Glen Island Center for Nursing and Rehabilitation Center

COMPLIANCE PLAN

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Revised November, 2014
MEMORANDUM

TO: Glen Island Center for Nursing and Rehabilitation Center ("GICNR") Employees and Others Associated with the Company

FROM: Leah Freidman, President, Owner/Operator

DATE: December 1, 2014

SUBJECT: Compliance Program

Glen Island Center for Nursing and Rehabilitation Center ("GICNR") is subject to complex federal and state laws and regulations. We are committed to full compliance with all applicable laws and regulations at all times. To help us attain this goal, and to continually maintain the highest ethical and legal standards of conduct, our company has adopted this Compliance Program ("the Plan"). The purpose of the Plan is to ensure that our organization and each individual associated with it fully comply at all times with these laws and regulations.

Our Plan defines the standards of conduct in a Code of Conduct that apply to all members, employees, independent contractors and agents of our organization. These policies and procedures will aid you in understanding what conduct is acceptable and what conduct is unacceptable. All employees, contractors and other individuals that provide services on behalf of or in conjunction with our organization will receive the Code of Conduct, which defines the basic mission of the Plan and contains the fundamental principles that serve to guide all individuals business on behalf of our organization.

The Plan also serves as a mechanism to identify possible violations of the Plan or any applicable laws and regulations before they become a problem. Therefore, the Plan includes periodic review of our internal policies and procedures. Each individual must understand and appreciate his or her individual responsibility in this process. To manage the overall administration of the Plan, we have appointed a Compliance Officer and a Compliance Committee. The Compliance Committee which will include the Administrator, Compliance Officer, Director of Financial Services, Director of Nursing, MDS Coordinator, Director of Rehabilitative Services, Purchasing Coordinator, Admissions Coordinator and Director of Quality Assurance and any other individuals, such as Medicare/Medicaid Specialist, Personnel Clerk, General Counsel, deemed appropriate by the

1 The Plan supersedes all prior plans.
committee. The success of the Plan depends on the individual efforts of each person associated with our organization. Thus, individuals who have a good faith belief that someone in our organization or someone doing business with our organization is in violation of the Plan or any law or regulation are required to report such information to the Compliance Officer. Individuals associated with the organization may bring forth any information or questions without fear of retribution or retaliation and with anonymity. Individuals will not face any penalties or other forms of retribution, retaliation or intimidation when they make a good faith report to the Compliance Officer.

Because laws and regulations change as the health care industry evolves, compliance with these rules must be viewed as an on-going effort. The Plan will be updated and modified as needed. You will be receiving training on a periodic basis. Finally, each individual associated with our organization is invited to discuss the Plan with his or her supervisor and/or the Compliance Officer. In this way, our organization and those associated with it will work together to provide high quality services in accordance with the highest ethical and legal standards. We are firmly dedicated in this effort to implement a Compliance Plan that is effective. We require each individual associated with our organization to be similarly dedicated.
Introduction

GICNR has established this compliance plan and policies and procedures (the “Plan”) to ensure that it complies with various legal requirements applicable to health care providers, including, but not limited to, the Federal Medicare and Medicaid anti-kickback statute (the “Anti-Kickback Statute”), the Federal and New York State false claims laws (the “False Claims Acts”) and certain regulations of the Medicaid program. This Plan is adopted by GICNR and it shall comply with all aspects of this Plan. Compliance with these complex legal requirements is extremely important because the failure to abide by these laws and regulations can lead to civil and/or criminal violations, serious financial consequences such as significant fines and penalties, and/or criminal sanctions for individuals and organizations.

The compliance efforts of GICNR are designed to establish a culture within the organization that promotes prevention, detection and resolution of instances of conduct that do not conform to Federal and State laws, Federal, State and private payor health care program requirements, and our organization’s ethical and business policies.

As colleagues in health care and representatives of GICNR, it is the obligation of us all that we follow basic, fundamental principles of ethical and business conduct. In today's dynamic world of health care, we must help each other to comply with applicable laws and regulations, our own internal policies and procedures, as good business practices.

We are committed to conducting all of our business in compliance with ethical standards and applicable laws, rules and regulations. The Standards of Conduct and the Compliance Plan do not represent any change from the organization's prior or current practices, but, rather, is a statement to guide all employees, contractors and other representatives of our organization.

The Compliance Plan is not intended to be a comprehensive explanation of all applicable legal and ethical principles applying to our organization, nor will it provide answers to every possible issue that may arise under these legal and ethical principles. It is intended to sensitize our organization and its representatives to potential problems that may arise under these legal and ethical principles so that advice can be sought should such an issue arise. We expect full compliance with the guidelines set forth in this Plan, and encourage our employees, contractors and other representatives to seek any further information or clarification necessary prior to engaging in any potentially risky or inappropriate actions or activities.

This Compliance Plan is intended to apply to all of the organization’s activities. It is applicable to any affiliated providers, employees, management, contractors and governing body members. If any individual has any question about the application of this Compliance Plan, he or she should contact the Compliance Officer or any member of the Compliance Committee.
This Compliance Policy and Plan is divided into three main sections:

1. An overview of certain applicable statutes, laws and regulations;
2. A Code of Conduct; and
3. The organization’s Compliance plan, policies and procedures.

All persons associated with GICNR must read all three sections of the document and make every effort to understand what standards of behavior are expected by the organization.
Summary of Certain Laws and Regulations Applicable to GICNR

The Anti-Kickback Statute

The Federal "Anti-Kickback" Statute makes it a crime, punishable by monetary fines and/or imprisonment, to knowingly and willfully offer, pay, solicit or receive a payment of any kind (i.e., cash, services, gifts, entertainment, favors, etc.) to anyone to induce patient referrals or in return for patient referrals of Medicare or Medicaid patients. These laws have been construed very broadly, and cover many "ordinary" business activities that are common practice in the non-health care arena. Examples of practices that could be covered by the "Anti-Kickback" Statute include: (i) routinely waiving patient deductibles or co-payments; (ii) offering or furnishing physicians or other providers with free equipment or services; and (iii) offering goods or services at below market value for the purpose of inducing patient referrals. Arrangements that satisfy all of the requirements of the regulatory "safe harbors" are immune from sanctions. Arrangements that do not meet the requirements of the regulatory safe harbors are not necessarily illegal but may be subject to heavy scrutiny. There are also New York State laws which correspond to these Federal laws. If you have any questions regarding the application of these laws, you should contact the Compliance Officer.

The False Claims Acts

The Federal criminal False Claims Act makes it illegal to submit or present a false, fictitious or fraudulent claim to the Federal government. Violations can result in imprisonment, exclusion from the Medicare program and/or a fine. The Federal civil False Claims Act authorizes the use of civil penalties plus three times the amount of damages the government sustains, where a person knowingly presents, or causes to be presented, a false or fraudulent claim; knowingly makes, uses or causes to be made or used, a false record or statement to get a false or fraudulent claim paid; or conspires to defraud the government in connection with the payment of a false or fraudulent claim. Penalties can be reduced where a person reports and cooperates with any government review that follows. Ignoring a potential violation of law can lead to liability. Under the False Claims Act, there are opportunities for the government and private persons to bring actions against health care providers for violation of these rules.

The New York State False Claims Act mirrors many of the provisions of the Federal False Claims Act. The State law authorizes the use of civil penalties plus three times the amount of damages the State or local government sustains related to false claim violations. Similar to the Federal False Claims Act, penalties can be reduced where a person reports and cooperates with any government review that follows the reporting and there are opportunities for the government and private persons to bring actions against health care providers for violation of these rules.
GICNR will pay particular attention to whether inappropriate activities are taking place that may violate the False Claims Act, including those items listed as risk areas later in this Plan. As this list is not exhaustive, GICNR should be made aware of any activity in which an individual or entity may be filing claims that it knows to be false or fraudulent, regardless of the identity of the payor, governmental, private or otherwise.

Similar information and information regarding the Compliance Program will be provided in an employee handbook of GICNR and the appropriate certification will be provided to the New York State Office of the Medicaid Inspector General.

This summary of the laws related to false claims is not meant to be exhaustive. Attached hereto as Appendix B and incorporated into this Plan, is a summary of these laws prepared by the New York State Office of the Medicaid Inspector General for your information.
Code of Conduct

Standards of Conduct for Employees and Others Associated with the Organization

All employees, contractors, members of governing board, officers and other individuals associated with the organization shall perform their duties in good faith and to the best of their ability and refrain from any illegal conduct.

No employee, contractor, member of the governing board, officer or other person associated with the organization shall obtain any improper personal benefit by virtue of his or her relationship with the organization. No employee or other individual associated with the organization may engage in any conduct that conflicts—or is perceived to conflict—with the best interests of the organization. Further, individuals associated with the organization must actively avoid placing themselves in situations that could be viewed by others as compromising the individual’s best judgment.

When the organization decides to enter into an agreement or arrangement with another healthcare entity or practitioner to provide services, that decision must be free of any improper influence. Thus, if you or any immediate family member is already an employee, consultant, owner, contractor or even a passive investor of an entity that: (i) engages in any business or maintains any relationship with the organization, (ii) provides to, or receives from, the organization any patient referrals, or (iii) competes with the organization, you must complete an “Conflict of Interest Disclosure Form” and submit it to the Compliance Officer. In this way, the organization can be assured that our business relationships are free from improper influences.

Employees may not accept gifts from patients, vendors or others associated with the organization without first receiving explicit authorization from the Compliance Officer. Further, you may not offer anything of value to an entity doing business with the organization or to someone who is a source of referrals for the organization without first receiving explicit authorization for such an offer from the Compliance Officer. This policy ensures that your activities will be at “arms’ length” and free from outside influence. Contracts entered into by GICNR shall be at fair market value. No agreement shall be entered into without the approval of the Chief Executive Officer.

Any waiver of deductibles or copayments must be reported to and approved by the organization’s Compliance Officer. Routine waivers of deductibles and/or copayments will not be permitted.

Employees and others involved in billing claims cannot bill for any amount other than in accord with the organization’s usual and customary fee for the particular service being provided and according to the organization’s policies and procedures or contracts with payors, as applicable. All communications with outside persons regarding services or billings and all information received related to billing should be clearly and comprehensively recorded in the appropriate files.
Claims are only to be submitted for services that are properly ordered as medically necessary. If an individual associated with the organization becomes aware of or discovers any claims that are false or are for services that are not properly ordered as medically necessary, this information must be reported to the Compliance Officer.

Employees, contractors, members, officers and other individuals associated with the organization will not use confidential or proprietary information for their own personal benefit or for the benefit of any other person or entity, while working for or with the organization, or at any time thereafter.
Compliance Program

A. The Compliance Officer and Compliance Committee

The Compliance Officer and Compliance Committee will oversee the Compliance Program. The Compliance Officer will be responsible for:

1. Developing compliance policies and procedures;
2. Overseeing and monitoring the organization’s compliance activities;
3. Overseeing internal and external audits of the organization’s records;
4. Ensuring that policies and procedures are kept current and followed by all employees and other persons affiliated with the organization;
5. Distributing policies and procedures that are understandable to all those affected thereby;
6. Appointing employees and others associated with the organization to serve in various roles and to complete tasks as needed to promote the Compliance Program;
7. Ensuring that training is provided to employees, contractors, Members and others affiliated with the organization;
8. Reviewing agreements to ensure compliance with laws and regulations with consultation of counsel as needed;
9. Working with senior management of the organization to ensure that appropriate discipline is taken in the event a person violates the Compliance Plan;
10. Investigating complaints related to the Compliance Plan and recommending a plan of action, which may include, but is not limited to, corrective action, new or revised policies and procedures, training or re-training, sanctioning/termination of individuals associated with the organization, repayment of payments for services, self-disclosure (after discussion with compliance counsel) and/or other appropriate actions;
11. Ensuring appropriate certifications are provided to the Office of the Medicaid Inspector General related to this Compliance Program (such certification(s) to be signed by the president of GICNR); and
12. Providing reports to president of GICNR at least quarterly regarding the activities of the Compliance Program.

The Compliance Committee’s functions shall include:

1. Analyzing the organization’s industry environment, the legal requirements with which it must comply, and specific risk areas;
2. Assessing existing policies and procedures that address these areas for possible incorporation into the Compliance Program;
3. Working with appropriate staff to develop standards of conduct and policies and procedures to promote compliance with the organization’s program; 
4. Recommending and monitoring, in conjunction with relevant personnel, the development of internal systems and controls to carry out the organization’s standards, policies and procedures as part of its daily operations; 
5. Determining the appropriate strategy/approach to promote compliance with the Plan and detection of any potential violations, such as through hotlines and other fraud reporting mechanisms; and 
6. Developing a system to solicit, evaluate and respond to complaints and problems.

The Compliance Officer shall be appointed by the President and the Compliance Committee which will include the Administrator, Compliance Officer, Director of Financial Services, Director of Nursing, MDS Coordinator, Director of Rehabilitative Services, Purchasing Coordinator, Admissions Coordinator and Director of Quality Assurance and any other individuals, such as Medicare/Medicaid Specialist, Personnel Clerk, General Counsel, deemed appropriate by the committee, report at least quarterly to the President. The Compliance Officer shall have direct access to any member in the organization and compliance counsel.

B. Written Policies and Procedures

The Compliance Officer will ensure the distribution of these written policies and procedures regarding the Compliance Program and addressing mechanisms to address specific areas of potential violations, such as violations of billing regulations and standards, as set forth more fully below. The Compliance Officer will ensure that these written policies and procedures are updated when the law, regulations, or standards change or when events in our organization warrant a revision to the Compliance Plan and related policies and procedures.

C. Education and Training Programs

There will be periodic Compliance Program training provided to all employees, contractors, Members and agents designed to:

1. Teach individuals associated with the organization the policies and procedures in place to ensure compliance with legal and ethical principles;
2. Emphasize the organization’s commitment to compliance with all laws, regulations and guidelines of Federal and State health care programs; and
3. Reinforce the fact that strict compliance with the law and the organization’s policies and procedures is a condition of employment or other association with the organization.

Individuals associated with the organization will be informed that failure to comply may result in

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disciplinary action, up to and including termination.

Each employee, contractor, agent and Member will be required to participate in an initial training session. Insofar as possible, persons associating with the organization after this period will participate in training sessions within 30 to 60 days following their association dates. Every associated person will also receive ongoing training, as needed from time-to-time, but at least once a year, to review the organization’s Compliance Plan, new laws and regulations and any revised organization practices. Strict adherence to the policies of the Compliance Plan is an important basis on which an individual’s performance is evaluated. Further, supervisors and managers are instructed to include adherence to the Compliance Plan as a basis on which to evaluate an individual’s performance.

The organization’s Compliance Officer is responsible for organizing the training sessions, and recording attendance. The organization will generally provide individuals two weeks advance notice of scheduled training sessions. Individuals will be asked to sign an acknowledgement form at the end of a training session stating that they understand the Compliance Plan, and any updates provided.

Training programs for existing and new employees, contractors, agents, executives and Members include the following elements:

a) Training will be conducted by the Compliance Officer with the assistance of the organization’s legal counsel and/or outside consultants as needed.
b) Periodic in-service training for existing associated individuals will occur at least annually.
c) If and/or when a problem has been identified within the organization, the Compliance Officer will inform and train associated individuals as soon as possible to avoid additional issues from arising.
d) The Compliance Plan is contained in a new employee orientation packet and is also provided to contractors, agents and Members.

Training programs include:

a) Overview of the False Claims Acts, Anti-Kickback law, and payor requirements.
b) Overview of Compliance Program and an individual’s obligation to participate in the Program.
c) Education on specific elements of each individual’s job. Particular attention is paid to training personnel in the billing area and personnel in any area affecting claims processing and submission.
d) Education regarding proper documentation requirements.
e) Education as to Medicaid regulations that apply to each job function.
f) The consequences of failure to comply with the Compliance Plan, i.e. discipline, termination, personal liability.
g) Individual’s obligation to report and the ability to report directly to the Compliance Officer.
h) Adherence to the Compliance Plan as a condition of association with the organization and a measure of performance.
i) Responsibilities of supervisors/managers to detect and report.
j) Forms individuals must sign, including:
   (1) attendance sheet;
   (2) individual promises to report if problems/issues arise in connection with the Compliance Plan;
   (3) individual understands Compliance Plan and has had the opportunity to ask questions where uncertain; and
   (4) receipt of applicable policies and procedures.

D. Auditing and Monitoring

The Compliance Officer shall monitor the implementation of the Compliance Plan and report regularly to the President. Audits will be designed to ensure compliance with GICNR’s Compliance Plan and related policies and procedures, and all relevant Federal and New York State laws. Internal audits will occur periodically. External audits will be performed if warranted. Auditing and monitoring may include:

1. Interviews with personnel;
2. Review of materials and documentation provided and used by the organization; and/or

Any corrective actions necessary will be made and follow-up will be conducted to ensure the corrective measures were implemented and the situation was remedied. Audit reports shall be made available to the Compliance Officer, Compliance Committee, and President, as requested.

E. Disciplinary Action

Strict compliance with these policies, procedures and requirements is a condition of employment or other association with the organization. The organization will take appropriate disciplinary action for misconduct, violating this Compliance Plan or violating the Federal or New York State laws and regulations that apply to the organization.

Individuals found to have participated, encouraged, directed, facilitated or permitted
violations of federal or state laws, the Compliance Plan itself or any policy will be subject to
discipline. The severity of the discipline will be based on the gravity of the infraction and can range
from verbal warnings to termination of the person’s association with our organization.

F. Investigation

The Compliance Officer will promptly investigate any potential violations or misconduct to
determine whether a material violation of this Plan has occurred. When investigating a report of
possible improper conduct, we will keep the report confidential and maintain the anonymity of the
reporting individual. When credible reports are received, the Compliance Officer, with assistance
from legal counsel as needed, will conduct a fair and thorough investigation and will take appropriate
corrective action. If a violation has occurred, the Compliance Officer in consultation with the
President and outside legal counsel will determine what steps must be taken to rectify the problem,
which may include repayment of claims to the appropriate payor, notification of regulatory and/or
prosecutorial authorities, self-disclosure, discipline, training or retraining, or the revision of the
Compliance Plan or creation of additional policies and procedures. Time requirements regarding
repayments or self-disclosures will be followed.

If the integrity of the investigation may be negatively impacted because of the presence of
employees or other individuals under investigation, the employees or other individuals allegedly
involved in the misconduct can be removed from his or her current work activity or position in the
organization until the investigation is completed. In addition, the Compliance Officer will take steps
to prevent the destruction of documents or other evidence relevant to the investigation. Once an
investigation is completed, if disciplinary action is warranted, it will be immediate, where
appropriate.

G. Communication and Reporting of Compliance Plan Violations

Individuals associated with the organization must report all violations of the organization’s
Compliance Plan, the policies and procedures of the organization and Federal or New York State
laws and regulations applicable to the organization. Individuals associated with the organization are
encouraged to ask about any questionable or confusing issues. Individuals associated with the
organization may bring forth any information or questions without fear of retribution or retaliation
and with anonymity. Individuals will not face any penalties or other forms of retribution, retaliation
or intimidation when they make a good faith report to the Compliance Officer. Any matters reported
to the Compliance Officer that suggest a violation of the Compliance Plan, the policies and
procedures of the organization or other legal requirements will be investigated promptly.

Any failure to report suspected illegal or improper conduct is a violation of the Compliance
Plan and may subject the individual to discipline. Similarly, a manager or supervisor who receives a
report from an individual is required to submit a report to the Compliance Officer. If there is any question about whether an individual should report possibly improper conduct, it is our organization's policy that a report should be made, either directly to a supervisor or to the Compliance Officer. Managers and supervisors may be disciplined if they fail to detect violations of the Compliance Plan where a reasonable effort would have uncovered the improper conduct.

To report, employees and other individuals should contact their immediate supervisor or the Compliance Officer. You may contact the Compliance Officer directly or call our anonymous hotline at 914-740-1447 or our internal extension #415.

No retaliation or adverse action will be taken against an individual as a result of submitting a good faith report of suspected irregular activities. Any individual who is found to have harassed or to have taken any adverse action against an individual, who submitted a report, participated in an investigation or assisted with remedial action may be subject to discipline, including immediate discharge. However, an individual who submits a report that lacks a good faith basis for the sole purpose of hurting an associated individual may be subject to discipline.

H. Supervisors and Managers

Supervisors and Managers will be responsible for:

1. Discussing with all supervised employees and others associated with the organization the compliance policies and procedures and legal requirements applicable to their functions within the organization;
2. Informing all supervised personnel that strict compliance with these policies, procedures and requirements is a condition of employment or other association with the organization and a measure of performance;
3. Disclosing to all supervised personnel that the organization will take disciplinary action up to and including termination for violation of these policies, procedures or requirements; and
4. Disclosing information received from individuals regarding compliance issues to the Compliance Officer.

I. Non-Employment or Non-Retention of Sanctioned Individuals/Credentialing

Individuals who have been convicted of a criminal offense related to health care or who are listed by a Federal agency as debarred, excluded or otherwise ineligible for participation in any federally funded health care program will not be employed or have another relationship with the organization. In addition, individuals who are excluded from participation in the New York State Medicaid program will not be employed or have another relationship with the organization.

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Current employees or others currently associated with the organization who are charged with criminal offenses related to health care or proposed for exclusion or debarment from a federally or state funded health care program should be removed from direct responsibility for or involvement in any federally or state funded health care program until resolution of such criminal charges or proposed debarment or exclusion. If the resolution results in conviction, debarment or exclusion of the individual, the organization will terminate its employment of or other association with that individual.

It is the organization’s policy to inquire into the background of applicants, or any health care entity that it learns has employed that applicant, with respect to matters relating to any current or prior disciplinary action, investigation, audit or review relating to the provision of health care goods or services, or any claim for reimbursement.

Individuals who hire or engage staff will be instructed to ask questions about investigations, audits, inquiries, and actions by Federal, State or local government agencies as well as private third-party payors. In the event an applicant or current/former employer has been or is being subjected to any governmental or third party payor review, the human resources employee or other appropriate individual will seek full disclosure of such review and, more particularly, the applicant’s involvement in such activity. That inquiry will call for information on the following: (i) the nature of the review; (ii) the conduct that was under scrutiny; (iii) the applicant’s job title/responsibilities at the prior/current employer; and (iv) the applicant’s relationship, if any, to the conduct that was scrutinized. If an applicant or a current/former employer of the applicant is or was involved in any conduct that was challenged or questioned, the human resources employee or other appropriate individual will consult with the organization’s Compliance Officer and/or legal counsel prior to making any offer of association. The Compliance Officer and/or legal counsel may suggest obtaining additional information from the applicant before the organization considers him/her for the position.

The following organizations will be queried with respect to potential employees, independent contractors, agents and Members:

a) General Services Administration: list of parties excluded from Federal programs. The URL address is https://www.epis.gov/epis/search.do.

b) HHS/OIG cumulative sanction report. The URL address is http://exclusions.oig.hhs.gov/.

c) NYS Medicaid Fraud Database. The URL address is http://www.omig.state.ny.us/data/component/option.com_physiciandirectory/.
c) Licensure and disciplinary record with NYS State Department of Education, Office of Professional Discipline (Nurses and other licensed professionals) (the URL address is http://www.op.nysed.gov/opd/research.htm#name) and the NYS Office of Professional Medical Conduct (Physicians, Physician Assistants) (the URL address is http://w3.health.state.ny.us/opmc/factions.nsf?physiciansearch?openform).

All staff will have the appropriate credentials and training to perform services. Appropriate and thorough background checks and credentialing will occur. References will be checked prior to employment or other association with the organization.

J. Record Creation and Retention

One of the primary purposes of maintaining and retaining records is to demonstrate that the organization provides medically appropriate services to its patients. Further, appropriate and complete documentation provides the basis on which reimbursement is sought from third party payors. Maintaining appropriate documentation is vital to the continued success of the organization. Thus, all employees, contractors and agents of the organization have an obligation to maintain accurate and complete records.

It is the policy of the organization to comply with at least the minimum standard required by Federal and State laws and regulations. Employees, contractors and agents are also expected to maintain complete, accurate and contemporaneous records as required by the organization and payors. The term “records” includes all documents, both written and electronic, that relate to the provision of services or that provide support for billing services to all payors. Records must reflect the actual service provided.

All records required either by Federal or State law or by this Compliance Plan will be appropriately created and maintained. Records should never be altered without permission of the Compliance Officer. In the case of a necessary alteration, the alteration should be signed and dated by the staff member altering the document. Signatures should always be accompanied by the date that the signature was made. Dates in all cases should include the month, date and year. Documents must never be backdated or predated. Signature stamps shall not be used. Under no circumstances shall any person sign the name of another individual.

Because the organization provides services under State and Federal health care programs, State or Federal government agencies may from time to time seek access to the organization’s records. If an employee, contractor or agent is requested to supply any records or documentation to individuals or entities outside of the organization, the employee, contractor or agent should immediately contact his or her supervisor and the Compliance Officer and/or President prior to
taking any action.

The organization is dedicated to protecting the privacy and confidentiality of all records relating to the organization’s patients and personnel. Employees and others associated with the organization should assume that all information relating to the provision of services and to billing is considered confidential. For example, information that the organization considers confidential includes any and all records pertaining to patients, financial information, all personnel information, patient lists, and any other information that is not generally disseminated to the public. This list is not exhaustive, and, therefore, if any question arises regarding the potential confidentiality of any information, individuals are instructed to seek guidance from the Compliance Officer. In particular, employees and others associated with the organization are directed to refrain from discussing any patient names or details pertaining to services provided to any patients with any person outside of the organization, unless expressly authorized by the Compliance Officer.

K. Marketing

All marketing done on behalf of the organization should be honest, straightforward, fully informative and non-deceptive. Those associated with the organization should fully understand the services offered by the organization. No remuneration will be given in order to induce a physician or other provider to refer to the organization. All marketing and promotional practices must be pre-approved by the CEO, who will, with consultation with counsel as needed, ensure that they do not violate any Federal, State or other law or regulation. No discount shall be offered without approval of the President, who shall consult counsel as necessary. The structure of any marketing arrangement between the company and an individual or company will be reviewed by the President and counsel as necessary for appropriateness.

L. Billing

GICNR is committed to prompt, complete and accurate billing of all services provided to patients. Billing shall be made for services provided, adhering to all terms and conditions specified by the government or private payor and consistent with industry practice. No false or misleading entries shall be made or submitted on any bills or claim forms, and no individual associated with the organization shall engage in any arrangement, or participate in such an arrangement at the direction of another individual associated with the organization (including any officer or supervisor of the organization) that results in such prohibited acts. Any false statement on any bill shall subject the individual to disciplinary action by the organization, including possible termination of the individual’s relationship with the organization. The organization is committed to billings which are accurate, reliable, timely and valid.

False claims and billing fraud may take a variety of forms, including, but not limited to, false statements supporting claims for payments, misrepresentations of material facts, concealment of material facts, or theft of benefits or payments from the party who is entitled to receive it. Risk areas
are described more thoroughly later in this Plan. If there is any question as to appropriate billing, the Compliance Officer should be consulted.

M. Government Inquiries

It is our organization’s policy to cooperate with and properly respond to all government inquiries and investigations. Any individual who receives a search warrant, subpoena, or other demand or request for investigation or documentation, or is approached by a federal or state regulatory or prosecutorial agency, should attempt to identify the investigator, if any, and immediately notify their supervisor, the Compliance Officer and the President. The Compliance Officer, in consultation, as necessary, with legal counsel, will coordinate any response to warrants, subpoenas, inquiries and investigations by regulatory and prosecutorial agencies. The response to any warrant, subpoena, investigation or inquiry must be complete and accurate. No individual associated with the organization shall alter, delete or revise any material from any computer, word processor, disk or tape, nor shall any person revise, destroy or alter any written documentation once such inquiry has been commenced. If a document is required to be retained, it must be preserved in its original form.

N. Risk Areas

1. Provision of free or below fair market value services to referral sources.
2. The failure to complete appropriate documentation – contemporaneous records of the Medicaid beneficiary’s name and CIN, treatment notes, X-rays, laboratory prescriptions and laboratory invoices should be made part of the patient’s treatment record.
3. Failure to maintain records required for Medicaid for six years following the date of payment or for the amount of time required by other payers.
4. Inducements or payments to beneficiaries in violation of relevant guidances.
5. Charging patients any fee beyond the Medicaid fee. Medicaid payment is considered payment in full. Except for beneficiaries with a “spend down,” beneficiaries cannot be charged beyond the Medicaid Fee. Deposits, down-payments or advanced payments are not allowed.
6. Medical necessity of procedures.
7. Excessive services.
8. Billing for non-covered services.
9. Billing for services to be provided in the future.
10. Providing services without a proper prior authorization.
11. Failure to check Medicaid or other payer eligibility, as required.
12. Failure to submit bills within 90 days or other timeframe required.
13. Not trying to collect a fee for services that is listed from individuals who are not enrolled in the Medicaid program.
14. Providing services while not in compliance with applicable licensure requirements.
15. Billing for services not provided.
16. Employing or contracting with those excluded from the Medicare and/or Medicaid programs.
17. Failing to disclose changes in ownership and control as required by the Medicaid regulations.
18. Submitting false claims or statements.
19. Illegally discriminating in the furnishing of services based upon the patient’s race, color, national origin, religion, sex, age or handicapping condition.
20. Failing to ensure compliance with standards when an outside entity is hired to perform billing functions.
21. Failing to seek payment from a primary insurance carrier, if available, prior to billing Medicaid.
22. Failing to file any required certification related to this Compliance Plan, as set forth on the Office of the Medicaid Inspector General’s website.
23. Failure to refund credit balances.
24. Excluded ordering or servicing person.
26. Servicing individual not appropriately credentialed to provide services.
27. Billing system error.
28. Billing for items or services not actually documented.
29. Unbundling and upcoding of claims.
30. Computer software programs that encourage billing personnel to enter data in fields indicating services were rendered though not actually performed or documented.
31. Knowing misuse of provider identification numbers which results in improper billing in violation of rules governing reassignment of benefits;
32. Billing company incentives that violate the anti-kickback statute.
33. Percentage billing arrangements.
34. Failing to have radiographs that are appropriate and of good diagnostic quality.
35. Not having an up-to-date, accurate, full-mouth chart which correlates with radiographs and treatment plans.
36. Billing for something unusual or more frequently than the norm, without an explanation or documentation.

O. Modification of this Compliance Plan

GICNR shall modify this Compliance Plan as necessary to comply with changes in relevant laws and regulations.
regulations or to enhance the Plan given changes in the operations or structure of the organization.
I hereby acknowledge receipt of the GICNR Compliance Plan. I have read the Plan and understand its contents. I promise to abide by the principles and directives contained within.

______________________________  __________________
Signature                        Date
Appendix A

GICNR
CONFLICT OF INTEREST POLICY

OBJECTIVES:

The objective of this policy is to ensure that the Administration and Staff of GICNR are able to govern and serve the best interests of GICC by exercising their best care, skill and honest judgment on its behalf and are not prevented from doing so solely because of a possible conflict of interest on their part. Additionally, the objective of this policy is to ensure that actual and potential conflicts of interests that may exist between GICNR, its Administration and staff are fully disclosed, examined and resolved.

The objectives are to be promoted by:

1. *Full Disclosure* by all Representatives (operators, employees, consultants and vendors, hereafter referred to as 'Representatives') of all personal and outside interests that may affect or be affected by GICNR's operations or by decisions that a Representative makes on GINR's behalf.

2. *Establishment of guidelines and procedures* for determining when a conflict of interest exists and of principles and procedures for addressing them.

Each actual or potential conflict of interest that is disclosed must be carefully examined and appropriate measures must be put into place to maintain the balance between ensuring fair and honest deliberations and encouraging participation of qualified Representatives in the operations of GICNR.

POLICY:

1. **Avoiding Conflicts of Interest.** It is the responsibility and duty of each representative to avoid any perceived or actual conflict of interest in dealing with suppliers, customers and all other entities on behalf of GICNR. No Representative may use his position with GICNR, or any information, confidential or proprietary to GICNR, to their personal advantage or in a manner that creates a conflict of interest or the appearance of a conflict of interest.

2. **Conflict of Interest Disclosures:**

   - *Duty to Disclose.* Each Representative must disclose the existence and nature of any personal and outside interest that may affect or be affected by GICNR's operations or
by a decision that a Representative makes on GICNR's behalf. *KEY Representatives* as defined below that have one or more of the following responsibilities to GICNR must complete and return the Conflict of Interest Disclosure Form to the Compliance Officer:

1. All Representatives with Supervisory and/or decision making authority.

2. Representatives with oversight responsibilities such as Operators, Administrator, Finance Director)

3. Representatives with procurement and purchasing responsibilities.

4. Representatives with responsibility for establishing agreements that can contractually bind GICNR, including resident admissions.

5. Representatives who are clinicians that make decisions about patient care.

6. Representatives with responsibility for setting and enforcing policies and procedures.

- *Initial disclosure.* Within 30 days after adopting this policy, each Representative as defined above (1-6) must complete and return to the Compliance Officer for review, the Conflict of Interest Disclosure form, indicating:

1. Any possible conflict of interest involving a financial interest, a position as an officer, board membership, other organizational membership, employment with an outside organization, ownership interest in an outside organization or joint venture arrangement with which GICNR competes or does business or could reasonably be expected to compete or do business with.

2. Any other possible conflict of interest which may have material impact on GICNR's plans and operations or result in personal benefit to a Representative.

- *Disclosure Before Appointment or Employment.* Prior to the appointment or employment of a new Representative, the new Representative must disclose any conflicts of interest as noted above,
• *Annual Disclosure.* Within three months following the close of each fiscal year, every Representative, as noted above, must disclose any conflict of interest.

• *Continuing Duty.* When any personal or outside interest on the part of any Representative that is suspected to be a conflict of interest develops after completion of the Annual Conflict of Interest Disclosure Form, but prior to the next, Representatives must contact the Compliance Officer or the Administrator and complete an Interim Conflict of Interest Disclosure Form indicating the suspected conflict.

3. **Conflict of Interest Determination.**

   a. **Definition of Conflict of Interest**

      A Conflict of interest is any personal or outside interest of a Representative that conflicts with, or that may in the foreseeable future conflict with, in fact or appearance, the operations of GICNR, in that the promotion of such interest may be inconsistent with the promotion of the best interests of GICNR. The following list includes examples of activities that are likely to constitute a conflict of interest for the Representative. This list is by no means all-inclusive.

      • A Representative who has a direct or indirect interest in any competitor or supplier, or a Representative who accepts directly or indirectly from any competitor or supplier any (a) salary, fee, commission or other compensation, (b) loans or other credit facilities, or (c) gifts or favors.

      • A Representative who uses GICNR's monies, materials, information or other tangible or intangible assets, including its reputation, to advance his or her personal outside business, or other outside interests.

   b. **Family or Household Members**

      Any business relationship between GICNR and a family or household member of any Representative, or any financial interest held by such family or household member, must be deemed a business relationship or financial interest belonging to that Representative for purposes of this policy. For the purposes of this policy, the following persons are considered family or household members:

      - Spouse, domestic partner or significant other
      - Natural or adoptive parents
      - Children and siblings
      - Step-parents, step-children and step-siblings
      - Father-in-law
c. Process for Determining Conflict of Interests

The Compliance Officer, under the general direction of the Administrator, is responsible for the implementation of the Conflict of Interest Policy. The Compliance Officer must ensure that all Key Representatives receive a copy of this Policy and complete the disclosure requirements. Additionally, the Compliance Officer must ensure that all conflicts of interests or possible conflicts of interests disclosed through this process are brought to the attention of the Administrator promptly. As part of the process of determining the existence of a conflict of interest, the Compliance Officer may review any actual or potential conflict of interests involving a Representative with the Administrator as necessary.

If a conflict of interest still appears to exist following a review by the Compliance Officer and the Administrator, then the matter will be forwarded to the facility's General Counsel for guidance in making a final determination.

d. When There is a Conflict of Interest

The Compliance Officer and the Administrator must review all available evidence brought to their attention sufficient to determine if a Representative or prospective Representative has a conflict of interest sufficient in number or importance to have or create an appearance of having a material effect on the operation or reputation of GICNR. If, after hearing the response of the Representative and making such further investigation as may be warranted in the circumstances, the Compliance Officer and the Administrator determine that the Representative has in fact failed to disclose a personal or outside interest that could constitute a conflict of interest, they must take appropriate disciplinary and corrective action.

If they, in their sole discretion, determine that any Representative or prospective Representative has conflicts of interest sufficient in number and/or importance that the effectiveness of such Representative on behalf of GICNR may be significantly impaired, they must ask such Representative to resign from (or must not appoint such Representative to) his or her position with GICNR. Similarly, if they determine that a Representative (or prospective Representative) has in fact failed to disclose a personal or outside interest that does or could constitute a conflict of interest sufficient in number and/or importance that the effectiveness of such a Representative on behalf of GICNR is significantly impaired, they must also take appropriate disciplinary and
corrective action.

e. When a Conflict of interest is Determined NOT to Exist

Representatives who do not receive or who are not contacted by the Compliance Officer concerning a conflict of interest do not have a conflict of interest. Accordingly, an affirmative response will not be sent to Representatives by the Compliance Officer to confirm that a conflict of interest does not exist for Key Representatives who completed a Conflict of Interest Disclosure Form.

f. Failure to Disclose

If the Compliance Committee has reasonable cause to believe that a Representative has failed to disclose a personal or outside interest that could constitute a conflict of interest, it must inform the Representative of the basis for that belief and give the Representative an opportunity to explain the alleged failure to disclose,

g. Conflicting Duties

In certain circumstances, a Representative disclosing an actual or potential conflict of interest may be faced with conflicting duties such that the Representative's disclosure of the actual or potential conflict of interest would breach the Representative's duty of confidentiality to another organization. In such cases, the Representative must state that an actual or potential conflict of interest exists and that his or her duties to another organization preclude full disclosure of the nature or extent of the interest. The representative must leave the meeting, or at least abstain from the discussion and vote. The disclosure must be recorded in the minutes of the meeting.
The Glen Island Center for Nursing and Rehabilitation (GICNR) has adopted a Conflict of Interest policy. This policy is being provided to you and is attached.

By signing below, you certify the following statements:

- I have received a copy of the Conflict of Interest Policy
- I have read and understood this policy
- I agree to fully comply with said policy
- I certify that I speak, read and understand English
- I understand that this policy applies to all staff, consultants, vendors, volunteers and any other interested party working for or doing business with GICNR
- Should there be the possibility of a conflict either now, or in the future, I will be excluded from any meetings or forums that are evaluating that issue
- I certify that I understand that this document and all related documents will become part of my permanent record and will be kept therein and active while my association with the facility is active. Should that relationship end, for any reason, the file will be retained for a period of seven (7) years and then destroyed.

I have read, understood and agree to comply with the Conflict of Interest policy and have completed the Conflict of Interest Disclosure Form.

______________________________
Signature

______________________________
Print Name

______________________________
Department/Vendor/Consultant/Volunteer

______________________________
Date

______________________________
Compliance Officer/designee signature

______________________________
Date

Revised 092016

Attachment
CONFLICT OF INTEREST DISCLOSURE FORM

Name: _______________________________ Date: _______________________________

Position: circle one: Employee Volunteer Consultant Other: ______________________

Please answer questions below:

1. Do you, or to your knowledge, any member of your family have a financial interest in a Vendor that has or seeks to enter into a transaction with GICNR. (You need not report any financial interest in a Vendor if your and your immediate family’s combined interest is less than 5% of the outstanding publicly traded shares of the vendor)
   _____ No _____ Yes If Yes, please explain:

2. Do you, or to your knowledge, any member of your family hold any position as a member, owner, director, officer, employee or consultant for a vendor that has or seeks to enter into a transaction with GICNR.
   _____ No _____ Yes If yes, please explain:

3. Have you, or to your knowledge, any member of your family received or enjoyed, directly or indirectly, any gift, entertainment, compensation, reward or other benefit or more than nominal value during the past year from any vendor that has or seeks to enter into a transaction with GICNR.
   _____ No _____ Yes If yes, please explain:

4. Have you or, to your knowledge, any member of your family engaged in any transaction with GICNR during the past year? (You need not report any compensation received as salary, wages or bonuses, any benefit received under GICNR’s written employee benefit plan or arrangement, any reimbursement of expenses made in conformity with GICNR’s
reimbursement procedures, or any health care services received from GICNR on customary terms).

_____ No _____ Yes If yes, please explain:

5. Are you a member of the governing board or an officer, or other employee of or consultant to any health care institution other than GICNR?

_____ No _____ Yes If yes, please explain:

I acknowledge that I have read the policies and directives set out in the attached Conflict of Interest policy and that I intend to abide by its provisions. I understand that I have an affirmative obligation to update the information stated above.

_________________________ ____________________________
Signature Print Name

_________________________
Date

_________________________
Compliance Officer Date

Action Required? _____ No _____ Yes If Yes, please explain:

Revised 09/2016
Appendix B
Summary of Relevant Federal and State Laws Relating to False Claims (from OMIG website)
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;
(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 impropriety 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.
(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.
(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.
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.

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**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.

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.
III. WHISTLEBLOWER PROTECTION

1) Federal False Claims Act (31 U.S.C. §3730(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.
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.