billing and claims submission activity; reporting of prohibited billing and claims submission activities; antiretaliation protections; detecting/preventing fraud, waste and abuse; monitoring and auditing; internal reporting of compliance matters; billing and claim reimbursement; investigations; and Compliance Officer information.

Mandatory Reporting

It is the policy of BHC to fully comply with all Federal, State, and local rules, regulations, mandates as required by the New York Office of Mental Health (OMH), as well as ensure that all employees be educated on the Code of Conduct for working with vulnerable persons and to act as mandated reporters if they witness or suspect an act of abuse or neglect or a significant. The incident management program policy lays out the procedure for reporting.

Anti-Retaliation/Intimidation

Retaliation is prohibited by law and will not be tolerated in the workplace. BHC maintains a policy that all employees should work without fear or without threat of retaliation if they, in good faith (i.e. holding a genuine belief in the truth of one's allegations), and based on a reasonable belief that the improper conduct has occurred, will act promptly to eliminate the conduct and impose corrective actions as necessary, including disciplinary action when appropriate.

Record Retention

The integrity and accuracy of BHC documents and records is of utmost importance. All BHC records must be maintained in accordance with, among other things, any applicable Federal, State or local law, accreditation standards, contracts, and/or CMS requirements as well as BHC's Records Management Program as well as make available any such records to regulatory or enforcement entities (e.g., OIG, MFCU, OMIG, CMS, NICS) upon request. Records shall be retained for a period not less than six (6) years.

II. COMPLIANCE OFFICER AND COMMITTEE

Responsibility of the Compliance Officer

BHC has an "open door" policy with respect to receiving reports of violations or suspected violation of the law or policy and with respect to answering personnel questions regarding compliance with same. BHC provides for an individual, known as the "Compliance Officer", whose primary responsibility is the oversight of the compliance and privacy functions at BHC which include, without limitation, the following:

- Supervising the Compliance Program and coordination of all compliance efforts including periodic audits of the efficacy of this plan;
- Developing and overseeing the implementation/dissemination/effectiveness of compliance policies and procedures;
- Drafting, implementing and updating (annually) policies/procedures, Compliance Work Plan and Compliance Program;
- Assisting in improving efficiency, quality of services and reducing FWA;
- Ensuring that Personnel/Affected Individuals are provided with BHC's Code of Conduct and Compliance Plan and access to any other written compliance and privacy policies and guidelines relevant to performing their function;
- Establishing, maintaining and overseeing a Compliance Committee;
- Developing and implementing an educational training program to ensure understanding of federal and state laws and regulations involving ethical and legal business practices
- Developing and disseminating communication that encourage active participation in the Compliance Program;
- Handling inquiries by employees regarding any aspect of compliance and investigating same;
- Recommending corrective action when necessary;
- Preparing at least annually a report to the Board of Directors and CEO concerning the compliance activities and actions undertaken during the preceding year, the proposed compliance program for the next year, and any recommendations for changes in the Compliance Program
- Ensuring that independent contractors and agents who furnish medical services to the Hospital are aware of the Hospital's Compliance Program including, without limitation, its

policies with respect to the specific areas of documentation, coding, billing, and competitive practices;
- Implementing anonymous and confidential mechanisms for reporting potential noncompliance and the oversight of compliance and privacy related investigations;
- Identifying and assessing areas of operations that present compliance risks, including vulnerabilities to fraud, waste and abuse and overpayments as well as prioritizing resources to mitigate and reduce those risks;
- Reviewing the Compliance Program and plan on an annual basis or as otherwise needed to conform to regulatory and operational changes;
- Regularly reporting to the CEO, or if other duties require, to another designee, and no less than quarterly to the Board of Directors and the Compliance Committee.

Compliance Work Plan

BHC's Compliance Plan ("Compliance Plan" or the "Plan") is an essential piece of the Compliance Program with a purpose and design to provide an outline of how the functions of the Compliance Program and its supporting policies, procedures and operations will be administered and carried out. This Plan will be reviewed, at minimum, on an annual basis. The review process occurs in order to evaluate the effectiveness of the Compliance Plan and Compliance Program, to reflect current practices and changes, to ensure that services are monitored, delivered, and evaluated in accordance with the Compliance Program.

The Compliance Plan is designed to, among other things:

- Establish an administrative framework for conducting an effective and diligent compliance effort including addressing plans to meet the required Federal and State elements of an effective compliance program;
- Create practices and receive feedback regarding adherence to these practices;
- Outline a commitment to educate Personnel/Affected Individuals regarding compliance requirements and how to conduct their job activities in compliance with Federal and State law and according to the policies and procedures of the Compliance Plan;
- Provide an overview of monitoring and auditing functions to measure the effectiveness of the Plan and to address problems in an efficient and timely manner;
- Outline enforcement and discipline components which ensure that all Personnel/Affected Individuals take their compliance responsibilities seriously; and
- Identify BHC's plan to minimize organizational compliance risks.

Risk Assessment

BHC performs an annual risk assessment. The risk assessment process is aimed at identifying, mitigating and preventing potential non-compliance. The annual risk assessment process involves key Personnel from various administrative and clinical departments, units and programs at BHC and is guided with the oversight of the Compliance Committee.

Risks are identified, evaluated, scored and ranked based on as series of potential factors such as legal, regulatory, public accountability and financial risk and culminates in the development of an annual Compliance Plan. The risk assessment process includes the identification of internal risks as well as the evaluation of external risks identified by governmental entities such as OMIG and OIG through their plan processes. Risks common to health care entities such as BHC generally include, without limitation:

- Billing and/or payments for items or services not rendered or not medically necessary;
- Ordered services;
- Governance;
- Mandatory reporting;
- Appropriate professional and provider credentialing;
- Quality of care;
- Medicare and Medicaid recipient fraud;
- Duplicate billing, up-coding, unbundling or other potential false or fraudulent submission of claims;
- Submitting false cost reports;
- Retaining identified overpayments;
- Privacy and security gaps;
- Contractors and;
- Violations of Self-Referral laws.

The Compliance Plan is a fluid process meaning that it is subject to change and is continuous throughout the year. Reviews of items identified in the Compliance Plan are performed under the guidance and direction of the Compliance Department and in many cases involve and require the input and assistance from key Personnel. Plan reviews are conducted with the associated legal, regulatory and compliance standards and requirements as a baseline and often involve a policy, process and financial impact assessment.

When reviews are performed under the Plan, key Personnel are responsible for responding, where appropriate, to the findings and recommendations and, where applicable, assisting in the plans and process for mitigation of identified risks. Mitigation steps may include corrective measures such as changes to policies, processes and future monitoring, ongoing assessment, training and education. Reviews performed under the Compliance Program and the annual risk assessment process are considered confidential, to the extent possible, in nature.

Compliance Committee Charter

BHC has an internal operational Compliance Committee (herein after referred to as the "Committee") which shall be responsible for coordinating with the compliance officer to ensure that the required provider is conducting its business in an ethical and responsible manner. The Committee, which meets quarterly and more frequently as dictated, for, among other things:

- Supporting the Compliance in developing, monitoring and assessing the Compliance Program;
- Coordinating with the Compliance Officer to ensure that the written policies/standards of conduct/training topics are timely completed;
- Providing an avenue of communication among Personnel/Affected Individuals; management and leadership, internal/external compliance functions/audits, and the Board of Directors;
- Periodically analyzing BHC's risk environment by identifying specific risk areas and developing a plan to, among other things, review and mitigate vulnerabilities;
- Assessing, revising and approving existing compliance and where applicable privacy and security policies and procedures to assure compliance with the law, regulations and contracts;
- Assisting key Personnel in designing and coordinating internal and external compliance reviews and monitoring activities;
- Ensuring BHC's Compliance Officer is allocated sufficient funds and resources to be able to fully and effectively carry out their responsibilities;
- Developing and reviewing BHC's compliance training and education initiatives, including review of the annual training plan;
- Reviewing the effectiveness of the system of internal controls, including the Compliance Committee Charter and Compliance Program, designed to ensure compliance with Medicare and Medicaid regulations in daily operations; and
- Analyzing reports and actions taken resulting from internal and external audits or compliance investigations.
- Assessing whether any other duties ascribed to the Officer hinder the ability to carry out/ satisfactorily perform primary responsibilities (annually or whenever the Officer's duties change).

The Committee is composed of Personnel from an array of departments which are considered pertinent to developing, implementing and maintaining the overall compliance goals of BHC. The Committee reports directly to the CEO and Board of Directors. Members for this year include, without limitation:

- Executive administration:
- Chief Compliance Officer (Chair);
- General Counsel;
- Chief Financial Officer;
- Chief Quality Officer; and

- Director of Environmental Security.

Administration level Personnel from the following departments, units or programs can include :

- Information Technology and Services/Security;
- Health Information Management;
- Human Resources;
- Medicine;
- Psychiatry;
- Utilization Review;
- Billing/coding;
- Patient accounts;
- Payroll;
- Strategic Operations;
- External Affairs;
- Admitting;
- Social Work;
- Programming;
- Pharmacy;
- Infection Control and
- Subsidiary corporation or entity administration (as needed).

III. EDUCATION & TRAINING

General compliance training is provided to all new Personnel/Affected Individual during their orientation/initial contractual phase. Personnel receive information on the Compliance Program, reporting mechanisms, privacy and confidentiality including without limitation the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and supporting regulations, as well as, applicable State privacy laws, the Code of Conduct, false claims and fraud, waste and abuse, organizational risk areas, antikickback/anti-referral, disciplinary standards for failure to comply and whistleblower/ non-retaliation or intimidation protections. Ongoing training is provided on an annual basis. Further, general compliance and privacy training is also provided to contractors, vendors and members of the Board of Directors via various means and methods.

Supplemental, remedial or targeted training and educations is performed as well and aims to cover topic or issues that may present a heightened risk of non-compliance, particularly to those directly affected by the statutes, regulations, policies, procedures and program guidelines for Federal health care programs. Details related to compliance training are outlined in a Compliance Training Plan which is developed and will be reviewed annually.

While BHC will make every effort to provide appropriate compliance information to all Personnel/Affected Individuals, and respond to all inquiries, no educational training program, no

matter how comprehensive, can anticipate every situation that may arise in regard to compliance. Responsibility for compliance with this Program, INCLUDING THE DUTY TO SEEK GUIDANCE WHEN IN DOUBT, rests with each Personnel/Affected Individual.

IV. LINES OF COMMUNICATION

Reporting Potential Non-Compliance

Personnel/Affected Individuals have an obligation to report or participate in the investigation of any known or suspected non-compliance. Non-compliance includes, without limitation, the following:

- Known or suspected misconduct, compliance or non-compliance issues;
- Known or suspected violations of employee or patient privacy or confidentiality;
- Known or suspected violations of any applicable law or regulation;
- Known or suspected violations of BHC's policies and procedures, the Code of Conduct or the Compliance Program;
- Related risks under self or external audit, review of investigation;
- Performing or participation in internal or external investigations, reviews and audits;
- Cooperating with or implementing remedial actions in response to noted compliance issues, deficiencies or failures;
- Known or suspected fraud, waste or abuse including actions related to false claims or services which are medically unnecessary and potential overpayments;
- Situations covered under Labor Law §§ 740, 741 which include, without limitation, violations that create and/or present a substantial and specific danger to the public health or safety, or which constitute health care fraud or situations where Personnel/Affected Individuals reasonably believes constitutes improper quality of patient care; and/or
- Situations covered under Labor Law § 218-b which include, without limitation, workplace safety, reporting in good faith potential violations of the Labor Law or seeking intervention related to such, refusing to work in environments where Personnel/Affected Individuals reasonably believe that such work exposes them or others to an unreasonable risk of exposure to disease due to failure to maintain compliance with applicable law or guidelines covering work conditions and disease prevention.

Personnel/Affected Individuals or other individuals or entities may report any suspected non-compliance or other issues outlined in this policy as follows:

- Confidentially by voicemail to the Compliance Officer, Michael Holohan, Esq, at 631-789-7227 (He is the only person with access to this line);
- By visiting the Compliance Department on the 2nd floor;
- By email to mholohan@brunswickhospitalcenter.org;
- By mail at Brunswick Hospital Center, Inc 81 Louden Ave, Amityville, NY 11701. Attn: Compliance Officer Michael Holohan, Esq

All reports to Compliance are kept confidential to the extent practicable. A reporter's identity remains confidential and is only released or revealed on a "need to know" basis if required by law including, without limitation, if the matter is subject to disciplinary proceedings or under investigation by a regulatory or law enforcement agency or as subject to disclosure under a legal proceeding.

V. DISCIPLINARY STANDARDS

Enforcement Actions & Discipline

Personnel/Affected Individuals who violate the Compliance Program or applicable laws, regulations, or program requirements are subject to enforcement actions and discipline. Such actions will be consistent with BHC's progressive discipline policies and collective bargaining. Enforcement of the Compliance Program is applied equally and consistently regardless of title, rank, role or position. Actions include, among other things, re-training, counseling, warning or termination of employment, contract or other affiliation with BHC. Personnel/Affected Individuals who engaged in reckless disregard and purposefully egregious conduct are subject to immediate significant action. Such actions are reviewed on a case by case basis.

Non-Retaliation or Intimidation

As stated above, BHC strictly prohibits intimidation, harassment or retaliation, in any form, against any individual who in good faith participates in the Compliance Program by reporting or participating in the investigation of suspected non-compliance including violations of law, policies and/or suspicions of fraud, waste and abuse.

The Compliance Department is responsible for the oversight of any investigation into allegations of retaliation. Any attempt to intimidate or retaliate against a person who participates in the Compliance Program will result in action up to and including termination of employment, contract, or affiliation with BHC.

VI. AUDITING & MONITORING

BHC actively uses auditing and monitoring processes to assess the effectiveness of its Compliance Program, as well as other BHC processes and systems. Audits and reviews are sometimes conducted by using outside resources such as legal counsel, auditors or other individuals or entities. Audits and reviews may be inclusive in the Compliance Plan or may be performed as otherwise determined by the Compliance Department/Committee, and at a minimum will focus on risk areas identified in 18 NYCRR 521-1.3.

The results of such audits are presented to the Compliance Committee, which assesses the results and recommends any necessary corrective measures. Additionally, reporting of audits and reviews, dependent on the nature or scope, are reported to the Board of Directors.

Additionally, on an annual basis, a review is performed to assess whether the Compliance Program's elements have been satisfied under applicable law or regulation. This is further used to support an external reviews of the Compliance Program.

Contract Management

Business relationships with contractors, vendors, educational institutions and physicians, including employment and contracting have their own individual and specific associated risks. Particularly, financial relationships between BHC and these individuals or entities needs to be thoroughly reviewed with a heightened awareness for additional risks.

Accordingly, BHC has adopted, at a minimum, specific processes, which address the following aspects of conducting business:

- Initial review of all proposed contracts prior to execution;
- Development of standardized contractual templates (where applicable);
- Periodic review of all contracts and leases with physicians to ensure that all conditions supporting the exceptions are being satisfied;
- Making and documenting reasonable, consistent and objective determinations of fair market value;
- With respect to contracts or agreements that relate to potential risks identified at BHC, include obligations to adhere to and termination of such contract or agreement for violations of BHC's Code of Conduct/Compliance Program;
- Monitoring the total value of monetary and non-monetary compensation provided under any contract; and
- Tracking expiration and/or renewal dates and terms in a formal methodical manner.

Exclusions & Sanction Monitoring

BHC maintains a system for performance of an initial and monthly screening of Personnel, members of the Board of Directors and, where applicable, vendors, as required by applicable law, guidance or industry best practice. Initial Screening will be performed prior to establishing employment, affiliation or a contractual relationship with Personnel, Board members or vendors and will continue on a periodic basis which, in most cases, meets or exceeds any requirements and industry best practices. BHC prohibits the employment, contract or other affiliation of or with individuals or entities that are excluded from participation in any Federal health care program.

VII. RESPONDING TO COMPLIANCE ISSUES

All queries, reports, problems, issues or concerns, complaints, and requests for guidance (collectively "Reports") received, referred to or otherwise obtained by the Compliance Department, at the discretion of the Compliance Department, shall be investigated, reviewed, referred to the appropriate department or otherwise appropriately responded to. The Compliance Department, exercising sound judgment on a case-by-case basis, shall have absolute discretion as to whether a Report concerning any potential non-compliance warrants an investigation or review. An initial assessment is made to determine the severity of any Report and the need to involve other departments, Personnel/Affected Individuals or outside resources.

Unless otherwise mandated by applicable Federal or State law, all investigations conducted under the Compliance Program shall be conducted in a confidential manner with due diligence to determine whether there is credible evidence that an issue exists. Personnel/Affected Individuals, as applicable, have an affirmative obligation to participate in a review or investigation conducted under the Compliance Program. The Compliance Department and others performing investigations or reviews have an obligation to protect the integrity of such. The Compliance Department reserves the right to engage the services of outside legal counsel independently and unilaterally when deemed warranted or necessary.

If the investigation or review indicates that actual or potential non-compliance has occurred, the Compliance Department will respond accordingly. Responses include, without limitation:

- Prompt identification, resolution and return of any overpayments via processes identified under the law including via Self-Disclosure Protocols;
- Notification to the appropriate government agency or law enforcement entity;
- Revision of current policies and procedures or process modification(s);
- System modification
- Training, education or remedial education; or
- Referral of disciplinary action which includes termination of employment, contract or other affiliation with BHC.

ADDENDUM A

TABLE OF ORGANIZATION 2023

ADDENDUM B

OVERVIEW OF APPLICABLE LAWS & CODES

I. REFERENCES

1) 18 NYCRR 521-1; 521-2; 521-3
2) NYS Social Services Law 145-b, 363-d
3) 18 NYCRR 504.1; 505.5; 515; 516; 519
4) NYS Education Law § 6810
5) 10 NYCRR 85.34
6) 10 NYCRR 752.11

II. FEDERAL LAWS

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

III. 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;

(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), (0), (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.-lf 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 theviolation, 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.

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

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

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

- has actual knowledge of the information;
- acts in deliberate ignorance of the truth or falsity of the information; or
- 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, granter-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.

(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 relaters," 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 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.

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.

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.
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.
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.